

Ontario Suspends Commercial Tenant Evictions

COVID-19 | Commercial Landlord | Commercial Tenancies Act | Litigation | Litigation & Dispute Resolution | Ontario Government

19 June 2020

In the wake of the COVID-19 pandemic, governments around the world have implemented physical distancing measures to “flatten the curve”.

While the effects of physical distancing have been favourable from an epidemiological perspective, businesses have suffered considerably.

When Ontario Premier Doug Ford ordered the closing of all non-essential business on March 23^d, 2020, a large part of the economy came to a standstill. Businesses that were deemed “non-essential” had to virtually cease their activity. However, their contractual and commercial leasing obligations endured. Like residential tenants, who were protected from being evicted earlier this year, commercial businesses have demanded protection from the threat of eviction.

On 17 June 2020, the Ontario government passed Bill 192, the *Protecting Small Business Act* to respond to the concerns raised by commercial tenants.

This Bill amends the *Commercial Tenancies Act* to temporarily ban or reverse evictions of commercial tenants, and to protect them from being locked out of their leased premises or having their assets seized until 31 August 2020. Among the Bill's provisions, courts are also prohibited from ordering writs of possession to commercial landlords that are effective during the non-enforcement period if the basis for the writ is an arrears of rent. The “non-enforcement period” is defined as the period that begins on the day the Bill comes into force (which was 18 June 2020) and ends on the day “this section is repealed”. The repeal date is currently expected to be 1 September 2020.

The Bill has a retroactive effect to 1 May 2020. Accordingly, if a landlord has exercised a right of re-entry between 1 May 2020 and the start of the non-enforcement period defined above, the landlord must restore possession of the premises to the tenant or, if unable to do so, must compensate the tenant for damages. Additionally, if a landlord has seized a tenant's goods between 1 May 2020 and the start of the non-enforcement period as a distress for arrears of rent, the landlord must return any unsold goods to the tenant.

However, Bill 192 does not protect all commercial tenants. More specifically, Bill 192 applies only to those businesses that are eligible for federal/provincial rent assistance under the Canada Emergency Commercial Rent Assistance (CECRA) for small businesses program. It does not apply to other commercial tenants, including commercial tenants where a landlord has been approved to receive the assistance under the CECRA because in these circumstances the landlord must enter into an agreement that contains a moratorium on an eviction for three months.

The Ontario government has encouraged landlords and tenants to participate in the CECRA. The CECRA provides forgivable loans to eligible commercial landlords for the months of April, May, and June 2020 to offset commercial rent. The government program offers to pay 50 per cent of the rent owing if the landlord agrees to forgive a quarter of it and the tenant pays the other quarter.

To qualify for CECRA for small businesses in Ontario, a commercial landlord must meet the following eligibility requirements:

1. own commercial real property which is occupied by one or more impacted small business tenants;
2. enter (or have already entered) into a legally binding rent reduction agreement for the period of April, May and June 2020, reducing an impacted small business tenant's rent by at least 75%;
3. ensure the rent reduction agreement with each impacted tenant includes:
 - a moratorium on eviction for the period during which the property owner agrees to apply the loan proceeds, and
 - a declaration of rental revenue included in the attestation

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We note that small businesses that opened on or after 1 March 2020 are not eligible, but properties with or without a mortgage are eligible for CECRA.

Without the protection provided to commercial tenants affected by the Bill, commercial landlords would otherwise have been eligible to evict those commercial tenants who did not pay their rent. In general, where a commercial tenant does not pay their rent a landlord can: (a) **affirm the lease and sue for rent or for performance of an obligation and initiate an action in the applicable court**; (b) **affirm the lease and re-enter and re-let the premises**; (c) **affirm the lease and exercise rent distress rights** (seizure of property assets); or (d) **accept the repudiation of the lease, terminate and re-enter**, and sue for the rent that would otherwise have been payable for the balance of the lease term.

The government's purpose in passing Bill 192 is to support small businesses and to provide them with relief.

Ontario is not the first province to have implemented legislation to protect small businesses from eviction. British Columbia, Alberta, Saskatchewan and Quebec have enacted similar legislation.

For more information about the content of this update, please contact the Chair of our Dispute Resolution Group, Gavin Tighe.

(This blog is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP).

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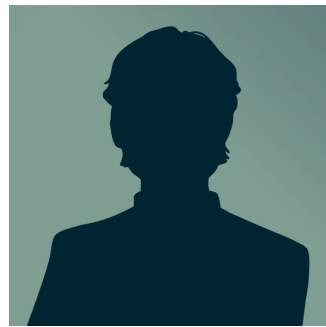


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