



ALBERTA

ALBERTA REGULATION 138/2020  
FILED ON July 29 2020

ECONOMIC DEVELOPMENT, TRADE AND TOURISM

*Office of the Minister  
MLA, Calgary-Peigan*

**MINISTERIAL ORDER NO. 103/2020**  
***Commercial Tenancies Protection Act (section 10)***

**COMMERCIAL TENANCIES PROTECTION REGULATION**

I, TANYA FIR, Minister of Economic Development, Trade and Tourism make the regulation in the attached appendix.

Dated this 23<sup>rd</sup> day of July, 2020.

TANYA FIR  
Minister  
Economic Development, Trade and Tourism

## APPENDIX

### Commercial Tenancies Protection Act

#### COMMERCIAL TENANCIES PROTECTION REGULATION

##### *Table of Contents*

- 1 Purpose of Regulation
- 2 Application of the Act
- 3 Domestic and foreign revenues
- 4 Calculating gross annual revenues
- 5 Parent entities
- 6 Substantial loss of revenue
- 7 Calculating tenant revenue
- 8 Expiry
- 9 Coming into force

##### **Purpose of Regulation**

**1** Pursuant to sections 2(1) and 10(1)(b) of the Act, this Regulation identifies conditions and requirements that must be met for the Act to apply to a commercial premises.

##### **Application of the Act**

**2(1)** Subject to subsection (2), the Act applies to a commercial premises if

- (a) the landlord and tenant of the commercial premises are not eligible for assistance under the Canada Emergency Commercial Rent Assistance program with respect to the commercial premises for the sole reason that the landlord has not, as required to be eligible for the program, entered into a rent reduction agreement with the tenant that includes a moratorium on eviction, or
- (b) the rent for the commercial premises is less than \$50 000 per month, the tenant's gross annual revenues as calculated under sections 3 and 4 are less than \$20 million per year and one of the following applies:
  - (i) the tenant has suffered a substantial loss of revenue, as determined in accordance with sections 3, 6 and 7;
  - (ii) the tenant was ordered to close the commercial premises to the public under an order or enactment made pursuant to the state of public health

emergency declared by Order in Council numbered O.C. 80/2020.

(2) The Act does not apply to a commercial premises if the landlord and tenant have, at any time, participated in the Canada Emergency Commercial Rent Assistance program with respect to the commercial premises.

**Domestic and foreign revenues**

3 If a tenant or, where applicable, a parent entity operates outside of Alberta, the tenant's revenues or, where applicable, a parent entity's revenues from all jurisdictions, domestic and foreign, shall be used for the purpose of calculating a tenant's gross annual revenues under section 4 and for the purpose of calculating a tenant's total gross revenue, average gross monthly revenue or gross monthly revenue in section 6.

**Calculating gross annual revenues**

4 For the purposes of calculating a tenant's gross annual revenues,

- (a) if the tenant operates out of a single commercial premises and is not a subsidiary of a parent entity,
  - (i) when the tenant has had at least one full fiscal year of operations prior to March 17, 2020, the tenant's gross annual revenues for the tenant's most recent fiscal year that ended prior to March 17, 2020 shall be used to determine the tenant's gross annual revenues, or
  - (ii) if the tenant has not had at least one full fiscal year of operations prior to March 17, 2020, the tenant's total gross revenues received prior to March 17, 2020 shall be deemed to be the tenant's gross annual revenues,

or

- (b) if the tenant operates out of more than one commercial premises and is not a subsidiary of a parent entity,
  - (i) when the tenant has had at least one full fiscal year of operations prior to March 17, 2020, the tenant's consolidated gross annual revenues for the tenant's

most recent fiscal year that ended prior to March 17, 2020 shall be used to determine the tenant's gross annual revenues, or

- (ii) if the tenant has not had at least one full fiscal year of operations prior to March 17, 2020, the tenant's total consolidated gross revenues received prior to March 17, 2020 shall be deemed to be the tenant's gross annual revenues,

or

- (c) if the tenant is a subsidiary of a parent entity that produces consolidated financial statements that include the tenant's operations,

- (i) when the parent entity has had at least one full fiscal year of operations prior to March 17, 2020, the parent entity's consolidated gross annual revenues for the parent entity's most recent fiscal year that ended prior to March 17, 2020 shall be deemed to be the tenant's gross annual revenues, or

- (ii) if the parent entity has not had at least one full fiscal year of operations prior to March 17, 2020, the parent entity's total consolidated gross revenues received prior to March 17, 2020 shall be deemed to be the tenant's gross annual revenues,

or

- (d) if the tenant is a subsidiary of a parent entity that does not produce a consolidated financial statement that includes the tenant's operations,

- (i) when the tenant has had at least one full fiscal year of operations prior to March 17, 2020,

- (A) where the tenant operates out of a single commercial premises, the tenant's gross annual revenues for the tenant's most recent fiscal year that ended prior to March 17, 2020 shall be used to determine the tenant's gross annual revenues,

or

(B) where the tenant operates out of more than one commercial premises, the tenant's consolidated gross annual revenues for the tenant's most recent fiscal year that ended prior to March 17, 2020 shall be used to determine the tenant's gross annual revenues,

or

(ii) if the tenant has not had at least one full fiscal year of operations prior to March 17, 2020,

(A) where the tenant operates out of a single commercial premises, the tenant's total gross revenues received prior to March 17, 2020 shall be deemed to be the tenant's gross annual revenues, or

(B) where the tenant operates out of more than one commercial premises, the tenant's total consolidated gross revenues received prior to March 17, 2020 shall be deemed to be the tenant's gross annual revenues.

**Parent entities**

**5** For the purposes of this Regulation, a tenant is a subsidiary of a parent entity if

(a) the tenant is controlled by

(i) that parent entity,

(ii) that parent entity and one or more additional entities, each of which is controlled by that parent entity, or

(iii) 2 or more entities, each of which is controlled by that parent entity,

or

(b) the tenant is a subsidiary of an entity that is that parent entity's subsidiary.

**Substantial loss of revenue**

**6** A tenant has suffered a substantial loss of revenue if any of the following apply:

- (a) if the tenant began operating on or before April 30, 2019, the tenant's total gross revenue in April, May and June 2020 is at least 25% less than the tenant's total gross revenue in the same 3-month period in 2019;
- (b) if the tenant was not operating until May 1, 2019 or later, but was operating on or before January 31, 2020, the tenant's average gross monthly revenue in April, May and June 2020 is at least 25% less than the tenant's average gross monthly revenue in January and February 2020;
- (c) if the tenant began operating after January 31, 2020 but before March 1, 2020, the tenant's average gross monthly revenue in April, May and June 2020 is at least 25% less than the tenant's gross monthly revenue in February 2020.

**Calculating tenant revenue**

**7** For the purposes of calculating a tenant's total gross revenue, average gross monthly revenue or gross monthly revenue in section 6,

- (a) if the tenant operates out of more than one commercial premises, the tenant's revenue will be calculated on a consolidated basis, and
- (b) if the tenant is the subsidiary of a parent entity, the tenant's revenue will be based on the tenant's operations, and not the consolidated revenues of the parent entity.

**Expiry**

**8** For the purposes of ensuring that this Regulation is reviewed for ongoing relevance and necessity, with the option that it may be repassed in its present or an amended form following a review, this Regulation expires on August 31, 2023.

**Coming into force**

**9** In accordance with section 10(2) of the Act, this Regulation has effect on March 17, 2020.