

Income and Tenancies During COVID-19: **Resources and Answers**

Disclaimer: This document is meant to be a helpful summary, but is by no means exhaustive or intended to substitute individual legal advice, and it does not cover mental health resources and other support that are no doubt vital right now. If you are in danger, unwell or in a situation with legal implications, please seek appropriate assistance.

Income Considerations

Employment Insurance Sickness Benefits (*EI eligible individuals only*):

Effective March 15, 2020, the federal government waived the 1-week waiting period for those individuals in imposed quarantine that claim EI sickness benefits. No medical certificate is required.

EI Work Sharing Program (*EI eligible individuals only*):

The federal government also announced changes to the existing EI Work Sharing Program, which provides EI benefits to workers who agree to reduce their working hours and share available work as a result of a downturn in business beyond their employer's control (whether directly or indirectly related to COVID-19). These measures are as follows:

- The permissible duration of Work Sharing Agreements will be extended from 38 weeks to 76 weeks as a result of COVID-19; and
- The mandatory waiting period between Work Sharing Agreements, which must usually be equal to the number of weeks of the previous agreement up to a maximum of 38 weeks, will be waived.

You may want to ask your employer if they are willing to participate in this program.

Canada Emergency Response Benefit (“CERB”) (*Everyone who made at least \$5000 in the last 12 month or previous tax year and who has lost their income due to COVID-19, whether or not you are regularly eligible for EI*):

Note: This merges the previously announced Emergency Care Benefit and Emergency Support Benefit

- Commences in April 6, 2020
- As long as people meet the \$5,000 threshold and have lost their income due to COVID-19, they can apply and will likely be eligible
- All those eligible for the CERB, regardless of how much they made before, will get \$2,000 per month, paid bi-weekly for a period of up to 16 weeks
- Application will be through a Service Canada online portal at a link that will be published widely when the site goes live, and they will also be able to apply over the phone or in person, where available
- People can keep their job (for example, they can be temporarily laid off) and still be eligible for the CERB, but they must not be receiving payment from their work

For EI eligible folks:

- People who qualify for EI will automatically qualify for the CERB as well
- If people are receiving regular EI or sickness benefits, those benefits will continue
- If a person's application for EI is pending, they do not need to reapply: their application will be transferred to the new system and they will receive the CERB
- If people are EI eligible and have lost their source of income, they can apply through the normal EI system but will receive the CERB, not EI
- If people qualify for EI but they gain access to this new benefit, they will still be able to claim EI at the end of the 16-week period covered by the CERB. If they are already receiving EI benefits that expire before Oct. 3 when the CERB eligibility period ends, they can claim the new benefit at the end of their EI
- People cannot, however, receive EI and the new benefit payments at the same time

If you're still working, you have new protections under the Ontario *Employment Standards Act* (i.e. you can't legally be fired and are allowed to take unpaid leave for the following reasons):

- An emergency declared under the *Emergency Management and Civil Protection Act*;
- An order under the *Health Protection and Promotion Act* or because you need to provide care or assistance to an individual under care under that legislation; or
- You are under individual medical investigation, supervision or treatment related to COVID-19;
- You are acting in accordance with an order under section 22 or 35 of the *Health Protection and Promotion Act* that relates to COVID-19;
- You are in quarantine or isolation or is subject to a control measure (which may include, but is not limited to, self-isolation), and the quarantine, isolation or control measure was implemented as a result of information or directions related to the designated infectious disease issued to the public, in whole or in part, or to one or more individuals, by a public health official, a qualified health practitioner, Telehealth Ontario, the Government of Ontario, the Government of Canada, a municipal council or a board of health, whether through print, electronic, broadcast or other means;
- You are under a direction given by your employer in response to a concern of the employer that you may expose other individuals in the workplace to COVID-19;
- You are providing care or support to an individual because of a matter related to COVID-19 that concerns that individual, including, but not limited to, school or daycare closures; or
- You are directly affected by travel restrictions related to COVID-19 and cannot reasonably be expected to travel back to Ontario.

If you are laid off:

Under the Ontario *Employment Standards Act, 2000*, a "temporary layoff" can last:

- not more than 13 weeks of layoff in any period of 20 consecutive weeks; or
- more than 13 weeks in any period of 20 consecutive weeks, but less than 35 weeks of layoff in any period of 52 consecutive weeks, where:
 - the employee continues to receive substantial payments from the employer; or

- the employer continues to make payments for the benefit of the employee under a legitimate group or employee insurance plan (such as a medical or drug insurance plan) or a legitimate retirement or pension plan; or
- the employee receives supplementary unemployment benefits.
- There is no statutory right to lay people off, so if your employment contract does not say that a layoff is possible, you may have a claim of constructive dismissal and should speak to an employment lawyer (there are many employee-side lawyers that work on contingency)

Tenancy Considerations

The Province of Ontario has stated that no new eviction orders will be issued until further notice in Ontario due to the COVID-19 pandemic. Need I pay rent?

The short answer is yes. While a Landlord's ability to obtain an eviction order for non-payment of rent has been suspended, this is a temporary measure. If a Tenant stops paying rent, a Landlord may still serve a notice to end a tenancy for non-payment of rent, which is the first step in the eviction process. Once the suspension on new eviction orders has been lifted, the Landlord may apply to the Landlord Tenant Board for an order to terminate the tenancy. If you are unable to pay your rent due to the COVID-19 outbreak, it's best to speak to your Landlord to coordinate an arrangement.

Landlords are expected to be fair, reasonable and empathetic in the circumstances. Likely, once any suspension is lifted, there will be a significant backlog at the Landlord and Tenant Board before any eviction will take place. However, it's always best to have a positive relationship with your landlord if possible, so a collaborative approach is better here.

Note that a landlord is not allowed to unilaterally apply your last month's rent deposit to your current owing rent – it's intended for last month only.

Approaching a landlord if you can't pay rent – specific considerations and things to know:

In accordance with section 3(1) of the *Residential Tenancies Act*, the *RTA* will apply despite any agreement or waiver to the contrary. Therefore, the Landlord and the Tenant cannot contract out of the *RTA*. An agreement between the Landlord and the Tenant to alter the payment of rent is permitted, therefore, so long as it does not violate the terms of the *RTA*.

The Landlord may enter into an agreement with the Tenant to permit the Tenant to fall into arrears of rent payments on an emergency basis. It's best that the agreement is an acknowledgment by the Landlord that the Tenant may temporarily accrue arrears, rather than either (a) a reduction in rent followed by a subsequent increase, (b) permitting the delay of rent payments, or (c) a promissory note to pay by the tenant (which comes with its own set of complexities and doesn't add any new legal obligations).

As part of the agreement to permit arrears, the Landlord can agree that it will not proceed against the Tenant for a temporary period of time. The agreement can be

accompanied by a repayment schedule that does not exceed the length of the term of the tenancy, and does not exceed one year from the date the arrears began to accrue.

Can I ask for a reduction of rent because services (like gym, pool, party room) have been reduced or closed?

Tenants have the right to bring an application before the Board for a reduction of rent due to a decrease in services. However, subsection 39(7) of O. Reg. 516/06 under the *Residential Tenancies Act* permits the Landlord to reduce services without affecting rent if the discontinuance or reduction is temporary and its duration is reasonable. A tenant should be reasonable in the circumstances, knowing that there is a larger safety reason your landlord will be doing this.

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“Fall down seven times, stand up eight.”
– Japanese Proverb