



Introducing the CANADA EMERGENCY COMMERCIAL RENT ASSISTANCE PROGRAM

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In our recent [commercial newsletter on COVID-19 in the Québec commercial leasing context](#), we referred to some of the challenges which lessees (tenants) and lessors (landlords) are facing due to the economic consequences of the COVID-19 pandemic. According to the Canadian Federation of Independent Business (CFIB), **80% of small and mid-sized businesses in the country have been forced to shut down partly or completely** as a result of the public health restrictions.¹ Many businesses are unable to meet their monthly rent obligations and have requested abatements, deferrals, or the renegotiation of key lease provisions. A CFIB survey suggests that **only 37% of businesses could pay their full rent during the pandemic.**²

Meanwhile, commercial lessors are concerned about their exposure to **widespread defaults on rent payments**. Although lessors are generally willing to consider making reasonable concessions in order to preserve good relationships with their lessees,³ there is no simple solution.

On April 24, 2020, the government of Canada announced that it had reached an agreement in principle with all provinces and territories in order to implement the **Canada Emergency Commercial Rent Assistance program** (CECRA) for small businesses.⁴ This article reviews what we currently know about this rent relief program.

The Basics of CECRA

The function of CECRA is to effectively **lower rent by 75% for small or medium-sized businesses that have been adversely impacted by COVID-19 and that meet the criteria set forth below.**⁵ The Canadian Mortgage and Housing Corporation (CMHC) will administer CECRA, through the collaborative efforts of the federal, provincial, and territorial governments.⁶

Through CECRA, qualifying commercial property owners will receive **forgivable loans to cover 50% of the monthly rent payments** by eligible small business lessees that experienced financial hardship during **April, May, and June, 2020**.⁷

The lessee will be responsible for paying 25% of the rent, the commercial property owner/lessor will absorb 25%, while the federal and provincial governments will share the remaining 50%.⁸ Lessees that are unable to pay their 25% portion of the rent may consider other means of financial assistance, including the **Canada Emergency Business Account loan program**.



For Commercial Property Owners

In order to apply for assistance through CECRA, a commercial property owner must⁹:

- a) Own commercial real property occupied by one or more impacted small business lessees;
- b) Enter (or have already entered) into a rent reduction agreement for the period of April, May, and June 2020, that will reduce the impacted small business lessee's rent by at least 75%.

The **rent reduction agreement** must include a **moratorium on eviction** for the period during which the loan proceeds are applied and a **declaration of rental revenue**.¹⁰ A commercial property owner **without a mortgage** is eligible for the program.

For Small Business Lessees or Sub-Lessees

To qualify for CECRA, an impacted small business lessee or sub-lessee must:

- a) pay no more than \$50,000 per month in gross rent per location (as defined by a valid and enforceable lease agreement);
- b) generate no more than \$20 million in gross annual revenues, calculated on a consolidated basis in the event of a group of companies; and
- c) have experienced at least a 70% decrease in revenues, as compared to its pre-COVID-19 financial performance.¹¹

To determine revenue losses, small businesses can compare their revenues in April, May, and June of 2020 against their revenues for the same months in 2019. Alternatively, they may use an average of their revenues earned in January and February of 2020 as a benchmark.

This support is **available to non-profits and charitable organizations**.¹²

Commercial property owners may apply to CECRA for assistance retroactively. Once the three-month period has ended, property owners may still apply for assistance through CECRA if the conditions for eligibility continue to be satisfied.

The deadline to apply is August 31, 2020, although this may vary by province. Property owners must refund any excess amounts paid by small business lessees within the period (or at the option of the lessee, apply such excess amounts to future rent payments).¹³

Conclusion

CECRA will provide **much-needed rent relief** to eligible commercial property owners and impacted lessees that participate in the program.

However, CECRA is unlikely to be a panacea for all lessors and lessees. Some lessees have expressed **concerns that the eligibility conditions for CECRA are too restrictive** and that they should not be paying any rent for the months where they were unable to operate their businesses.¹⁴ As for lessors, not all of them may be willing to apply for assistance through CECRA.¹⁵



There appears to be some merit to these concerns. According to a CFIB survey, only 10% of small business owners qualify for CECRA and believe their lessor will participate in the program.¹⁶

CECRA has the potential to help resolve lessors' cash flow issues. However, depending on the circumstances, **it might be more attractive for lessors to negotiate directly with their lessees** in order to maintain their rights to full rent payments on a deferred basis, rather than absorb 25% of rent through

CECRA. Alternatively, in cases where the lessee has a track record of **unreliable performance** predating the COVID-19 pandemic, the lessor may wish to enforce its lease rights in the event of a default in the payment of rent.

If you wish to learn more about how CECRA may apply to your situation, we recommend that you seek legal advice from an experienced professional.

► **This article will be updated and revised as new details with respect to CECRA emerge.**

The information and commentary set forth herein are for the general information of the reader and are not intended as legal advice or as an opinion to be relied upon in relation to any particular circumstances.

If you have questions with respect to the interpretation of your commercial lease, please contact one of our attorneys, who will be pleased to advise.

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¹ COVID-19 situation 'grave' for small businesses, CFIB warns | CBC News. (2020, April 11). Retrieved from <https://www.cbc.ca/news/canada/ottawa/businesses-suffering-shutdowns-cfib-says-1.5529433>

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- ³ Paltiel, B. (2020, April 24). Tough Conversations: How Landlords Are Negotiating With Their Tenants Over Unpaid Rent. Retrieved from <https://www.bisnow.com/new-york/news/economy/tough-conversations-how-landlords-are-negotiating-with-their-tenants-over-unpaid-rent-103983>
- ⁴ Prime Minister announces partnerships with provinces and territories to deliver the Canada Emergency Commercial Rent Assistance for small businesses. (2020, April 24). Retrieved from <https://pm.gc.ca/en/news/news-releases/2020/04/24/prime-minister-announces-partnerships-provinces-and-territories>
- ⁵ *Ibid.*
- ⁶ *Ibid.*
- ⁷ *Ibid.*
- ⁸ *Ibid.*
- ⁹ Canada Emergency Commercial Rent Assistance (CECRA) for small businesses. (n.d.). Retrieved from <https://www.cmhc-schl.gc.ca/en/finance-and-investing/covid19-cecra-small-business>.
- ¹⁰ *Ibid.*
- ¹¹ *Ibid.*
- ¹² *Ibid.*
- ¹³ *Supra* note 8.
- ¹⁴ O’Kane, J., & Younglai, R. (2020, April 24). Ottawa confirms 75-per-cent rent relief for small businesses hit by pandemic. Retrieved from <https://www.theglobeandmail.com/business/article-ottawa-confirms-75-per-cent-rent-relief-for-small-businesses-hit-by/>
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