

2020 Bill 23

Second Session, 30th Legislature, 69 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 23

COMMERCIAL TENANCIES PROTECTION ACT

THE MINISTER OF ECONOMIC DEVELOPMENT, TRADE AND TOURISM

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 23

2020

COMMERCIAL TENANCIES PROTECTION ACT

(Assented to , 2020)

Table of Contents

1	Definitions
2	Application
3	Protection from remedies
4	No payment of late fees or penalties in emergency
5	Prohibition on rent increases in emergency
6	Payment plans
7	Enforcement
8	Act prevails
9	Relationship to other Acts
10	Regulations
11, 12	Related amendments
13	Coming into force

Preamble

WHEREAS the Lieutenant Governor in Council made Order in Council numbered O.C. 80/2020 under section 52.1(1) of the *Public Health Act* on March 17, 2020 declaring a state of public health emergency due to pandemic COVID-19 and the significant likelihood of pandemic influenza;

WHEREAS the public health emergency has had and is likely to continue to have a detrimental effect on the ability of commercial tenants to operate;

WHEREAS commercial tenants may have difficulty meeting their obligations under a tenancy agreement as a result of the effects of the public health emergency; and

WHEREAS commercial tenants should not be subject to undue consequences, eviction or other termination of their tenancy because of circumstances beyond their control caused by the COVID-19 pandemic;

THEREFORE HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Definitions

1 In this Act,

- (a) “common areas” means areas controlled by a landlord and used for access to commercial premises or for the service or enjoyment of tenants;
- (b) “COVID-19 pandemic” means the COVID-19 pandemic declared by the World Health Organization;
- (c) “emergency end date” means August 31, 2020 or such alternative date as may be prescribed by the regulations;
- (d) “landlord” means
 - (i) the lessor or owner of the commercial premises,
 - (ii) a property manager who acts as agent for the owner of the commercial premises and any other person who, as agent for the owner, permits the occupation of the commercial premises under a tenancy agreement,
 - (iii) the heirs, assigns, personal representatives and successors in title of the owner of the commercial premises, and
 - (iv) a person who is entitled to possession of the commercial premises, other than a tenant, and who

attempts to enforce any of the rights of a landlord under a tenancy agreement or this Act;

- (e) “Minister” means the Minister of Economic Development, Trade and Tourism;
- (f) “rent” includes the consideration to be paid by a tenant to a landlord under a tenancy agreement, including operating costs, but does not include a security deposit;
- (g) “tenancy agreement” means a written, oral or implied agreement to rent a commercial premises and includes a licence to use a commercial premises;
- (h) “tenant” means
 - (i) a lessee under a tenancy agreement,
 - (ii) a person who is permitted by the landlord to occupy commercial premises under a tenancy agreement,
 - (iii) a person who is permitted to occupy commercial premises under an assignment or sublease, or as an under-tenant, of a tenancy agreement to which the landlord has consented, and
 - (iv) an heir, assign or personal representative of a person referred to in subclause (i), (ii) or (iii).

Application

2(1) This Act applies only to a class of landlords or a class of tenants prescribed by the regulations.

(2) Subject to subsection (1), this Act applies to every tenancy agreement

- (a) in effect in Alberta on March 17, 2020, and
- (b) entered into in Alberta before March 17, 2020 and made effective during the period beginning on March 17, 2020 and ending on the day on which the state of public health emergency declared in Order in Council numbered O.C. 80/2020 terminates or lapses.

(3) For greater certainty, this Act does not apply to a tenancy or tenancy agreement to which the *Residential Tenancies Act* or the *Mobile Home Sites Tenancies Act* applies.

(4) Despite subsection (2), this Act does not apply with respect to the eviction of a tenant or other termination of a tenancy agreement where the eviction or termination has taken effect prior to the date on which the Bill to enact the *Commercial Tenancies Protection Act* receives first reading.

