

Bill 192, Protecting Small Business Act, 2020

By: Minden Gross LLP [Commercial Leasing Group](#)

June 18, 2020

On June 17, 2020, the Legislative Assembly of Ontario held all three readings of Bill 192, [Protecting Small Business Act, 2020](#) (the “Act”). The Act amends the [Commercial Tenancies Act of Ontario](#) (the “CTA”) to prohibit certain actions by landlords if the landlord is or would be eligible to receive assistance from the [Canada Emergency Commercial Rent Assistance](#) (“CECRA”) for small businesses program. Ontario’s rapid approval of this legislation follows the lead of other Canadian provinces that have recently passed similar legislation or orders whose purpose is to protect commercial tenants from evictions through the COVID-19 pandemic. On June 18, 2020, the Act received Royal Assent and came into force.

The key features of the Act are as follows:

- The moratorium and prohibitions shall be enacted as a new Part IV to the CTA.
- The Act will be automatically repealed on September 1, 2020, or on an earlier day to be named by proclamation of the Lieutenant Governor.
- The new Part IV of the CTA will apply to a tenancy in respect of which:
 - (1) the landlord is eligible to receive assistance under the CECRA program; or
 - (2) the landlord would be eligible to receive assistance under the CECRA program if the landlord had entered a rent reduction agreement with its tenant containing a moratorium on rent eviction.
- The moratorium starts on the day the Act comes into force (June 18, 2020) and ends on the day the Act is repealed (as described above).
- The Act mandates the following restrictions:
 1. Judges are precluded from ordering a writ of possession that is effective during the moratorium in respect of applicable tenancies **if the basis for ordering the writ is an arrears of rent**. This applies to any action or application that was commenced before, on or after the start of the moratorium. However, this prohibition does not apply in respect of an action or application by the landlord for a writ of possession if same was commenced **after** the landlord was approved to receive the assistance.

2. During the moratorium, affected landlords are prohibited from exercising a right of re-entry. **Note that this is not limited to rent defaults.** However, this prohibition does not apply if the right was exercised **after** the landlord was approved to receive CECRA assistance.
3. Relatedly, if an affected landlord had previously exercised a right of re-entry during the period **beginning May 1, 2020**, and ending the day immediately before the start of the moratorium, the landlord must, **as soon as reasonably possible**:
 - (1) restore possession of the premises to the tenant (unless tenant declines to accept possession); or
 - (2) if the landlord is unable to restore possession of the premises to the tenant for any reason other than the tenant declining possession, the **landlord must compensate the tenant for all damages sustained by the tenant by reason of the inability to restore possession.** Additionally, if possession of the premises is so restored to the tenant, the tenancy is deemed to be reinstated on the same terms and conditions (unless otherwise agreed between the parties). However, these provisions do not apply if the right was exercised **after** the landlord was approved to receive assistance.
4. During the moratorium, affected landlords may not exercise the remedy of distress. Additionally, if the landlord exercised the remedy of distress during the period **beginning May 1, 2020** and ending the day before the start of the moratorium, said landlord must return to the tenant all seized goods and chattels that are unsold as of the start of the moratorium. However, these provisions do not apply if the seizure of the tenant's goods or chattels was done **after** the landlord was approved to receive CECRA assistance.
 - Landlords who contravene or fail to comply with the above-described restrictions are liable to the tenant for any damages sustained by the tenant as a result.
 - The Act applies despite any other Part of the CTA or any provision in an agreement or any common law rule.

The Act does not protect tenants who are not eligible small business tenants within the meaning of the CECRA program. Further, the Act does not prohibit landlords who do not participate in CECRA, either generally or with respect to a particular tenant, from commencing legal proceedings against the tenant for payment of rent as it falls due. Lastly, we note that if a landlord and tenant have been approved for the CECRA program, under the applicable rent reduction agreement, the landlord would still be subjected to restrictions in enforcing lease defaults by its tenant. In particular, during the period starting April 1, 2020 and ending on the date on which the tenant is no longer receiving any rent reduction or credit under such agreement, the landlord cannot serve the tenant with any default notice nor seek to effect or proceed with an eviction where the basis for such default notice or eviction is a lease default where the tenant was prevented from performing its obligations in



default because of the COVID-19 pandemic, excepting any default by the tenant in the payment of that part of its rent that was not forgiven pursuant to the rent reduction agreement.

In our view, the Act introduces a powerful incentive for landlords and tenants in Ontario to participate in the CECRA program. Although the Act does not mandate that landlords must forgive or abate the rent of CECRA-eligible tenants, the thrust of the Act will nonetheless be a material encroachment on the rights of many Ontario landlords under their respective leases and at law.

We continue to provide updates on the implementation of the CECRA program. If you have any questions or would like to obtain legal advice on the CECRA program, please contact any lawyer in our [Commercial Leasing Group](#).

Commercial Leasing Group

Stephen Posen

Chair – Commercial Leasing Group
e: sposen@mindengross.com
p: (416) 369-4103

Ian Cantor

Partner - Litigation Group
e: icantor@mindengross.com
p: (416) 369-4314

Christina Kobi

Partner, Commercial Leasing Group
e: ckobi@mindengross.com
p: (416) 369-4154

Benjamin Radcliffe

Partner, Commercial Leasing Group
e: bradcliffe@mindengross.com
p: (416) 369-4112

Steven Birken

Associate, Commercial Leasing Group
e: sbirken@mindengross.com
p: (416) 369-4129

Catherine Francis

Partner - Litigation Group
e: cfrancis@mindengross.com
p: (416) 369-4137

Michael Horowitz

Partner, Commercial Leasing Group
e: mhorowitz@mindengross.com
p: (416) 369-4121

Boris Zayachkowski

Partner, Commercial Leasing Group
e: bzayachkowski@mindengross.com
p: (416) 369-4117

Melodie Eng

Associate, Commercial Leasing Group
e: meng@mindengross.com
p: (416) 369-4161

Leonidas Mylonopoulos

Associate, Commercial Leasing Group
e: lmylonopoulos@mindengross.com
p: (416) 369-4324

This article is intended to provide general information only and not legal advice. This information should not be acted upon without prior consultation with legal advisors.