

Limitations on Landlord Remedies during the Pandemic – Ontario's Moratorium on Eviction and Distress Rights

January 11, 2021

On December 8, 2020, the Ontario government passed Bill 229, *Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020*, an omnibus budget bill (Bill 229). Among other things, Bill 229 extended the moratorium on evicting tenants that were or would have been eligible to receive assistance under the Canada Emergency Rent Assistance (CECRA) for small businesses program (CECRA tenancies), as more particularly set out in our November 17, 2020 article. Pursuant to Bill 229, during specified periods, 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 protections for CECRA tenancies under Bill 229 apply during the "Non-Enforcement Period" which commenced on December 8, 2020 and will expire on January 31, 2021, as established by Ontario Regulation 763/20 (the Regulation). Prior to the enactment of the Regulation, it was unclear as to when the moratorium under Bill 229 would expire in light of the fact that the CECRA program is no longer active.

On December 17, 2020, the Ontario government passed the Regulation, which not only established the above-referenced end date to the eviction moratorium established under Bill 229 in respect of CECRA tenancies, but also extended the protections under Bill 229 to a new category of tenants to account for the fact that the CECRA program has been replaced by the Canada Emergency Rent Subsidy (CERS) program. Accordingly, the Regulation extends the Bill 229 protections to tenants satisfying the following criteria (CERS tenancies): (i) the tenant has been approved to receive CERS, (ii) the tenant has provided proof of this approval to their landlord, and (iii) not more than 12 weeks has passed since the day the tenant was approved for CERS.

The protections under the Regulation for CERS tenancies will apply for rolling 12-week periods from the date of approval under the CERS program, and such protections will be available during the "non-enforcement period" applicable to CERS tenancies commencing no earlier than December 17, 2020 and expiring no later than April 22, 2022. A tenant under this class may qualify for subsequent 12-week periods of protection if they reapply and receive approval for a new CERS payment. In such cases, the 12-week period will be restarted from the date of the new CERS approval, provided that proof of the new approval is given to the landlord and not more than 12 weeks has passed since the day the tenant was approved for CERS. The Ontario government has published a webpage summarizing the applicability and effect of these changes, available [here](#).

For information on how tenants may qualify for the CERS program, see our November 26, 2020 article.

Key Takeaways Regarding Bill 229 and the Regulation

1. The protections for CECRA tenancies under Bill 229 apply during the period commencing on December 8, 2020 and expire on January 31, 2021. The moratorium on evictions applies retroactively to October 31, 2020 with respect to CECRA tenancies.
2. The protections for CERS tenancies under Bill 229 apply during the period commencing on December 17, 2020 and expire on April 22, 2022. The protections offered by Bill 229 to CERS tenancies will not apply retroactively to October 31, 2020 as they do for CECRA tenancies. As of the date of this article, Bill 229 offers no protections for CERS tenancies whose landlords may have exercised a right of re-entry or distress prior to December 17, 2020.
3. After January 31, 2021, only CERS tenancies will be entitled to the Bill 229 protections as outlined above.
4. Landlords should exercise caution with regards to exercising eviction or distress rights and should speak with legal counsel prior to taking any actions if there is any uncertainty whatsoever, including a situation in which a tenant approved for CERS fails to provide proof of the same to its landlord.

Please contact Cassels with any questions you may have regarding the new proposed legislation. Given the technical nature of these programs, property owners and tenants who may look to benefit from these programs should seek legal and advisory counsel as soon as possible. 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.