

Court File No. CV-21-00673084-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

- and -

PEACE BRIDGE DUTY FREE INC.

Respondent

MEMORANDUM OF FACT AND LAW

Date: December 13, 2021	BLANEY MCMURTRY LLP Barristers & Solicitors 2 Queen Street East, Suite 1500 Toronto, ON, M5C 3G5 David T. Ullmann (LSO #42357I) Email: dullmann@blaney.com John Wolf (LSO #30165B) Email: jwolf@blaney.com Brendan Jones (LSO #56821F) Email: bjones@blaney.com Alexandra Teodorescu (LSO #63889D) Email: ateodorescu@blaney.com Lawyers for the Respondent
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MEMORANDUM OF FACT AND LAW

PART I - OVERVIEW

1. Peace Bridge Duty Free Inc. (“**Duty Free**”) seeks an adjournment of the receivership application brought by its secured creditor, the Royal Bank of Canada (“**RBC**”), to allow for more time for good faith negotiations between Duty Free, its landlord and RBC.
2. The Duty Free business has been savaged by the Covid-19 pandemic, as the business was closed for more than 18 months and the border was not fully reopened until November 2021. There will be material improvement to the business and its ability to satisfy its creditors, if given the time.
3. RBC’s receivership application was caused by Duty Free’s landlord sending Notices of Default and threatening to terminate the lease and/or enforcing its rights against Duty Free’s goods and chattels. But for that action by the landlord, RBC had agreed to forbear from enforcing.

4. The purpose of this memorandum is to highlight for the Court the facts and law which demonstrate that during an adjournment the landlord would continue to be prohibited by new pandemic enacted provisions under the *Commercial Tenancies Act* from re-entering or exercising a right of distraint against Duty Free during the ongoing “non-enforcement period” that applies to the tenancy.

PART II - FACTS

The Tenancy

5. Duty Free is an Ontario corporation with a registered office address located at 1 Peace Bridge Plaza, Fort Erie, Ontario (the “**Leased Premises**”).¹

6. By lease dated July 28, 2016, Duty Free leased the Leased Premises from the Buffalo and Fort Erie Public Bridge Authority (the “**Landlord**”) for a fifteen (15) year term commencing on November 1, 2016 and ending on October 31, 2031, subject to Duty Free’s option to extend for an additional period of five (5) years through 2036 (the “**Lease**”).²

7. The Landlord is an international entity created by the State of New York and the Government of Canada. It is governed by a 10 member Board of Directors consisting of five members from New York State and five members from Canada.³

¹ Affidavit of Jim Pearce, sworn December 12, 2021 (“**Pearce Affidavit**”), para. 5, Motion Record of the Respondent, Peace Bridge Duty Free Inc. (“**Motion Record**”), Tab 2.

² Pearce Affidavit, *supra*, para. 6, Motion Record, Tab 2.

³ Pearce Affidavit, *supra*, para. 7, Motion Record, Tab 2.

8. Duty Free completed major renovations to the Leased Premises between April 2018 and May 2019 at a cost of over \$6 million.⁴

Impact of Pandemic of the Business

9. As the name suggests, Duty Free operates a land border duty free shop with 26,000 square feet of retail space from the Leased Premises.

10. Duty Free holds a non-transferrable license to operate the retail store from the Canada Border Services Agency (“**CBSA**”) and an authorization by the Liquor Control Board of Ontario to buy and sell alcohol products.⁵

11. The duty free store is typically open 24 hours a day and 365 days a year, although the store’s hours were impacted by the pandemic. The business previously employed approximately 90 staff, including cashiers, product specialists/buyers, customer service, sales staff, supervisors, marketing professionals, and support staff in replenishment, customs paperwork, inventory and cash control. All staff live locally and all functions are performed at the store location.⁶

12. The pandemic, and particularly the border closures between Canada and the United States, greatly impacted Duty Free’s business. The land border was closed between March 2020 and August 2021 for all non-essential travel. The retail store entirely closed on or about March 21, 2020 and was partially reopened on September 19, 2021. Canada only reopened its land border to

⁴ Pearce Affidavit, *supra*, paras. 15-16, Motion Record, Tab 2.

⁵ Pearce Affidavit, *supra*, paras. 49-51, Exhibits “H,” “J” and “K,” Motion Record, Tabs 2, 2H, 2K and 2K.

