

May 11, 2020

The Canada Emergency Rent Assistance Program

In April, Prime Minister Trudeau announced the Canadian Emergency Commercial Rent Assistance (CECRA) program – a joint venture between the federal and provincial governments with the aim of assisting commercial landlords and tenants struggling because of COVID-19. Since the initial announcement, more details of the program have been released by the federal government and the government of Ontario. Many commercial landlords and tenants are still waiting for more information, which has been promised. However, in this News ReLease we will summarize what is known thus far.

The Federal Program

Canada Mortgage Housing Corporation (CMHC) will administer the CECRA. On April 29, 2020, CMHC released some particulars: forgivable loans will be given to qualifying commercial property owners, covering up to 50% of the tenant's gross monthly rent for April, May, and June 2020 (CECRA Period). The landlord and tenant must enter into a written agreement, reducing gross rent by at least 75% for the CECRA Period, stating there will be no eviction during the CECRA Period. In effect, the landlord forgives at least 25% of the rent, the tenant pays up to 25% of the rent, and the governments cover 50%. That funding would be paid by CMHC directly to the landlord's mortgage lender. If the property owner does not comply with all applicable criteria, the CECRA loan will not be forgiven and ultimately the landlord will have to reimburse CMHC.

Property owners must be the registered owner of the property, have a mortgage loan secured by the property and have declared rental income on their tax returns for

the 2018 and/or 2019 tax years. Otherwise they do not qualify. (CMHC also announced that the requirement for a mortgage may be changed.)

Tenants are eligible for the CECRA if they pay no more than \$50,000 in monthly gross rent (as defined by the applicable lease) per location, generate no more than \$20 million in gross annual revenues (calculated on a consolidated basis at the ultimate parent level), and have either temporarily ceased operations or experienced at least a 70% decline in pre-COVID-19 revenues (compared to the same period in 2019 or the average revenues earned in January and February of 2020).

The landlord is the party who applies. It is expected that the application process will become available by mid-May. The deadline to apply is August 31, 2020 and the CECRA can have retroactive effect. In that case, to qualify for CECRA, property owners who previously received rent from their tenant for the CECRA Period will have to refund the amounts paid by the tenant (or provide the tenant with a credit for future months' rent).

Confusion in Ontario

Prior to CMHC's announcement of April 29, 2020, outlining what is set out above, the government of Ontario announced parameters of what it called the Ontario-Canada Emergency Commercial Rent Assistance (OCECRA) program. Some of the announced details of the OCECRA were inconsistent with the CMHC outline above, spawning uncertainty and reluctance.

To the relief of many, on May 7, 2020 the government of Ontario revised its announcement and aligned the

OCECRA requirements with those of CECRA provided by CHMC.

The OCECRA still has some additional eligibility requirements: a tenant entity will be excluded if it is owned by individuals holding political office, or if it promotes violence, incites hatred or is discriminatory. Also, tenants who were in the “Lenders special accounts or Restructuring Group prior to March 1, 2020” are ineligible (although the province does not define these terms).

Many Unanswered Questions

Many other questions are unsettling and may lead to continued fence-sitting: What form of rental assistance will property owners receive if they do not have a mortgage secured by the property? Is GST/HST/QST included in the \$50,000 gross rent threshold for eligible tenants? If the property owner has already agreed to defer or abate any rent, will the \$50,000 maximum on rent be based on the pre- or post-deferral/abatement amounts? To whom will tenants be required to provide evidence that they have ceased operations or

experienced the requisite decline in revenues? What does it mean that tenants will only be eligible if they generate no more than \$20 million in gross annual revenues on a consolidated basis at the ultimate parent level – do individual franchisee subtenants qualify on a per-location basis or do they comprise part of the parent consolidated figure? If tenants fail or refuse to pay 25%, does the landlord have any rights or must it settle for 50% from the CECRA? Will property owners that own property indirectly (i.e., through a bare trustee or nominee corporation) be permitted to participate?

Tepid Uptake

It is encouraging that the provincial and federal governments have come together to provide rental assistance to commercial landlords and tenants, but the gaps and inconsistencies have yielded lukewarm interest and caused significant uncertainty. Widespread commitment to the program is not predictable. Many landlords and tenants have expressed doubts, while considering whether 50% is better than nothing. Time will tell as to the adoption of the CECRA.

ANNOUNCEMENT

Daoust Vukovich LLP is pleased to welcome MEGHAN GREENFIELD to the firm as an Associate Lawyer. Meghan is joining the Firm’s commercial leasing team, representing landlords and tenants in managing their commercial leasing relationships. She is a graduate of Bond University (Queensland, Australia) and was called to the Ontario Bar in 2014. Meghan can be reached at 416-597-0830 (mgreenfield@dv-law.com).

This publication is a general discussion of certain legal and related developments and should not be relied upon as legal advice. If you require legal advice, we would be pleased to discuss the issues in this publication with you, in the context of your particular circumstances.



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