Protection from remedies

3(1) Notwithstanding any provision in a tenancy agreement referred to in section 2, a landlord shall not give a notice of default, distrain for rent, evict a tenant or otherwise exercise remedies under or terminate a tenancy agreement during the period beginning on March 17, 2020 and ending on the emergency end date, in relation to

- (a) the non-payment of any rent, rent arrears or both by a tenant due to circumstances beyond the tenant's control caused by the COVID-19 pandemic,
- (b) the applicability of an act of God or force majeure provision of a tenancy agreement or frustration of contract caused by the COVID-19 pandemic, or
- (c) the breach of any continuous occupancy clause of a tenancy agreement caused by the COVID-19 pandemic.

(2) Subject to the regulations, during the period referred to in subsection (1), any provision in a tenancy agreement that is inconsistent with this Act with respect to giving a notice of default, distraining for rent, evicting a tenant or otherwise exercising remedies under or terminating a tenancy agreement as a result of

- (a) the non-payment of rent or arrears of rent by a tenant caused by the COVID-19 pandemic,
- (b) the applicability of an act of God or force majeure provision of a tenancy agreement or frustration of contract caused by the COVID-19 pandemic, or
- (c) the breach of a continuous occupancy provision by a tenant caused by the COVID-19 pandemic

is void.

(3) Subject to the regulations, this section does not affect the rights of a landlord to evict a tenant or otherwise terminate a tenancy agreement in the case of one of the following substantial breaches of a tenancy agreement, if such a breach is identified in the tenancy agreement as a cause for eviction or termination:

- (a) the tenant interfering in any significant manner with the rights of either the landlord or other tenants in the premises, the common areas or the property of which they form a part;
- (b) the tenant performing illegal acts or carrying on an illegal trade, business or occupation in the premises, the common areas or the property of which they form a part;
- (c) the tenant endangering persons or property in the premises, the common areas or the property of which they form a part;
- (d) the tenant doing or permitting significant damage to the premises, the common areas or the property of which they form a part;
- (e) the tenant failing to maintain the premises and any property rented with it in a reasonably clean condition;
- (f) the tenant failing to vacate the premises at the expiration of the tenancy, if the expiration is unrelated to a matter identified in subsection (1)(a), (b) or (c);
- (g) the tenant repudiating the tenancy agreement by abandoning the premises without notifying the landlord of any intent to reoccupy, assign or sublease the property;
- (h) the tenant making any bulk sale or becoming bankrupt or insolvent or taking the benefit of any Act in force for bankrupt or insolvent debtors;
- (i) the tenant receiving from any of its secured creditors a notice under the *Bankruptcy and Insolvency Act* (Canada) advising the tenant that the secured creditor intends to realize on security located at the leased commercial premises;

- (j) if the tenant is a corporation, any order being made for the winding-up of the tenant or other termination of the corporate existence of the tenant.

No payment of late fees or penalties in emergency

4(1) For greater certainty, subject to the regulations, notwithstanding any provision in a tenancy agreement referred to in section 2, a landlord shall not charge a fee or penalty for late payment of rent or non-payment of rent by a tenant during the period beginning on March 17, 2020 and ending on the emergency end date.

(2) This section voids any provision in a tenancy agreement referred to in section 2 with respect to

- (a) the imposition or charging of a late fee or penalty for the period beginning on March 17, 2020 and ending on the emergency end date, and
- (b) the enforcement or collection of a late fee or penalty charged on or after the date immediately following the emergency end date relating to the period beginning on March 17, 2020 and ending on the emergency end date.

(3) If a tenant has paid a fee or penalty for late payment of rent or non-payment of rent that the landlord was prohibited by subsection (1) from charging, the landlord shall refund the amount of the fee or penalty that the tenant has paid or provide the tenant with credit for that amount.

Prohibition on rent increases in emergency

5(1) Notwithstanding any rights under a tenancy agreement, or any notice that may have been provided under a tenancy agreement, a landlord shall not increase the rent payable under an existing tenancy agreement during the period beginning on March 17, 2020 and ending on the emergency end date.

