

Further Changes to COVID-19 Rent Support Measures

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By Robert Eisenberg

Please note that the information contained herein is subject to change as new Regulations are made.

As Canada enters yet another wave of the COVID-19 pandemic, the federal government (the “**Government**”) is introducing new changes to the supports available to commercial tenants.

On December 17, 2021, Bill C-2, *An Act to provide further support in response to COVID-19* received Royal Assent and became law. Though there are some changes, the enacted version of Bill C-2 is substantially the same as the version first tabled. As discussed in [our previous article](#), Bill C-2 introduced new targeted COVID-19 support measures to support commercial tenants. Now, as more COVID-19 restrictions are implemented across the country, the Government is proposing to temporarily expand access to the Local Lockdown Program. This is welcome news for businesses in Ontario subject to [new lockdown measures](#).

The Local Lockdown Program

The Local Lockdown Program allows eligible organizations which are affected by a qualifying public health restriction to access rent support through the [Tourism and Hospitality Recovery Program](#) (the “**THRP**”).

Eligibility

While organizations apply for the Local Lockdown Program through the THRP, organizations do not need to be in the tourism, hospitality, arts & entertainment or recreation sectors to be eligible for support. Instead, rent support is provided to organizations that meet the following conditions, regardless of sector:

- one or more of the organization’s locations is subject to a public health restriction lasting for at least seven days;
- the public health restriction must require the business to cease activities that accounted for at least 25% (approximately) of total revenues of the organization during the prior reference period (described in more detail below) for that claim period; and
- the organization must demonstrate at least a 40% revenue drop for the claim period when compared to the corresponding prior reference period.

Calculating the Subsidy

The subsidy is calculated the same way as for the THRP. The rent subsidy rate is calculated by comparing current-month revenue losses to those of a prior reference period. The rules applicable under the previous subsidy programs, the Canada Emergency Rent Subsidy (CERS) and the Canada Emergency Wage Subsidy (CEWS), for calculating the current-month revenue losses continue to apply.

The starting subsidy rate is 40%, which increases on a sliding scale as revenue further declines. For example, if an organization's revenue decline is 40%, a 40% subsidy is applicable, and if an organization's revenue decline is 50%, then a 50% subsidy is available. The maximum subsidy for Periods 22 to 26 (i.e., October 24, 2021 to March 12, 2022) is 75%, so once an organization has a revenue decline of 75% or greater, the applicable subsidy is capped at 75%. For Periods 27 and 28 (i.e., March 13, 2022 until May 7, 2022), the rent subsidy rates are reduced by half.

Proposed Changes to the Local Lockdown Program

On December 22, 2021, the Government announced that it intends to introduce regulations to temporarily [expand the support available](#) under the Local Lockdown Program. The expanded support would apply to Periods 24 and 25 (December 19, 2021 to February 12, 2022). For these Periods, an organization would be able to qualify for the Local Lockdown Program if:

- one or more of its locations is subject to a public health order that has the effect of reducing the entity's capacity at the location by 50% or more; and
- the activities restricted by the public health order accounted for at least 50% of the entity's total qualifying revenues during the prior reference period.

Moreover, the Government announced that it intends to temporarily lower the current-month revenue loss threshold to 25%, instead of 40%. As such, the subsidy rate would begin at 25% for eligible organizations that have experienced a 25% current-month revenue decline and would increase in proportion to current month revenue decline up to a maximum subsidy of 75%.

As regulations are introduced, the details of the temporarily expanded Local Lockdown Program may change.

Update on Ontario's Moratorium on Evicting Commercial Tenants

Certain eligible commercial tenants may still be protected by the Ontario provincial government's [eviction moratorium](#) associated with the CERS program. Under the moratorium, the following actions are prohibited with respect to eligible commercial tenants:

- judges are prohibited from ordering a writ of possession based on arrears of rent;
- landlords are prohibited from exercising any self-help rights of re-entry or termination; and
- landlords will be prohibited from exercising any rights of distress for arrears of rent.

To be eligible, a commercial tenant must:

- have been approved to receive CERS;
- have provided proof of the CERS approval to its landlord; and
- not more than 12 weeks have passed since the day the tenant was approved for the CERS.

While the CERS program has been replaced by the programs discussed in [our previous article](#) and in this one, tenants may apply for CERS up to 180 days after each claim period has ended. As such, the moratorium may still be applicable to certain eligible businesses depending on when they apply for and receive CERS approval. Tenants may also be eligible if they would have been able to receive assistance under the Canada Emergency Commercial Rent Assistance (CECRA) program, which pre-dated the CERS program, if the CECRA program had not been discontinued.

The moratorium is set to expire on April 22, 2022. However, industry groups are currently calling on the Ontario government to extend the moratorium to cover tenants who are eligible for the new federal subsidies.

Additional Responses of the Government of Ontario

If COVID-19 restrictions remain in place long-term, provinces may introduce additional supports for businesses. Currently, in Ontario, the provincial government has announced that [\\$10,000 grants](#) will be available for qualifying small businesses that are subject to closures by the province's most recent lockdown measures.

To receive the grant, a small business must: (1) be required to close due to public health orders that took effect 12:01 a.m. on January 5, 2022; and (2) have fewer than 100 employees. While further details on eligibility are expected to become available when applications open in the coming weeks, the province has indicated that eligible small businesses will include:

- Restaurants and bars;
- Facilities for indoor sports and recreational fitness activities (including fitness centres and gyms);
- Performing arts and cinemas;
- Museums, galleries, aquariums, zoos, science centres, landmarks, historic sites, botanical gardens and similar attractions;
- Meeting or event spaces;
- Tour and guide services;
- Conference centres and convention centres;
- Driving instruction for individuals; and
- Before- and after- school programs.

While it remains to be seen what additional supports provincial governments will make available to businesses, the federal government's recent announcement regarding the Local Lockdown Program should provide eligible commercial tenants with some comfort.

Should you have any questions about the impact of COVID-19 and government support programs on commercial tenancies or if you would like to discuss how we can help you with your commercial leasing needs, please reach out to Robert Eisenberg at reisenberg@weirfoulds.com or by telephone at 416-619-6287.

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.

[For more information or inquiries:](#)



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Robert Eisenberg is a property development and commercial leasing lawyer who excels at identifying potential landmines and devising clear, creative, and proactive solutions.



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