

COVID-19: Commercial Leasing Considerations

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By

The coronaviruses are a large family of viruses that can cause illnesses ranging from the common cold to more serious respiratory infections. COVID-19 is a form of coronavirus that causes a respiratory infection and may result in a range of common to severe symptoms such as fever, cough, difficulty breathing, and, in severe cases, pneumonia, kidney failure and even death. As of March 10, 2020, news organizations have reported that the spread of COVID-19 has reached over 100 countries, there have been 79 confirmed cases of COVID-19 in Canada and Canada's first death due to the virus has occurred. It is important that businesses create and implement an effective response plan so that COVID-19 does not adversely impact their operations; however, companies must be aware of their legal rights and obligations when doing so.

Companies must consider how they will continue their business in the face of COVID-19 and their more general HR obligations, but in addition, tenants and landlords should take into account commercial leasing considerations and review their leases to determine what rights and obligations they have in the face of a health emergency such as COVID-19. Both tenants and landlords must consider how their respective business, including their employees, customers/clients and suppliers, could be impacted. The potential leasing considerations that should be taken into account are outlined below.

Commercial Leasing Considerations

As a landlord or tenant you should review your leases to determine what rights and obligations you have in the face of COVID-19 which may impact your business, access to your premises and the privacy of your customers/clients, suppliers and employees. Since the SARS outbreak in 2003, many leases have been drafted to include health emergency provisions which give the landlord special rights in the event of a health emergency. With respect to older leases, landlords have rights to govern the control and operation of a building, including the control of access to a building and common areas. Both landlords and tenants should be aware of these rights, and what a landlord or tenant is legally able or required to do under their lease in response to COVID-19. Considerations include:

- A landlord must exercise its right to control access reasonably and in good faith. Can a landlord restrict the access of a tenant's customers/clients, suppliers and employees to a tenant's premises, common areas and a building in general? If yes, to what extent can landlords restrict such access?
- Can tenants still gain access to their premises to retrieve files and/or laptops in the event access to the building is restricted?
- Can a landlord inspect a tenant's customers/clients, suppliers and employees for illness?
- Could customers'/clients', suppliers' and employees' privacy be affected by a landlord's response to COVID-19 and the control of a building?
- Is a landlord permitted to enter a tenant's premises without permission to disinfect and clean it?
- As a response to COVID-19, are tenants able to close down their businesses? Are tenants able to reduce operating hours in contravention of lease provisions?
- What obligations does a landlord have to keep a building clean and safe?
- Can the landlord limit services to a building?

- Will this constitute a force majeure event under the terms of the lease?

If you have any questions with respect to your commercial lease and your rights and obligations in the face of COVID-19, please do not hesitate to contact our [commercial leasing group](#) who will be able to advise you.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

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