(2) If a tenancy agreement expires or is terminated on or after March 17, 2020, and the landlord and tenant enter into a new tenancy agreement in respect of the same premises that was the subject of the expired or terminated tenancy agreement during the period beginning on March 17, 2020 and ending on the emergency end date, the rent payable under the new tenancy agreement from the date the agreement was entered into until the emergency end

date is deemed to be the amount of rent payable under the tenancy agreement that was in force immediately prior to the date on which the landlord and tenant entered into the new tenancy agreement.

(3) If a landlord has increased the rent payable under an existing tenancy agreement during the period beginning on March 17, 2020 and ending on the emergency end date, or has entered into a new tenancy agreement to which subsection (2) applies, the landlord shall refund any difference between the rent paid by the tenant and the amount that the landlord was permitted to charge under subsections (1) and (2) to the tenant or provide the tenant with credit for that amount.

Payment plans

6(1) If a tenant is unable to meet the tenant's rent obligations under a tenancy agreement and this is caused by the COVID-19 pandemic, the landlord and tenant shall enter into a payment plan for the payment of rent.

(2) A payment plan

(a) may extend beyond the emergency end date, and

(b) must account for any payment of fees, penalties or rent by a tenant that the landlord was prohibited by section 4 or 5 from charging and that has not been refunded to the tenant.

(3) A payment plan has the effect of amending the tenancy agreement to the extent necessary to give effect to the payment plan, and in the event of a failure by a tenant to adhere to a payment plan after the emergency end date, a landlord shall have all remedies available to the landlord under the tenancy agreement as modified by the payment plan.

Enforcement

7 Subject to the regulations, non-compliance with this Act shall be considered to be a substantial breach of the tenancy agreement by the landlord, and the tenant shall be entitled to exercise all rights of the tenant relating to a substantial breach that are set out in the tenancy agreement and any additional rights established by the regulations.

Act prevails

8 Any waiver or release by a tenant of the rights, benefits or protections under this Act is void.

Relationship to other Acts

9 For greater certainty, nothing in this Act affects the operation of the *Safer Communities and Neighbourhoods Act* in relation to a tenant.

Regulations

10(1) The Minister may make regulations

- (a) prescribing an alternative emergency end date for the purposes of this Act;
- (b) prescribing a class of landlords to which this Act applies;
- (c) prescribing a class of tenants to which this Act applies;
- (d) respecting prohibitions against giving a notice of default, distraining for rent, evicting a tenant or otherwise exercising remedies under or terminating a tenancy agreement;
- (e) respecting payment plans;
- (f) respecting prohibitions against charging fees or penalties for late payments of rent or non-payment of rent;
- (g) respecting the voiding of provisions in tenancy agreements in respect of giving a notice of default, distraining for rent, evicting a tenant or otherwise exercising remedies under or terminating a tenancy agreement, including respecting the imposition or charging of late fees or penalties or the enforcement or collection of late fees or penalties;
- (h) for the purposes of sections 3(3) and 7, respecting substantial breaches of a tenancy agreement, including specifying circumstances in which a substantial breach will not entitle a landlord or tenant to exercise rights under a tenancy agreement and establishing or clarifying the rights of a tenant in the case of a substantial breach under section 7;

- (i) respecting any other matter considered necessary to carry out the purposes of this Act.
- (2) A regulation made under subsection (1) may be made retroactive to the extent set out in the regulation.

Related Amendments and Coming into Force

Amends RSA 2000 cM-20

11(1) The *Mobile Home Sites Tenancies Act* is amended by this section.

(2) Section 16.1 is amended

(a) in subsection (2)

- (i) **by striking out** “between” **and substituting** “during the period beginning on”;
- (ii) **by adding** “ending on” **before** “the emergency end date,”;

(b) in subsection (3)(b)

- (i) **by striking out** “between” **and substituting** “during the period beginning on”;
- (ii) **by adding** “ending on” **after** “and”.

