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Cannabis legalization | Lessors : what steps should you take?

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Subject to many restrictions, the possession and production of cannabis were legalized in Canada following the coming into force of the *Cannabis Act*[1] (the "**Cannabis Act**") on October 17, 2018.

In this context, a guide for employers was previously published by our team in Employment and Labour. To consult it, click here.

Beyond the area of employment, the entire legislation concerning cannabis legalization in Canada affects the business community, including cannabis producers, lessors of residential or commercial buildings, associations of co-owners, financial institutions and others. The cultivation, production and use of cannabis raise a number of serious questions arising from real estate law and public law.

Residential Leasing

For lessors, certain legal considerations regarding the use of cannabis in residential rental properties require specific actions in the short term. What are they?

On June 12, 2018, the Quebec government adopted the *Cannabis Regulation Act*[2] (hereinafter referred to as the "**Act**") to complement the Cannabis Act. Section 107 of the Act states the following:

> 107. A lessor may, until 15 January 2019, modify the conditions of the lease of a dwelling by adding a prohibition against smoking cannabis. *[Our emphasis]*
>
> To that end, the lessor must give the tenant a notice of modification describing the prohibition against smoking cannabis applicable to the use of the leased premises.
>
> The tenant may refuse the modification for medical reasons. The tenant must do so by informing the lessor of the refusal within 30 days after receiving the notice of modification. In such a case, the lessor may apply to the *Régie du logement*, within 30 days after receiving the notice of refusal, for a ruling on the modification of the lease.
>
> In the absence of a refusal, the prohibition is deemed entered in the lease 30 days after the tenant received the notice of modification.

In light of this provision, any lessor may take the necessary measures to prohibit the use of cannabis on the leased premises of residential rental properties before January 15, 2019.

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More specifically, what steps must lessors, who wish to assert their right to modify a lease unilaterally, take before January 15, 2019, under section 107 of the Act?

1. Draft a clause amending the lease.

Lessors must first draft an amendment clause for the leases that they wish to amend to include the prohibition against smoking cannabis on leased premises, including, without limitation, balconies.

The amendment clause need not extend the prohibition against smoking cannabis to common areas such as halls and lobbies, given that such a prohibition is already provided for under section 12, paragraph 8 of the Act.

2. Send a notice of modification to the tenants.

Once this amendment clause is drafted, lessor must send a written notice of modification to all tenants, to the address indicated in the lease, before January 15, 2019.

The notice of modification should include the following:

Name and surname of the tenant or tenants concerned;
Section 107 of the Act (full text);
The exact text of the modification to the lease; and
The lessor's signature and the date on which they have signed the notice of modification.

Although no specific requirement in this regard is provided for in either the Act or the *Civil Code of Québec*, it is recommended that lessors indicate the consequences that tenants face if they fail to comply with the prohibition against smoking cannabis in the notice of modification. These consequences may include the resiliation of the lease in a case where the other tenants' right to the peaceable enjoyment of the premises has been violated[3].

3. Use an appropriate delivery method

The lessor will have to choose a means of transmission that will ensure that the notice of change is transmitted AND received before January 15, 2019, and that physical and enforceable proof of receipt by the tenant is kept. The most appropriate means of transmitting the notice of change may vary depending on the circumstances and the means of communication agreed upon between the lessor and their tenant and/or used by them in the past. The methods of transmission provided for in the *Code of Civil Procedure* include, among other things, delivery by the bailiff, sending by registered mail, personal delivery and sending by technological means. In any event, the lessor must ensure that they choose the method of transmission that provides the most convincing evidence that the tenant has received the notice.

When will the amendment clause come into effect?

In the absence of a refusal by the tenant (the tenant may, for medical reasons, refuse the modification proposed by the lessor under section 107 of the Act), and following a 30-day period from the receipt of said notice, the prohibition against smoking on leased premises will be deemed to have been entered in the lease.

What happens if a lessor fails to assert their right to unilaterally modify a lease under section 107 of the Act before January 15, 2019?

Any lessor who does not send the notice of amendment before January 15, 2019 will have to wait until the expiry of the current lease and will be subject to the general provisions of the Civil Code of Québec for the amendment of a residential lease, unless an agreement is reached with the tenant.

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Are lessors of commercial rental properties, like lessors of residential rental properties, required to take a particular action before a given date?

Lessors of commercial rental properties cannot benefit from the right to modify leases unilaterally set out in section 107 of the Act.

However, paragraph 17 of section 12 of the Act provides that smoking is prohibited in enclosed spaces that are open to the public, such as office buildings and shopping centres. Moreover, it is possible for the owners of commercial buildings to consider an amendment to the rules and regulations of the buildings in order to prohibit the use of cannabis on leased premises as well as in common areas.

In this regard, lessors of commercial buildings would be well advised to immediately adopt a policy in line with the policy adopted regarding the use of tobacco on leased premises and in common areas, if appropriate.

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1. *Cannabis Act*, S.C. 2018, c. 16
2. *Cannabis Regulation Act*, CQLR, c. C-5.3
3. *Chartier v. Chassé, 2018 QCCQ 2823*

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