

CLIENT ALERT

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PROTECTING SMALL BUSINESS ACT, 2020

by Paul A. Muchnik and Justin Quach

As of June 18th, Bill 192, *Protecting Small Business Act, 2020* (the "Act") received royal assent and came into force. The Act is an amendment to the *Commercial Tenancies Act of Ontario* (the "CTA") and introduces prohibitions on certain actions by landlords who are eligible, or would be eligible, to receive assistance from the Canada Emergency Commercial Rent Assistance ("CECRA") for small businesses program.

The Act is intended to prevent the eviction of commercial tenants during the COVID-19 pandemic if the basis for eviction is non-payment of rent for the months of April, May, and June 2020. It also serves to protect commercial tenants from being locked out or having assets seized due to non-payment of rent for the months of April, May, and June 2020.

Highlights of the Act are as follows:

- The Act only applies to a landlord that is either (1) eligible to receive assistance under CECRA and has elected not to participate; or (2) eligible to receive assistance under CECRA and is participating by having entered into a rent reduction agreement containing a moratorium on eviction.
- The time period in which a landlord is prohibited from taking action against tenants (the "Non-Enforcement Period") begins June 18, 2020 and ends on the day the Act is repealed. The Act is anticipated to be repealed September 1, 2020, or on an earlier day to be named by the proclamation of the Lieutenant Governor.
- The Act prohibits judges from ordering a writ of possession that is effective during the Non-Enforcement Period if the basis for doing so are rental arrears for the months of April, May, and June of 2020. This prohibition applies irrespective of whether the action or application was commenced before, on, or after the beginning of the Non-Enforcement Period.
- During the Non-Enforcement Period, a landlord caught under this Act is prohibited from exercising a right of re-entry.
- If a landlord exercised the right of re-entry between May 1, 2020 and June 18, 2020, the Act mandates that the landlord shall as soon as reasonably possible,
 - i. Restore possession of the premises to the tenant unless the tenant declines to accept possession; or
 - ii. If the landlord is unable to restore possession of the premises to the tenant for any reason other than the tenant declining to accept possession, compensate the tenant for all damages sustained.

Unless otherwise agreed, the tenancy is deemed to be reinstated on the same terms and conditions.

- During the Non-Enforcement Period, a landlord caught under this Act is prohibited from seizing any goods or chattels as a distress for non-payment of rent for the months of April, May, and June of 2020.
- If a landlord seized any goods or chattels as distress for arrears between May 1, 2020 and June 18, 2020, the Act mandates that the landlord shall, as soon as reasonably possible, return to the tenant all of the seized goods and chattels that are unsold as of June 18, 2020.
- If a landlord of an eligible tenant applies for CECRA and is approved to receive assistance under CECRA, the landlord will no longer be prohibited from, and the tenant will no longer be protected from evictions, lockouts, or asset seizures for non-payment of rent for the months of April, May, and June 2020.
- A landlord who fails to comply with the above-mentioned is liable

to the "person aggrieved" for any damages sustained by the person aggrieved as a result of the contravention or non-compliance.

The Act was introduced in Ontario to halt and reverse evictions in light of the COVID-19 pandemic, but also to address the lack of participation in the CECRA program. Although CECRA is primarily intended to provide relief for commercial tenants, participation in the program is at the landlord's discretion. Prior to the Act, tenants who would otherwise be eligible for relief under CECRA could be denied such relief and be subject to eviction, lockouts, or asset seizures for arrears in rent if the landlord did not wish to enroll in the program. The Act serves to persuade landlords to participate in CECRA if their tenants are eligible for assistance.

The Act is intended to protect commercial tenants during the COVID-19 pandemic, provide relief to tenants, provide landlords with income stability, and it also aids in preserving the relationship between landlords and tenants.

However, the Act leaves the following questions unanswered:

- The Act mandates that landlords who fail to comply are liable to "persons aggrieved" for damages. Who is considered a person "aggrieved"? Was it the legislature's intention to expand a landlord's liability beyond the tenant?
- The Act is set to be repealed on September 1, 2020 and CECRA only provides relief for the months of April, May, and June. Are businesses that have experienced significant declines in revenue expected to resume and meet their pre-pandemic rental obligations or be faced with evictions and asset seizures as of September 1, 2020? Is the Act simply a rent deferral mechanism, prolonging the inevitable demise of commercial tenancies of troubled businesses?
- After a tenant is eligible and approved for assistance under CECRA, landlords are no longer prohibited under the Act from commencing evictions, lockouts, and asset seizures for non-payment of rent for the months of April, May, and June, 2020. However, the Act does not specify whether a tenant that would be eligible, but refuses to participate in the CECRA program is entitled to protection under the Act.

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