(3) Section 24.1 is amended

(a) in subsection (2)(b)

- (i) **by striking out** “between” **and substituting** “during the period beginning on”;
- (ii) **by adding** “ending on” **after** “and”;

(b) in subsection (3)

Explanatory Notes

Related Amendments and Coming into Force

11(1) Amends chapter M-20 of the Revised Statutes of Alberta 2000.

(2) Section 16.1 presently reads in part:

(2) If a tenancy expires or is terminated on or after March 27, 2020, and the landlord and tenant enter into a new tenancy agreement in respect of the same mobile home site that was the subject of the expired or terminated tenancy agreement between March 27, 2020 and the emergency end date, the rent payable under the new tenancy agreement from the date the agreement was entered into until the emergency end date is deemed to be the amount of rent payable under the tenancy agreement that was in force immediately prior to the date on which the landlord and tenant entered into the new tenancy agreement.

(3) Despite section 16, a landlord shall not increase the rent payable under an existing tenancy agreement until after the emergency end date where

(b) the notice period required under section 16(1) or the regulations is to elapse between March 27, 2020 and the emergency end date.

(3) Section 24.1 presently reads in part:

(2) This section applies to

(b) every tenancy agreement entered into in Alberta between April 1, 2020 and the end date.

(3) Notwithstanding any provision in a tenancy agreement referred to in subsection (2), a landlord shall not charge a fee or penalty for late payments of rent or non-payment of rent by tenants between April 1, 2020 and the end date.

- (i) **by striking out** “between” **and substituting** “during the period beginning on”;
 - (ii) **by adding** “ending on” **after** “and”;
- (c) **in subsection (4)**
- (i) **in clause (a)**
 - (A) **by striking out** “between” **and substituting** “beginning on”;
 - (B) **by adding** “ending on” **after** “April 1, 2020 and”;
 - (ii) **in clause (b)**
 - (A) **by striking out** “between” **and substituting** “beginning on”;
 - (B) **by adding** “ending on” **after** “and”.

Amends SA 2004 cR-17.1

12(1) The *Residential Tenancies Act* is amended by this section.

(2) Section 14.1 is amended

- (a) **in subsection (2)**
 - (i) **by striking out** “between” **and substituting** “during the period beginning on”;
 - (ii) **by adding** “ending on” **before** “the emergency end date,”;
- (b) **in subsection (3)(b)**
 - (i) **by striking out** “between” **and substituting** “during the period beginning on”;
 - (ii) **by adding** “ending on” **after** “and”.

Coming into force

13(1) This Act, except sections 11 and 12, has effect on March 17, 2020.

(4) For greater certainty, this section voids any provision in a tenancy agreement referred to in subsection (2) with respect to

- (a) the imposition or charging of late fees or penalties for the period between April 1, 2020 and the end date, and*
- (b) the enforcement or collection of late fees or penalties charged on or after the date immediately following the end date for the period between April 1, 2020 and the end date.*

12(1) Amends chapter R-17.1 of the Statutes of Alberta, 2004.

(2) Section 14.1 presently reads in part:

(2) If a tenancy expires or is terminated on or after March 27, 2020, and the landlord and tenant enter into a new residential tenancy agreement in respect of the same residential premises that was the subject of the expired or terminated residential tenancy agreement between March 27, 2020 and the emergency end date, the rent payable under the new residential tenancy agreement from the date the agreement was entered into until the emergency end date is deemed to be the amount of rent payable under the residential tenancy agreement that was in force immediately prior to the date on which the landlord and tenant entered into the new residential tenancy agreement.

(3) Despite section 14, a landlord shall not increase the rent payable under an existing residential tenancy agreement until after the emergency end date where

- (b) the notice period required under section 14(1) is to elapse between March 27, 2020 and the emergency end date.*

13 Coming into force.

(2) Sections 11 and 12 have effect on March 27, 2020.