⁶ Pearce Affidavit, *supra*, para. 11, Motion Record, Tab 2.

fully vaccinated Americans on August 9, 2021, and the United States did not re-open its border to Canadian travelers until November 8, 2021.⁷

The Lease

13. All terms not otherwise defined herein have the meaning ascribed to them in the Lease and the rent deferral agreements described below. Under the Lease, Duty Free agreed to pay Base Rent, Percentage Rent and Additional Rent. As a result, the Rent payable is tied to Duty Free's Gross Sales. The amount payable for Base Rent and Percentage Rent can generally be described as approximately 20% of sales with a floor of \$4,000,000.⁸

14. The agreement on the amount of Rent was largely based on traffic and revenue expectations, which were negatively impacted by the worldwide pandemic that prohibited virtually all cross-border travel and closed the bridge to non-essential travel.⁹

15. The parties realized that the nature of this tenancy and the control exercised by other parties needed to be accounted for. Pursuant to subsection 18.07 of the Lease the Landlord agreed to consult with Duty Free about the impact of changes to Applicable Laws on the Lease as follows:

In the event an unanticipated introduction of or a change in any Applicable Laws causes a material adverse effect (*sic*) on the business operations of the Tenant at the Leased Premiers, the Landlord agrees to consult with the Tenant to discuss the impact of such introduction of or change in Applicable Laws to the Lease. [emphasis added]¹⁰

⁷ Pearce Affidavit, *supra*, para. 12, Motion Record, Tab 2.

⁸ Pearce Affidavit, *supra*, paras. 17-18, Motion Record, Tab 2.

⁹ Pearce Affidavit, *supra*, para. 19, Motion Record, Tab 2.

¹⁰ Pearce Affidavit, *supra*, para. 20 and Exhibit "A", Motion Record, Tabs 2 and 2A.

16. Adverse Effect is defined as paragraph 2.01(c) of the Lease:

“Adverse Effect” means any one or more of:

...

(vii) loss of **enjoyment of a normal use** of property; and

(viii) **interference with the normal conduct of business**. [emphasis added]¹¹

17. Applicable Laws is defined as paragraph 2.01(e) of the Lease:

“Applicable Laws” means any statutes, laws, by-laws, regulations, ordinances and requirement of governmental and other public authorities having jurisdiction over or in respect of the Leased Premises or the Property, or any portion thereof, and all amendments thereto at any time and from time to time, and including but not limited to the Environmental Laws. (emphasis added).¹²

Rent Deferral Agreements

18. On April 27, 2020, Duty Free entered into a rent deferral agreement prepared by the Landlord due to travel restrictions and economic hardship created by the Covid-19 pandemic.¹³

19. During the Rent Deferral Period, Duty Free was required to pay all Additional Rent, and Base Rent was deferred to be paid over an amortized period.¹⁴

¹¹ Pearce Affidavit, *supra*, para. 21 and Exhibit “A”, Motion Record, Tabs 2 and 2A.

¹² Pearce Affidavit, *supra*, para. 22 and Exhibit “A”, Motion Record, Tabs 2 and 2A.

¹³ Pearce Affidavit, *supra*, para. 24 and Exhibit “B”, Motion Record, Tabs 2 and 2B.

¹⁴ Pearce Affidavit, *supra*, para. 25, Motion Record, Tab 2.

20. The first rent deferral agreement expired on July 31, 2020. Duty Free made all payments required under the first rent deferral agreement and the parties continued to act as if the agreement had been extended.¹⁵

21. In November 2020, Duty Free accepted the Landlord's offer to enter into a second deferral agreement, which had the same terms as the first agreement except that the amortization period to repay rent was doubled to two years. The Rent Deferral Period under the second deferral agreement was to be extended to the earlier of (i) March 31st, 2021 or (ii) the last day of the month following the date the duty free shop fully reopened for business after the restrictions on non-essential travel between Canada and the US are lifted.¹⁶

22. Notwithstanding that under the rent deferral agreement the Rent Deferral Period ended on March 31, 2021, the Canada-US border remained closed and the retail duty-free store remained closed. Again, the parties continued to act as if the agreement had been extended and Duty Free continued to pay Additional Rent to the Landlord.¹⁷

23. The underlying principle of the deferral agreements was that Duty Free would not be required to pay Base Rent until traffic across the Canada-US border returned to normal levels and Duty Free was able to reopen its store to the public.¹⁸

24. Duty Free continued to make payments and the Landlord continued to accept payment under the terms as set out in the rent deferral agreements. Duty Free also paid to the Landlord all

¹⁵ Pearce Affidavit, *supra*, paras. 25-26, Motion Record, Tab 2.

