

## Bill 23: Alberta's attempt at filling the gaps in CECRA

By Harrison Clark

On June 16, 2020, the Alberta Legislature introduced Bill 23: *Commercial Tenancies Protection Act* (the **Act**). Introduced to protect eligible commercial tenants experiencing financial challenges as a result of the COVID-19 pandemic (the **Pandemic**) from evictions, lease terminations, late penalties and rent increases during the Pandemic, if passed, the Act will apply to:

1. certain classes of landlords (which include lessors and owners of commercial properties, as well as property managers) and tenants (which includes subtenants, lessees, permitted occupants, and licensees) prescribed by the upcoming regulations; and
2. commercial lease agreements in effect in Alberta on March 17, 2020 or made effective between March 17, 2020 and the public health emergency end date (the **End Date**).

While the End Date will be released in the future and may be altered by regulations, the Government of Alberta indicated through a June 16, 2020 Government of Alberta press release (the **Press Release**), the End Date will be August 31, 2020, subject to any extension. It should be noted that the Act will not apply to lease agreements entered after March 17, 2020.

### Tenant protections

Under the Act, applicable landlords will not be able to give a notice of default, distraint for rent, evict a tenant, or otherwise exercise remedies under a commercial lease agreement, including termination, between March 17, 2020 and the End Date that relate to:

1. the non-payment of any rent, rent arrears, or both;
2. the applicability of a force majeure provision or frustration of a contract; or
3. the breach of any continuous occupancy clause.

The Act does not specify which party has the onus of proving or disproving the above relationship between the Pandemic and the cause of the tenant's difficulties. However, the Press Release indicates the Act and upcoming regulations will apply to:

1. those tenants that would be eligible for the CECRA program, but whose landlords have chosen not to participate or
2. those who have had to close their business due to public health orders or have had their business revenue decline by 25% or more as a result of Pandemic.

### Prohibition on rent increases, late fees and penalties

The Act will not force landlords to forgive or reduce rent but will restrict them from increasing rent payable by a tenant until the End Date. Should a landlord have increased and collected the rent payable by the tenant following the March 17, 2020 (with the commercial lease agreement still in effect) or increased and collected the rent on a new commercial lease agreement (with the same tenant at the same premises), the landlord must refund the difference or provide a credit to the tenant. If the commercial lease agreement was terminated prior to June 16, 2020, a landlord can retain any increased rent amounts received.

Following the Act becoming law, applicable landlords cannot charge a fee for late or non-payment of rent by the tenant. If a tenant paid a fee or penalty for late payment of rent or non-payment of rent after March 17, 2020, the landlord must refund the amount or provide the tenant with credit for that

amount. This includes fees or penalties for late payment of rent regardless of whether the commercial lease agreement was terminated prior to June 16, 2020. If the commercial lease agreement persisted beyond June 16, 2020, landlords only need to refund rent increases charged and collected after March 17, 2020.

If a tenant's actions violate any commercial lease provisions other than those covered by the Act, the tenant may be evicted or penalized in accordance to the commercial lease agreement's terms. Such provisions not covered by the Act include, but are not limited to, the tenant performing illegal acts or carrying on an illegal trade, the tenant endangering persons or property in the premises, and the tenant failing to maintain the premises and any property rented with it in a reasonably clean condition. However, the landlord is still prevented from exercising the common remedial rights under a commercial lease agreement, such as distraint and additional fees.

#### **Substantial breach**

Failure by the landlord to follow the Act will constitute a substantial breach of the commercial lease agreement. This will provide the tenant with the option to pursue recourse remedies under the terms of the commercial lease agreement or through any additional rights provided by the upcoming regulations.

#### **Payment plan**

Should the tenant be unable to pay the required rent under the commercial lease agreement because of the Pandemic, the Act indicates tenants and landlords must develop a rent payment plan for missed payments. The terms of a payment plan may extend beyond the End Date and must account for any fees, penalties, or increased rent that have not otherwise already been refunded to the tenant.

#### **Conclusion**

If passed, the Act will apply retroactively from March 17, 2020 but will not apply to any evictions or lease terminations occurring prior to first reading, which occurred on June 16, 2020. Further, the Act has received First Reading and Second Reading in the Alberta Legislature and therefore must proceed through the Third Reading and receive Royal Assent prior to becoming law. This article summarises the information available following the Second Reading and changes to the Act and the introduction of regulation are likely and may impact this article.

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