

Tips for Commercial Landlords and Tenants in Navigating the COVID-19 Crisis

March 13, 2020

By: Minden Gross LLP Commercial Leasing Group

COVID-19, the coronavirus dominating headlines in recent weeks, has become a global pandemic. In the past 72 hours there has been increasing concern as to the extent of the pandemic. With the recently-announced suspensions of sports, closures of schools, and restrictions on public gatherings, it is clear that the pandemic will directly impact both landlords and tenants in the immediate future. As this situation continues to develop, it is important for landlords and tenants alike to be able to respond to rapidly evolving conditions and to ensure they are well prepared to mitigate against potential risks they may face in the coming days and weeks. Accordingly, knowing what your legal rights and obligations are as a landlord or tenant is critical to ensure you are well prepared.

Generally, recourse should be had to the applicable lease in question as it may contain specific provisions dealing with these types of scenarios, to which you would be bound. Some leases contain explicit and lengthy provisions dealing with each party's rights and obligations in a "health emergency" situation, which would likely apply in this situation. In addition, the following considerations should be kept in mind:

- In most leases, the landlord has a fairly broad right to create and amend rules and regulations for the property. Most leases will specify that those rules and regulations must be reasonable, of general application to all or substantially all of the tenants at the property and non-discriminatory towards the applicable tenant. As a result, a landlord could theoretically limit access to a property and impose policies to which a tenant and its employees would be bound.
- Has there been a governmental order or other legal requirement to close a tenant's business or a property? If so, both landlords and tenants would be bound to abide by such requirement.
- Has there been medical advice from a governing body or authoritative source recommending the closure of a business or property? If so, parties may wish to rely on such advice.
- Does the lease contain a force majeure clause? What scenarios are included in it? Typically, force majeure clauses do not excuse the payment of rent or other monetary amounts payable under a lease.

- Does the lease contain any specific right to an abatement of rent in this type of scenario? Typically abatement rights are limited to damage and/or destruction scenarios. Without any express right to abatement, a tenant would likely be required to continue paying all rent payable under the lease during any period of closure.
- Do your insurance policies provide coverage in respect of the payment of rent? Upon preliminary investigation, it appears that coverage may not be available for non-payment of rent which results from a pandemic.

Prudent landlords and tenants would be well advised to ensure their stores and properties have a plentiful supply of disinfectant or hand sanitizers with signage encouraging the use for tenants, staff, and customers, as well as promoting and abiding by good hygiene practices (e.g. frequent handwashing). If any staff appear sick or have been in contact with someone who has been or may be diagnosed with COVID-19, they should probably be sent home until diagnosed and you should contact your applicable public health agency. If any customers, clients or other visitors appear sick you may wish to ask them to leave until diagnosed and again you should contact your applicable public health agency; if this policy were to be adopted there should be a clear sign at the entrance reserving the right to do so. As a result of the foregoing concerns, landlords and tenants may wish to implement, or at least reserve their rights to implement, screening devices and procedures for persons entering the applicable property and to prevent access as necessary and/or appropriate in the circumstances. In order to mitigate risk against any potential claims (negligence or otherwise), it is important to be diligent, cautious and reasonable in enforcing any policies to safeguard the health of staff and customers.

The key to mitigating and containing the spread of COVID-19 is constant and thorough communication. Landlords and tenants should ensure they advise each other as situations develop and particularly if there is a confirmed or suspected case of COVID-19 at the applicable property.

Undoubtedly this is a novel situation fraught with more questions than answers. If you want to discuss your rights and obligations in the face of COVID-19, please do not hesitate to contact us.

For up-to-date information on COVID-19, you may wish to visit any of the following websites:

- **Toronto Public Health** - <https://www.toronto.ca/community-people/health-wellness-care/diseases-medications-vaccines/coronavirus/>
- **Canada Public Health** - <https://www.canada.ca/en/public-health/services/diseases/coronavirus-disease-covid-19.html>
- **Centers for Disease Control and Prevention (US)** - <https://www.cdc.gov/coronavirus/2019-ncov/index.html>

If you have any questions or would like information on commercial leasing issues as a landlord or tenant, contact any lawyer in our Commercial Leasing Group:

Stephen Posen

Chair – Commercial Leasing Group
e: sposen@mindengross.com
p: (416) 369-4103

Christina Kobi

Partner
e: ckobi@mindengross.com
p: (416) 369-4154

Benjamin Radcliffe

Partner
e: bradcliffe@mindengross.com
p: (416) 369-4112

Steven Birken

Associate
e: sbirken@mindengross.com
p: (416) 369-4129

Michael Horowitz

Partner
e: mhorowitz@mindengross.com
p: (416) 369-4121

Boris Zayachkowski

Partner
e: bzayachkowski@mindengross.com
p: (416) 369-4117

Melodie Eng

Associate
e: meng@mindengross.com
p: (416) 369-4161

Leonidas Mylonopoulos

Associate
e: lmylonopoulos@mindengross.com
p: (416) 369-4324