¹⁶ Pearce Affidavit, *supra*, para. 27 and Exhibit "C", Motion Record, Tabs 2 and 2C.

¹⁷ Pearce Affidavit, *supra*, paras. 29 and 30, Motion Record, Tab 2.

¹⁸ Pearce Affidavit, *supra*, para. 31, Motion Record, Tab 2.

government subsidies for rent, as set out below. The Landlord did not raise any objection until it demanded immediate payment of all Deferred Rent plus three months' accelerated rent on September 8, 2021, being 13 days before Duty Free opened for business.¹⁹

Landlord Delivers Notices of Default

25. On September 8, 2021, the Landlord issued two notices of default under the Lease. One in respect of a monetary default in which the Landlord demanded payment within 9 days of \$5,931,389, representing the full amount of all Rent arrears without regard to the amortization schedule in subsection 2.3 of the November 2020 rent deferral agreement.²⁰

26. Duty Free takes the position the notice of monetary default is invalid since the unamortized portion of the Deferred Rent was not due and payable at the time the notice was issued since there had been no prior Event of Default.²¹

27. The second notice of default demanded that Duty Free pay, within 14 days, September 2021 rent in full as well as three months' accelerated Rent being about \$1.2 million dollars plus \$10,000 of legal expenses and more taxes, based on alleged non-monetary defaults that:

- (a) Duty Free did not provide a replacement letter of credit after the Landlord, without notice and contrary to the parties' course of conduct to that point, applied Duty Free's full \$50,000 letter of credit toward Rent arrears even though the Canada-US

¹⁹ Pearce Affidavit, *supra*, para. 32, Motion Record, Tab 2.

²⁰ Pearce Affidavit, *supra*, paras. 36-38, Motion Record, Tab 2. See also Affidavit of Christopher Schulze, sworn December 2, 2021, Exhibit "G," Application Record, returnable December 14, 2021. ^D

²¹ Pearce Affidavit, *supra*, para. 38, Motion Record, Tab 2.

border had not fully reopened, and Duty Free's retail duty-free store had not reopened yet;

- (b) Duty Free had not continuously and actively carried on the Permitted Use in the whole of the Leased Premises and it had not operated its business 24 hours a day, seven days a week, 365 days a year; and
- (c) Duty Free closed for 10 consecutive days without the prior consent of the Landlord (during a worldwide pandemic that resulted in travel restrictions and border closures).²²

28. Duty Free has restored the \$50,000 letter of credit and re-opened the duty-free store, thus curing the non-monetary defaults, to the extent they were *bona fide* defaults.²³

29. Duty Free and the Landlord entered into without prejudice negotiations to try and settle issues related to the alleged monetary Notice of Default and the Lease. The negotiations did not result in an agreement.²⁴

Duty Free is CERS Recipient

30. Duty Free participated in the government programs designed to assist small businesses that were affected by Covid-19 with rent payments.²⁵

²² Pearce Affidavit, *supra*, para. 39, Motion Record, Tab 2.

²³ Pearce Affidavit, *supra*, para. 41, Motion Record, Tab 2.

²⁴ Pearce Affidavit, *supra*, para. 45, Motion Record, Tab 2.

²⁵ Pearce Affidavit, *supra*, para. 33, Motion Record, Tab 2.

31. In or about October 2020, the Canadian government announced the Canada Emergency Rent Subsidy (“**CERS**”) that provided a subsidy to cover part of eligible commercial rent for small businesses impacted by Covid-19 to be administered in several four (4) week periods. The CERS program applied retroactively starting September 27, 2020, and ran until October 23, 2021.²⁶

32. Duty Free applied for and was approved for CERS. Most recently, Duty Free was approved for CERS claim period 14 (September 26, 2021 to October 23, 2021) on November 8, 2021, less than twelve (12) weeks ago.²⁷

33. Duty Free advised its Landlord that it had applied for, been approved and did receive CERS payments. On November 12, 2021, Duty Free sent a copy of its most recent CERS approval notice to the Landlord by email.²⁸

34. All CERS payments received by Duty Free have been remitted to the Landlord.²⁹

Payment of Percentage Rent Since Re-Opening

35. Since re-opening for business on September 19, 2021, in addition to Additional Rent and CERS payments, Duty Free has paid to the Landlord percentage rent based on 20% of gross sales as follows: \$19,533 for September rent paid; \$61,600 for October rent; and \$109,400 for November rent.³⁰

²⁶ Pearce Affidavit, *supra*, para. 34, Motion Record, Tab 2.

