

Commercial Lease and the Landlord's Right of Distress

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When a commercial tenant is in default with the payment of rent, a landlord has certain rights under the Commercial Tenancies Act (Ontario) including the right of distress. Distress is a commercial landlord remedy which gives the landlord the right to take possession, and sell the goods and chattels of the tenant located at the leased premises to satisfy arrears of rent.

It is imperative for a landlord to consider the various options available to it, depending on the circumstances, before deciding to exercise the right of distress against the assets of a defaulting tenant. More importantly the landlord must consider, with the assistance of its solicitor, any potential liability.

The Federal and Provincial Governments have what they call a “super priority” right when it comes to the payment of any amounts owing by a tenant with respect of some deductions, provincial sales tax, goods and services and harmonized sale taxes. These arrears create a security interest in the tenant's assets which security interest is in priority to the rights of any other creditor, including the landlord.

Accordingly, if a landlord in exercising a right of distress fails to remit outstanding amounts to the appropriate government authority when distributing the proceeds of a distress sale it will be subject to a claim for payment. The amount of the claim will be the lesser of the full amount due on account of the arrears and the gross proceeds of the distress sale.

Having said this, in order to avoid liability in these circumstances, it is incumbent the landlord provide written notice of the distress to the relevant government authorities and request details of any amounts payable in order to determine the extent of any possible liability of the tenant to such government authorities.

If you have any questions or would like any assistance, please do not hesitate to contact me directly at 613-696-1307 or by email at hgregoropoulos@lmrlawyers.com.



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