COVID-19

IN CANADA

By Jacob Cowles, SIOR

As governments around the world rushed to implement measures to protect both their economies and citizens at the outset of COVID-19, businesses started asking what would happen on April 1 when rent was due. With a national shutdown in place, how would rent get paid? What would happen if tenants couldn't access their spaces indefinitely? Several months later and the same issues still prevail, but Canada is faring much better than our neighbors to the south. Let me highlight some of the rent relief measures implemented by federal and provincial governments in Canada, discuss both landlord and tenant responses to the crisis, and conclude with how tenants and landlords may position themselves well moving forward.

When the U.S./Canadian border was closed on March 16, it became clear that a national economic shutdown was looming. However, the situation varied from coast to coast with official shutdown dates unique to each province. While Ontario and Quebec were the major infection centers for Canada, other provinces—such as Manitoba and New Brunswick—saw significantly lower rates of infection and transmission. On March 18, Prime Minister Trudeau announced that he would be rolling out a variety of aid for both those newly unemployed—in the form of wage subsidies and tax credits—as well as for businesses of all sizes in the coming weeks—in the form of loans, access to work-sharing programs to keep employees on payroll, and so on. However, rent relief for commercial tenants was not announced until April 24, and was not accessible until a month later on May 25.

The Canadian Emergency Commercial Rent Assistance Program (CECRA) was intended to give tenants with small businesses an abatement of at least 75% of their gross rent for April, May, and June 2020, which the federal and provincial governments would pay to the landlord. The program was voluntary, required the landlord to apply on behalf of their tenant, and contingent on the landlord agreeing to take a loss of 25% of the rent not covered by the program. Moreover, businesses were only eligible if they paid no more than $50,000 CAD in monthly gross rent per location, generated no more than $20 million in gross annual revenue, and had lost at least 70% of their revenue. Other relief programs aimed at commercial tenants included the Regional Relief and Recovery Fund (RRRF), which offers business loans when a company was ineligible for other forms of relief, and over 30 industry specific relief initiatives and programs. Many provinces implemented eviction bans for commercial tenants, though the conditions of the bans varied. Some bans were unconditional, while others barred a landlord from evicting a tenant if the tenant was eligible and willing to go through CECRA to receive assistance. Other forms of relief came from municipal actors and included extending the deadline to pay property taxes, temporary funds that smaller retail businesses could access to stay afloat, and local assistance to help businesses offer their products and services online.

Many tenants had already been negotiating some form of rent abatement or deferral before the implementation of CECRA and the RRRF. Generally, an attitude persisted amongst Canadians that "we're all in this together," which allowed some tenants to quickly and easily secure rent relief in collaboration with their landlords. For some tenants, however, the introduction of these programs complicated negotiations. With the details of CECRA being unveiled so late into the lockdown, some landlords adopted a "wait and see" position before agreeing to any rent relief programs, resulting in much needed assistance being postponed until landlords could get a more complete picture of what the government was offering them. Once CECRA applications opened, however, many landlords opted to not enroll in the program to avoid losing 25% of their gross rent, given that the program was voluntary. An additional concern was the onerous amount of paperwork required to receive CECRA. At the beginning of July, a month into the program, landlords for only 16,000 of Canada's small businesses had applied to the program, out of approximately 1.2 million that were potentially eligible. Overall, the rollout of CECRA and related details was slow at a moment when tenants needed to make immediate decisions about how to manage rent payments.

It is too early to get a full picture of what collaboration happened between tenants and landlords, however early snapshots tell us that most agreements involved deferrals of rent, rather than abatements (rent forgiveness). In general, the retail and office sectors saw the greatest number of requests

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for relief. The retail sector was hit the hardest, with only 20% to 25% of regional mall tenants in Canada making their rental payments in April. Industrial tenants fared better, apart from smaller industrial tenants with service bays, who saw revenues drop more dramatically than those in e-commerce or logistics. Some landlords were more willing to help smaller tenants, and thus expected that larger companies, who also experienced cash-flow and liquidity issues, to continue to pay their rent. As such, when met with a request from a larger tenant, some landlords refused relief, reasoning that such tenants get better rental rates and concessions in their leases from the outset, and that now was a time for them to continue to fulfill their lease agreements so that resources could go to smaller tenants. There was a class of tenants who also ceased making rent payments and then negotiated with their landlords. Major cases include Starbucks and Canadian Tire, who withheld their payments regardless of whether or not their landlords were willing to reach an agreement. Faced with an unprecedented economic environment, businesses of all sizes were forced to take the risk of default in favor of cash preservation.

Such variations in the negotiating of rent relief points to the differing perceptions of this crisis for landlords and tenants and the expectations on both sides for granting such relief. As businesses of all sizes reached out for help, landlords of varied scales responded in different ways. For example, many private landlords were quick to offer relief on the assumption and knowledge that their tenant had been reliable and trustworthy over the course of many years, or even decades. Having built strong relationships with their tenants, it was in both parties' interests to work to a solution to keep them in their space and in business for the long-term.

As my firm navigated rent relief discussions with over 1,000 landlords across Canada, we noticed an almost uniform approach by the institutional owners. In exchange for a consideration of rent relief, tenants would be required to submit historical financial statements, and future business plans—documentation that was largely irrelevant and difficult to compile within a meaningful timeframe given the circumstances. This approach was effective in dissuading many tenants from following through in their request for relief and while it was effective in preserving liquidity for the landlord in the short-term by weeding out tenants who were not faced with the imminent threat of failure, it creates risk for many tenants that will now have a weakened ability to weather a prolonged crisis. For larger, multi-market tenants, they may be pushed to re-evaluate their real estate strategy to include parameters around ownership type, favoring privately owned versus institutional when comparing options for their tenancy in the future.

The COVID-19 crisis has demonstrated that short term sacrifices from both tenants and landlords may help ensure greater stability in the future: a "winner takes all" approach may feel like a victory in the moment, but could erode a vital business relationship that requires trust and good faith. Ideally, negotiations between the two should try to find a solution that is in the best long-term interest for both parties: it should not be assumed that what is in the best interest for the landlord is opposed to what is in the best interest of the tenant. Both ultimately want to carry on with business as usual in what is a shorter-term, but nonetheless major health and economic crisis.

While markets around the world now deliberate the likelihood of a "second wave" and how best to respond, the fact is that nobody really knows how this is going to play out. Never have we experienced a worldwide, government-imposed cessation of economic activity and until a vaccine has been administered on a massive scale, the disruption and uncertainty will continue to exist.

The Canadian experience has demonstrated that while swift action and good will from governments and municipal actors may be available and certainly helpful, the most effective and direct route to relief in this crisis lay in the tenant and landlord relationship and their ability to collaborate on a solutions that protect their collective interests for the long term.

MEET THE AUTHOR

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