

COVID-19: Help for Commercial Landlords

APRIL 2020



While the impact of COVID-19 on Canadian businesses has been dramatic and widespread, none have been more affected than traditional bricks and mortar businesses not considered 'essential' under [Canada's COVID-19 Economic Response Plan](#). Many restaurants, retail stores, and service providers have been forced to close completely. Those that have been able to continue operating are doing so at a reduced capacity and are constantly monitoring the risks to the health and safety of their employees and customers. The result has turned once vibrant and bustling retail neighbourhoods, shopping malls and commercial areas into virtual ghost towns.

Commercial landlords are struggling to support their tenants through this difficult and unexpected time while still meeting their own financial obligations. The Canadian government has announced various relief programs to assist businesses and individuals, but the support offered can be slow to arrive when bills are coming in and rent is due.

The Tenant - Overcoming the Rent Hurdle

Dine-in only restaurants, barbershops and hair salons are examples of businesses that have virtually lost all sources of revenue. Even if their owners were able to make the April 1st rental payment, many will be hard pressed to do so for May. This reality is quickly setting in, as evidenced by a recent [survey](#) of small business owners by The Canadian Federation of Independent Business (CFIB) which revealed that nearly 40% of businesses fear permanent closure.

“April rent was really tough, and many businesses will find May a total nightmare if things don’t change. Provinces should move to reduce property taxes and introduce a rent subsidy for hard hit business like those forced to close by provincial essential services rules.” - Laura Jones, EVP, CFIB

The CFIB is calling for provinces to provide rent subsidies to cover fixed costs and to reduce commercial property taxes by a minimum of 25% with a further recommendation to pass that relief on to commercial tenants.

Tenants are also strongly encouraged to communicate and negotiate with their landlords. Keeping the lines of communication open allows opportunities to



IT IS CRITICAL FOR LANDLORDS TO MAINTAIN REGULAR COMMUNICATION WITH THEIR TENANTS AS CIRCUMSTANCES SURROUNDING COVID-19 ARE CHANGING CONTINUOUSLY.

develop solutions that work for both parties. Simply refusing to pay rent can have unintended, long-term negative consequences for tenants.

There may be circumstances when informal negotiations with landlords have not delivered desired results and the terms of the commercial lease(s) will impact the ongoing viability of the business. Tenants could consider using a statutory proceeding to disclaim the lease(s) via restructuring the operating business or a special purpose entity holding the lease(s).

The failure to pay rent without an agreement from the landlord in writing is a clear breach of the terms of a lease. The tenant risks losing options to extend, first rights of refusal, exclusivity rights, no build covenants and other contractual benefits. If you have tenants who threaten not to pay their rent, you might want to remind them of what they risk. - Gowlings, [Commercial Landlord Survival Guide](#)

The Landlord - Helping Tenants While Still Meeting Their Own Obligations

Landlords don't want to lose their tenants and face increased vacancy rates with a possible extended recession looming. They also want to avoid the bad publicity that could come from insisting on full payment of rent or evicting a non-paying tenant. Some large landlords are supporting tenants through rent deferrals. Choice Properties REIT (Loblaw) is granting 60-day rent deferrals on a case-by-case basis for qualifying small businesses and independent tenants. RioCAN is offering an automatic 60-day interest-free rental deferral for independent commercial tenants who have asked for relief.¹ According to Minden Gross, tenants should be required to provide their landlords with [complete financial disclosure](#) as a pre-requisite for considering rent deferrals. Landlords can also consider offering rent reductions, rent abatement or loan conversions.

The Certified Commercial Investment Member (CCIM) Institute offers a variety of rent-relief strategies landlords can implement to help their tenants as well as considerations and implications for each. [Learn More >](#)

What Help is Available to Landlords?

Mortgage Deferrals

The major Canadian banks have all offered mortgage payment deferrals to landlords. It's important to contact your bank and ask about the specific details as the banks continue to evolve their programs and offerings to assist both commercial and residential landlords. Landlords should gain an understanding of the important terms of the deferral, such as any impact on their business and personal credit rating, how interest accruing during the deferral period will be treated, and how their repayment schedule will change after the deferral ends. As always, it is prudent to try to negotiate the best terms possible.

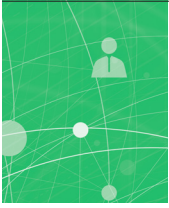
City of Toronto Relief Measures

The City of Toronto has implemented several [economic support programs](#) including deferral of property tax payments and utility bills for 60 days. In addition, Toronto Hydro has cut hydro rates to the off-peak rate of 10.1¢ per kWh, 24 hours a day, seven days a week for households and small businesses effective March 24, 2020.

The Canadian Emergency Wage Subsidy (CEWS)

The [Canada Emergency Wage Subsidy](#) offers a 75% wage subsidy for eligible employers in addition to the previously announced 10% subsidy. These subsidies may help tenants continue to pay at least some rent if they are able to partially operate and help landlords reduce their maintenance and property management payroll costs.

¹ <https://globalnews.ca/news/6786919/rent-deferral-businesses-coronavirus>



LANDLORDS SHOULD CUT ANY UNNECESSARY COSTS AND DEFER DISCRETIONARY MAINTENANCE BY EITHER CANCELLING OR RENEGOTIATING CONTRACTS IF POSSIBLE.

Canada Emergency Commercial Rent Assistance (CECRA)

The Government of Canada has announced its intent to [provide loans, including forgivable loans](#), to commercial landlords to allow them to reduce or forego the rent of their small business tenants for the months of April, May and June. The details of this program have yet to be announced.

What Else can Landlords Do To Protect Their Business?

Landlords should cut any unnecessary costs and defer discretionary maintenance by either cancelling or renegotiating contracts if possible. They can also prepare detailed [cash flow forecasts](#) based on different scenarios to help anticipate potential financial needs. All possible financing sources should be explored, including drawing from new or existing lines of credit, extending accounts payable, and loans or equity injections from shareholders. It is critical for landlords to maintain regular communication with their tenants as circumstances surrounding COVID-19 are changing continuously.

There remains tremendous uncertainty as to how long this situation will last. What is certain is that this is a health crisis, not an economic one, and no one is to blame. Landlords will be well served by being as patient and understanding as possible.

COVID-19 RESOURCES HUB

Visit our [COVID-19 Resources](#) hub for the latest information on Canadian and US government programs as well as helpful resources for business owners, including free webinars.

fullerllp.com/covid-19-resources/



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