

Bill 229 – Further Protections for Commercial Tenancies

November 17, 2020

Bill 229, *Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020* (the Act), an omnibus budget bill, was introduced by the Ontario government on November 5, 2020. This Act is subject to change as it makes its way through the legislative process. If passed, Schedule 5 of the Act will provide protection for commercial tenants under Part IV of the *Commercial Tenancies Act* by establishing a Non-Enforcement Period (as defined below) in respect of certain commercial tenancies. During the Non-Enforcement Period, judges are prohibited from ordering a writ of possession if the basis for ordering the writ is an arrears of rent, and landlords are prohibited from exercising a right of re-entry and from seizing any goods or chattels as a distress for arrears of rent.

The "Non-Enforcement Period" will begin on the date which the Act comes into force and will end on a prescribed date (which has yet to be determined).

The Act will only apply in respect of a tenancy in which the landlord:

(i) is or was eligible to receive assistance under the Canada Emergency Rent Assistance (CECRA) program;

(ii) is receiving or has received assistance under the CECRA program;

(iii) would be eligible to receive assistance under the CECRA program if the landlord entered into a rent reduction agreement with the tenant containing a moratorium on eviction; or

(iv) would have been eligible to receive assistance under the CECRA program if the program applications were still being accepted.

While the CECRA program ended on September 30, 2020 and was replaced by the Canada Emergency Rent Subsidy (CERS) program (along with the new Lockdown Support), the CECRA program remains the referenced program in connection with Bill 229. For more information on CERS and the Federal Government's Lockdown Support, see our recent insight [here](#).

If a landlord has exercised a right of re-entry between October 31, 2020 and the day immediately before the start of the Non-Enforcement Period, the landlord will be required to restore possession of the premises to the tenant as soon as reasonably possible, subject to the tenant agreeing to accept the restoration of possession. If the landlord is unable to restore possession to the tenant as soon as reasonably possible for any reason (other than the tenant declining to accept possession), then the landlord must compensate the

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tenant for damages sustained by the tenant by reason of the inability to restore such possession. If a landlord restores possession to the tenant, the tenancy will be deemed to have been reinstated according to the same terms and conditions of the lease in question, unless the landlord and the tenant agree otherwise.

If a landlord seizes goods or chattels as a distress for arrears of rent between October 31, 2020 and the day immediately before the start of the Non-Enforcement Period, the landlord must, as soon as reasonably possible, return to the tenant all of the seized goods and chattels that are unsold as of the start of the Non-Enforcement Period.

If a landlord fails to comply with the aforementioned restrictions and requirements, then the landlord will be liable for damages sustained by the tenant as a result of such failure.

If passed, Schedule 5 of the Act will effectively work to extend the temporary moratorium on evictions and restrictions on distress rights previously provided to certain commercial tenants through October 30, 2020 pursuant to the *Protecting Small Business Act, 2020* and the *Helping Tenants and Small Business Act, 2020*.

Please contact Cassels with any questions you may have regarding the new proposed legislation. We look forward to guiding you during these uncertain times.

The authors gratefully acknowledge the contributions of articling student Angela He in the preparation of this article.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.