

Montreal, March 30, 2020

Subject: COVID-19 and the Payment of Rents

Dear member,

The loss of revenue associated with COVID-19 is a concern for both landlords and tenants. Many organizations (factories, religious institutions and other Christian communities) are concerned about not receiving rent from their tenants. What does the law say and what recourse do organizations have in this regard?

THE COMMERCIAL LEASE

If the tenant requests a postponement, deferral or cancellation of rent payments, is the organization obliged to accept?

The answer is no. The payment of rents and charges remains due by the tenant to the organizations, even if the tenants claim that they are unable to pay them, due to a loss of revenue or non-utilization related to the COVID-19 crisis. If tenants fail to meet their contractual obligations, they are liable to the organizations under article 1458 of the *Civil Code of Quebec*. In the event of non-payment, if a clause in the commercial lease provides for it, the organizations could terminate the lease without having to go before a judge and subsequently apply to the civil courts to claim the rent due as well as the damages suffered. If there is no clause in the commercial lease allowing for termination, organizations will have to apply to the Superior Court to request the termination of the lease, reimbursement of the rents and any damages suffered.

Can the tenant and the organizations come to an amicable agreement?

Absolutely. In fact, it is advisable to encourage amicable settlements before undertaking legal proceedings, which can be long and costly. Organizations can, if they wish, negotiate with their tenants who are unable to pay their rent, particularly because of a sharp drop in their activities related to COVID-19, a deferral or staggering of their rent. The tenant and the organization can simply draw up a written agreement to this effect, in the presence of a witness. However, this can only be done by mutual agreement with the organization. Under no circumstances can tenants force organizations to accept such an agreement.

It should be noted that if organizations decide to take legal action against their tenant, they will have to retain a lawyer to do so, which may become more costly than allowing the tenant to defer or stagger his or her rent.

THE RESIDENTIAL LEASE

Does a tenant have the right to stop paying rent because they can no longer afford it as a result of the COVID-19 crisis?

As with commercial leases, tenants of residential leases are required to pay their rents and expenses to organizations even if they can no longer afford to do so because of the COVID-19 crisis. However, the *Quebec government has asked landlords who can afford it to be flexible*, to allow their tenants to pay their rent when they are able to cash their unemployment insurance cheques, which should arrive in the week of April 6, 2020.

What recourse do organizations have if their tenants stop paying rent?

In the event of non-payment of rent by their tenants for residential leases, the organizations will have to contact the Régie du logement. It should be noted that hearings before the Régie du logement are currently suspended during the health crisis, except for emergencies, which do not include files concerning non-payment of rent.

If you have any questions on this subject or on any other subject covered by your legal telephone assistance program, feel free to contact the lawyers on your free legal assistance line Monday to Friday from 8:00 a.m. to 6:00 p.m. by calling 1 844 545-8198.

Ms. Sophie Lecomte
Lawyer