

Government Announces Details of Rent Assistance Program for Small Business Tenants

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Commercial landlords and tenants have been monitoring government communications in the hopes of hearing that some form of rental assistance is on the way.

On April 24, 2020, the federal government gave these parties cause for optimism with the announcement of an agreement in principle with the provinces and territories to provide rent reduction relief to qualifying small business tenants that have been significantly affected by the COVID-19 pandemic.

This aid program, known as the Canada Emergency Commercial Rent Assistance program ("**CECRA**"), will provide forgivable loans to qualifying commercial property owners who agree to lower the gross rent payable by their tenants for April, May and June 2020 by at least 75%.

The program will be administrated and delivered by Canada Mortgage and Housing Corporation ("**CMHC**"), with each province and territory agreeing to contribute to the costs of implementation in varying proportions.

The terms and conditions of CECRA are not yet finalized. Both the federal government ([available here](#)) and the Ontario Government ([available here](#)) have issued press releases that describe the framework of the program, along with general eligibility criteria. On April 29, 2020, CMHC also released a notice ([available here](#)) which provides additional information regarding CECRA. This article will outline a number of key provisions of these announcements.

As mentioned, the CECRA program is aimed at small business tenants. However, Prime Minister Trudeau has indicated that the federal government is working on some form of rent assistance program for larger business tenants and it is reported today that a coalition of retailers and landlords are lobbying on behalf of larger business for the implementation of a program comparable to CECRA.

Key Elements of CECRA

The key elements of the CECRA program are generally described as follows:

- The government will offer forgivable loans to qualifying commercial landlords to cover 50% of the monthly gross rent payable by eligible small business tenants for the months of April, May and June 2020. Landlords and tenants will each be responsible for 25% of the gross rent.
- The loans will be forgiven if the landlord enters into a rent forgiveness agreement with the eligible small business tenant under which the landlord will have agreed: (i) to reduce rent to 25% of gross rent for the months of April, May and June 2020; and (ii) not to evict the tenant during the months in which the rent forgiveness applies. In addition, the landlord must not seek to recover any reduced or abated rent after the program.
- The Ontario Government has indicated in its press release that the reduced rent payable by the tenant under the rent forgiveness agreement will be determined by calculating 25% of the portion of rent that relates to the landlord's "before profit costs" (or "fixed" costs). However, CMHC has subsequently stated in its notice that the reduced rent will be calculated based upon the entire amount of gross rent without deduction for the portion of gross rent attributable to "profit". We expect this inconsistency will be clarified when the final terms of the CECRA program are released.
- CMHC will disburse the loans directly to the landlord's mortgage lender. While it is clear that CECRA loans will be available to landlords who have mortgages secured by their property, CMHC advises that an alternative mechanism is under development to allow landlords without mortgages to participate in the program. The Ontario Government encourages landlords who do not have a mortgage secured by their property to contact CMHC "to discuss program options, which may include other forms of debt relief or funds to cover fixed cost payment obligations such as utilities.
- The program is expected to be operational by mid-May, but landlords who have not offered rent reductions of at least 75% for April and May will be able to do so retroactively to qualify for CECRA. CMHC has indicated in its notice that the deadline to apply for CECRA will be August 31, 2020.

Eligibility Criteria

1. Eligible Tenants

The government press releases and notices provides some guidance as to what constitutes an "eligible small business tenant" for the purposes of the program. According to the CMHC notice, in order to qualify the tenant must: (i) pay no more than \$50,000 dollars in monthly "gross rent" per location (as defined in the lease agreement); (ii) generate no more than \$20 million dollars in gross annual revenues, calculated on a consolidated basis at the parent level; and (iii) have either temporarily ceased operations or have experienced at least a 70 percent drop in pre-COVID-19 revenues. The 70 percent revenue decrease is to be determined by comparing revenues for April, May and June to revenues from the same months in 2019 or alternatively compared to average revenues for January and February 2020.

The Ontario Government and CMHC have also indicated that the program will be available to non-profits and charities, however the details of how such organizations would qualify were not specified.

2. Eligible Landlords

The Ontario Government and CMHC have indicated that an eligible landlord (referred to as an "eligible commercial property owner") is one that: (i) is the registered owner of commercial property in Canada where the impacted small business tenant is located; (ii) has a mortgage secured by the commercial property (however, as mentioned above, CMHC will be announcing an alternative mechanism for landlords who do not have a mortgage to participate in the program); and (iii) has declared rental income in its personal or corporate tax return in years 2018 and/or 2019. The Government of Ontario indicates that commercial properties with a residential component or a mixed use which includes at least 30 per cent commercial component are also eligible for the program.

Concluding Remarks

The announcement of the CECRA program is certainly welcome news for small business tenants and landlords who have been significantly impacted by the COVID-19 pandemic. However, questions remain about the program's mechanics and eligibility criteria. What is the process for verification of a tenant's 70% decline in revenues and annual gross revenue? Will the Ontario Government require landlords to reduce gross rent to 25% of the landlord's "before profit costs" in order to qualify for a CECRA loan? Would retailers who have closed for business and shifted to operating pick-up and delivery services be excluded from the program if they are unable to demonstrate a 70% decline in revenues? We suspect some of these questions will be addressed by the final terms and conditions of the CECRA, which are to be released in the future.

Until then, landlords and tenants currently engaged in negotiating rent relief or deferment in respect of the months of April, May and June should consider whether they may be eligible for the CECRA program. If so, it may be prudent to make any agreement subject to the landlord making application for and passing on the benefit of any qualifying government rent assistance programs to the tenant. Until all terms and conditions of CECRA are announced, it is not possible to guarantee any particular landlord or tenant will qualify for the program.

Blaney McMurtry will be closely monitoring the development of this program and will be providing a further update as more information becomes available. Should you have any questions about the CECRA or require assistance with any other leasing matters, please contact one of the lawyers in our [Commercial Leasing Group](#).

The information contained in this article is intended to provide information and comment, in a general fashion, about recent cases and related practice points of interest. The information and views expressed are not intended to provide legal advice. For specific legal advice, please contact us.

