

COVID-19 AND COMMERCIAL TENANCIES - ALBERTA'S *COMMERCIAL TENANCIES PROTECTION ACT*

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Background

Bill 23, *the Commercial Tenancies Protection Act* (“**CTPA**” or the “**Act**”), was introduced in legislature on June 16, 2020 to protect commercial tenants experiencing difficulty meeting their obligations under a tenancy agreement due to pandemic COVID-19. The purpose of the Act is to ensure that eligible tenants are not subject to undue consequences (i.e. late penalties, rent increases, eviction or other termination of their tenancy) because of circumstances beyond their control. The CTPA addresses gaps left by the federal [Canada's Emergency Commercial Rent Assistance](#) (“**CERCA**”) program which provides forgivable loans to commercial property owners of the rent payments of eligible small business tenants. Lawmakers have introduced Bill 23 to the Alberta legislature in an attempt to address the problem of non-payment of rent during the emergency period.

Who is Protected?

The CPTA will protect eligible tenants of commercial premises who are unable to meet their lease obligations due to the effects of COVID-19. Any waiver or release by an eligible tenant of their rights, benefits and protections under the Act is void. The Act does not protect from termination those tenants who commit a substantial breach of their tenancy agreement. Substantial breaches include, amongst other items, the significant interference with the rights of the landlord or other tenants in the premises or common areas, endangering persons or property in the premises or common areas, the tenant repudiating the tenancy agreement by abandoning the premises, or the tenant receiving a notice from any secured creditors under the *Bankruptcy and Insolvency Act* (Canada).

If passed, the CTPA will retroactively come into force on March 17, 2020. The CTPA will apply to commercial tenancy agreements that were in effect during the public health emergency period starting on March 17, 2020 through until August 31, 2020 (the “**Emergency End Date**”), and which were entered into prior to March 17, 2020. The Act also prescribes that the Minister of Economic Development, Trade and Tourism (the “**Minister**”), may make regulations that prescribe an alternative Emergency End Date creating the possibility that the Act

may be extended in response to the COVID-19 pandemic. The Act will not apply to evictions and terminations of commercial tenancy agreements that have taken effect prior to the first reading of the Bill which occurred on June 16, 2020.

The Act does not provide clarity on the classes of “eligible” tenants or landlords to whom the Act will apply, but does prescribe that the Minister may make regulations clarifying these classes. The Alberta Government has provided some clarity through an online posting, where it is indicated that these protections are intended for: (1) commercial tenants with tenancy agreements eligible for CERCA, but whose landlords chose not to participate and (2) commercial tenants who have had to close their business due to COVID-19 or have experienced a decline of 25% or more of their revenue due to COVID-19.

Implications for Commercial Landlords

The CPTA applies to eligible commercial landlords and their agents or assigns. Notwithstanding any tenancy agreement, the Act bars eligible landlords from giving notice of default, distraining on rent, evicting a tenant, or otherwise exercising remedies or terminating the tenancy agreement of commercial tenants protected under the Act. Provided the breach or default is caused by the COVID-19 pandemic, the Act provides protection from remedies in the following circumstances: (1) the non-payment of rent, rent-arrears, or both; (2) the applicability of a force majeure clause or frustration of contract; or (3) the breach of a continuous occupancy clause by the tenant.

The CPTA further bars eligible landlords from increasing rent under the lease or enforcing any provision in the tenancy agreement which imposes a late fee or penalty for late payment of rent or non-payment of rent by a tenant for the period of March 17, 2020 through the Emergency End Date. Furthermore, landlords who have charged a late fee or increased rent during the emergency period are required to refund the amount paid or provide the tenant with a credit in the amount paid.

Non-compliance by eligible landlords with the Act is considered a substantial breach of the tenancy agreement by the landlord. Tenants will be entitled to exercise all rights of the tenant relating to a substantial breach under the tenancy agreement as well as any additional rights established by the regulations.

Repayment of Outstanding Rent

The CPTA prescribes the use of payment plans for the repayment of outstanding rent. Payment plans will have the effect of amending the tenancy agreement to the extent necessary to respond to the COVID-19 pandemic. The CPTA does not require eligible landlords to engage in rent forgiveness or rent reduction. While the Act does preclude landlords from exercising specific remedies during the effective period of the Act, failure of a tenant to adhere to the payment plan after the Emergency End Date will entitle a landlord to exercise all

remedies available to the landlord under the tenancy agreement.

Next Steps

The CPTA has gone through its first reading on June 16, 2020 and its second reading on June 23, 2020 in the Alberta Legislature. The Bill is required to go through one additional reading before it can receive Royal Assent and become law with retroactive effect to March 17, 2020.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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