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Canadian Emergency Commercial Rent Assistance Program (CECRA)

June 30, 2020

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The COVID-19 pandemic has severely impacted many small businesses in BC. On April 24th, 2020, the Government of Canada announced a new program – the Canada Emergency Commercial Rent Assistance Program (CECRA) – to provide financial assistance to small business tenants and their landlords suffering from the impacts of COVID-19 during the months of April, May, and June. On June 30th, the CECRA was extended to cover July 2020.

Under the CECRA, qualifying small business tenants' rent obligations will be reduced to a maximum of 25% of their regular monthly rent. An additional 50% of the monthly rent will be covered by a forgivable loan from the federal government to the commercial property owner/landlord. This loan will be forgiven on December 31, 2020 provided the commercial property owner complies with the requirements of the program. The remaining 25% of the monthly rent payable by the tenant must be forgiven by the commercial property owner.

As an added incentive for commercial property owners in British Columbia to participate in the program, the Government of BC enacted Ministerial Order No. M179 (the "Order") on June 1, 2020. Under the Order, landlords who elect not to participate in CECRA are prohibited from taking any of the following actions after May 29, 2020 in the event of an eligible small business tenant's failure to pay rent:

- exercise any contractual or other right of re-entry to the tenant's leased property;
- give the tenant notice of re-entry or notice of termination of the tenant's lease;
- distraint the tenant's property for rent due; or
- take any steps to rent out the tenant's leased property on the tenant's behalf.

As an aside, we suspect many commercial landlords would not describe the Order as creating incentives for commercial landlords to participate in CECRA, but rather as unwelcomed coercion to force commercial landlords (and good taxpayers) to participate in an unpopular government program with significant administrative paperwork burdens.

The Order will continue to apply until the end of the applicable period of the CECRA (currently July 31, 2020) or until BC's state of emergency is cancelled – whichever comes first. The Order does not apply when a tenant has abandoned or deserted the leased property, nor does it apply to leases that expired prior to May 29, 2020.

Small Business Eligibility

Only impacted small business tenants are eligible for the CECRA. Impacted small businesses are defined as businesses opened prior to March 1, 2020, that pay no more than \$50,000 in monthly gross rent per location, generate no more than \$20 million in gross annual revenues, and have experienced a 70% decline in pre-pandemic revenues.

Commercial Property Owner Eligibility

The commercial property owner must own commercial property which is occupied by one or more impacted small business tenants and enter into a legally binding rent reduction agreement with each eligible small business tenant that wishes to participate in the program for the period of April, May, June, and July 2020.

The CECRA does not apply to government-owned properties. However, exceptions include:

- where there is a long-term lease to a First Nation, or Indigenous organization or government, the leaseholder is eligible as a property holder for CECRA;
- where there is a long-term commercial lease with a third party who operates the property (e.g., an airport), the third party is eligible as a property holder for the CECRA;
- post-secondary institutions, hospitals, and pension funds are eligible as property holders; and
- crown corporations with limited appropriations that are designated as eligible for the CECRA.

Application Process

Commercial property owners register for CECRA on behalf of their tenants. Registration for the CECRA program opened on May 25, 2020 and will remain open until August 31, 2020 on the Canadian Mortgage and Housing Corporation portal.

Commercial property owners must submit a property owner attestation of eligibility, tenant or sub-tenant attestation of eligibility, rent reduction agreements for each impacted tenant asking for rent relief, and a forgivable loan agreement. The included links provide examples of the required agreements.

The rent reduction agreement must include a moratorium on eviction for the period during which the property owner agrees to receive the forgivable loan proceeds and a declaration of rental revenue.

More detailed information on CECRA eligibility and the application process can be found on the CECRA website and on the Small Business BC website.

