

# Intelligence MEMOS



From: Hugh O'Reilly and Edward Waitzer

To: Bill Morneau, Minister of Finance

Date: April 1, 2020

Re: **RENTAL CHAOS – THE NEED FOR A RULES-BASED EVICTION FRAMEWORK**

---

During the COVID-19 crisis, all levels of government in Canada are responding decisively with policies to create a climate of certainty and respond to those in immediate need during a decidedly uncertain time.

One of the most difficult aspects is that crisis management can resemble the game of whack-a-mole. Solving one problem can create other, unanticipated, problems that require their own urgent solutions. This is partially why, in normal times, government responses can take what appears to be a maddeningly long period of time.

We fear that one recent policy initiative that will create unforeseen problems is the eviction moratorium that applies to tenants who cannot pay their rent as a result of COVID-19 income loss.

From a social and public health policy perspective, an eviction moratorium is good policy. Individuals should not suffer the consequence of losing their home while they await government support. From a public health perspective, it is also sensible to avoid this outcome while social distancing is required.

However, a general eviction moratorium may create the conditions of market breakdown (at a time when the opposite is required) and could have a number of unfortunate knock-on effects. For these reasons, the eviction moratorium needs to be targeted, time limited and include a return to more normal conditions in its design.

The need for a rules-based eviction moratorium can be seen when the example of a social, not-for-profit or affordable housing provider (NFP Providers) is considered (the issues created for landlords are considered [here](#)).

NFP Providers typically do not have other sources of income or liquidity beyond rental income. After the eviction moratorium ends, is it unclear how lost rental income will ever be recouped. NFP Providers may not be able to sustain such a permanent loss of rental income.

Another factor to consider is that NFP Providers often have tenants who are recipients of provincial social assistance.

There is no income interruption for these tenants, but it appears that the eviction moratorium will apply to them even if they choose not to pay their rent. We do not dispute that provincial social assistance may be insufficient, but a general eviction moratorium that results in the NFP Provider subsidizing these tenants surely isn't an appropriate or effective mechanism to solve a broader income assistance problem. For this reason, we believe that the eviction moratorium should make clear that it does not apply to tenants who are in receipt of provincial social assistance.

For those tenants whose incomes are interrupted or insufficient, any eviction moratorium should be targeted, and rules based.

It could, for example, be made conditional on landlords and tenants being required to enter into a deferred rent payment arrangement based upon a prescribed payment schedule and receipt of income benefits by the tenant.

Rent subsidies, such as the \$500 subsidy, payable directly to the landlord, such as B.C. is offering, could be part of such a rules-based framework. Rules will clarify to whom the moratorium applies, but also make it clear that it does not relieve the tenant of the obligation to pay rent.

The length of the eviction moratorium needs some definition as well. A definite end point, say 90 days after the end of social distancing, would allow those who have lost their jobs to return to work and regain a stable income.

In the absence of clear rules, the transition when the moratorium ends will be very difficult. Those most in need will have accumulated additional debt, rental tribunals will be swamped, and it is highly unlikely that the unpaid rents will ever be collected.

The potential for permanent dislocation is substantial. NFP Providers will be forced to bear the consequences of the crisis, and could even lead to the failure of these organizations. If this were to occur, then the consequences for those in need would be severe.

The types of difficulties faced by NFP Providers will apply to most landlords and tenants.

In times of crisis, certainty becomes increasingly valuable. The income support measures announced by all levels of government in Canada are an important element of creating certainty in these unprecedented times. Housing also needs certainty.

*Hugh O'Reilly and Edward Waitzer are Senior Fellows at the C.D. Howe Institute. Edward is also a partner at Stikeman Elliott LLP. Stikeman Elliott represents a number of multi residential landlords. Hugh is also a Member of the Board of Directors of Namerind, a not-for-profit aboriginal housing provider in Regina. Their views are their own.*

*To send a comment or leave feedback, email us at [blog@cdhowe.org](mailto:blog@cdhowe.org).*

*The views expressed here are those of the authors. The C.D. Howe Institute does not take corporate positions on policy matters.*