Common Issues

Lack of Landlord Participation

Despite Ministerial Order No. M179, many landlords have chosen not to participate in the CECRA program. Some landlords have, however, offered alternative rent relief such as reducing rent to operating costs only or by the same amount as per the CECRA program. But, if you are an impacted small business tenant who has not received any rent relief, you are not without options.

First, consider reaching out to your landlord to determine whether they intend to apply for the CECRA program. Commercial property owners have until August 31st, 2020 to apply and the loan amounts can be applied retroactively even if tenants have already paid rent for April, May, June, and July. If your landlord is hesitant about applying, remind them that the CECRA benefits them as well. If several small business tenants cannot pay their rent, CECRA provides an opportunity for the landlord to reduce the shortfall on the rental income they receive from their small business tenants for these four applicable months. The landlord will be aware that if a tenant decides to abandon their premises because the landlord will not participate in CECRA, it will likely take the landlord a few months to find a new tenant, and meanwhile they will continue to pay their mortgage, property taxes, and other costs. Furthermore, the landlord may have to reduce the rent for the abandoned premises in order to attract a new tenant while COVID-19 continues to impact business generally.

Second, help your landlord with the application process as much as possible. Many commercial property owners are hesitant to apply for the CECRA because of the extra paperwork involved. If you, as a tenant, have the capacity to ease this workload by returning your paperwork promptly or even organizing to have all eligible small business tenants apply together, the landlord may be more likely to proceed with an application.

Finally, maximize the other COVID-19 benefits available to you such as Canada Emergency Wage Subsidy (CEWS), Canada Emergency Business Account (CEBA) interest-free loans, and the Regional Relief and Recovery fund (RRRF).

Rent After July 31st

The Canadian Federation for Independent Businesses recently issued a statement recommending that the CECRA be extended to September 2020. However, there is no indication that the Government of Canada will extend the CECRA period beyond July 31st or the Government of BC will extend the moratorium on commercial tenant evictions beyond July 31st.

The Governments of Alberta and Ontario have approved a moratorium on commercial tenancy evictions that will last until August 31st. However, as Alberta is also experiencing economic challenges with the fall in the price of oil, as BC has not been impacted by COVID-19 to the same level as Ontario and as businesses in BC are now re-opening, BC may decide an extension of the Order beyond July 31st is not necessary.

If the CECRA and eviction moratorium periods are not extended, failure to pay August rent would permit the landlord to terminate the lease. Accordingly, small businesses who are still unable to pay rent will need to negotiate further rent relief terms with their landlords independently.

If a commercial landlord elected not to participate in CECRA, we anticipate such landlords will take the position they can terminate a lease where the tenant has not paid full rent for any of April, May, June or July as of August 1st given that the Order only applies up to July 31, 2020. Where a landlord elects not to participate in CECRA and then brings an action for unpaid rent or to terminate a small business tenant's lease for non-payment of rent and that tenant would have been eligible for CECRA, we suspect the court will be highly sympathetic to any reasonable defence a tenant makes to the landlord's action. We also anticipate tenants will claim the landlord failed to mitigate their damages by electing not to participate in the CECRA program.

If you are an impacted small business tenant who will not be able to pay full rent in August or subsequent months, carefully consider how long you expect your cash flow to be impacted by COVID-19. If you had a rent reduction agreement with your landlord for April, May, June, and July (through CECRA or otherwise), ask your landlord whether they are willing to extend the rent relief for subsequent months. Alternatively, your landlord may propose a rent deferment program, under which you agree to pay higher rent in later months to cover rent not paid on time. If so, consider the number of months over which you would need to spread the deferred payments after your business operation are back to normal after the pandemic or they stabilize to a new, but possibly reduced, revenue level.

Finally, recall that many small businesses are experiencing the same cash flow challenges and your landlord's next best alternative may be no tenant at all for an extended period of time and no cash flow from the premises. If that is the case, the landlord will likely welcome or at least discuss candidly an alternative proposal that allows the landlord to collect some rent now, or a high probability of rent in the coming months, rather than none at all.

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