²⁷ Pearce Affidavit, *supra*, paras. 35, 46, Exhibit “D” and Exhibit “F”, Motion Record, Tabs 2, 2D and 2F.

²⁸ Pearce Affidavit, *supra*, para. 43, Motion Record, Tab 2.

²⁹ Pearce Affidavit, *supra*, paras. 35, 43 and Exhibit “D”, Motion Record, Tabs 2 and 2D

³⁰ Pearce Affidavit, *supra*, para. 42, Motion Record, Tab 2.

36. The border crossing traffic over the bridge and Duty Free's gross sales remain down approximately 60% to 70% percent from pre-pandemic levels.³¹

Receivership Application

37. Duty Free has made all payments to RBC when due and has continued to pay amounts owing in accordance with the terms its credit agreements.³²

38. However, after the Landlord issued its Notices of Default on September 8, 2021, RBC made demand and sent a Notice of Intention to Enforce Security on September 23, 2021.³³

39. On October 8, 2021, RBC and Duty Free entered into a Forbearance Agreement. The Forbearance Agreement was set to expire on the earlier of either January 4, 2022 or an "Intervening Event," which included if the Landlord purported to terminate the Lease.³⁴

40. On November 23, 2021, RBC advised it had terminated the Forbearance Agreement because of concerns about the Landlord acting to enforce its supposed rights and remedies.³⁵

³¹ Pearce Affidavit, *supra*, para. 42, Motion Record, Tab 2.

³² Pearce Affidavit, *supra*, para. 59, Motion Record, Tab 2.

³³ Pearce Affidavit, *supra*, para. 61, Motion Record, Tab 2.

³⁴ Pearce Affidavit, *supra*, para. 62, Motion Record, Tab 2. See also Affidavit of Christopher Schulze, sworn December 2, 2021, Exhibit "D," Application Record, returnable December 14, 2021.

³⁵ Pearce Affidavit, *supra*, para. 64 and Exhibit "M", Motion Record, Tab 2 and 2M.

PART III - LAW

Landlord Is Stayed by Eviction Moratorium

41. Because of the effects of the Covid-19 pandemic and the associated government mandated restrictions, the Ontario government acted to temporarily ban evictions for tenants who have been approved for CERS.

42. The recent amendments to Part IV of the *CTA* relating to CERS and [O. Reg. 763/20: *Non-Enforcement Period - Prescribed Tenancies*](#) came into force on December 17, 2020 resulting from [Bill 229 \(*Protect, Support and Recover from COVID-19 Act \(Budget Measures\), 2020*\)](#) that received Royal Assent on December 8, 2020.

43. As a result, pursuant to section 80(2) and Part IV of the *CTA*, certain commercial tenants who meet the “prescribed criteria” are protected from re-entry by the Landlord pursuant to section 82 of the *CTA*, and from the landlord exercising its right to distrain against the tenant’s goods or chattels pursuant to section 84 of the *CTA*.³⁶ The amendments are intended to provide a measure of relief from the impact of Covid-19.

44. After January 31, 2021, to receive protection under Part IV of the *CTA* during the applicable CERS non-enforcement period, Duty Free must satisfy the following CERS prescribed criteria:

1. The tenant has been approved to receive CERS;
2. The tenant has provided proof of the approval referred to in paragraph 1 to their landlord; and

³⁶ [*Commercial Tenancies Act*, R.S.O. 1990, c. L.7, sections 82 and 84.](#)

3. Not more than 12 weeks have passed since the day the tenant was approved.

A tenant can renew its eligibility for protection under the CERS criteria by being approved for CERS for multiple four week claim periods.³⁷

45. The non-enforcement period for tenancies based on CERS approval begins on December 17, 2020 and ends on April 22, 2022.³⁸

46. In *Blue Health Consultants v. Blue Health Services*, Justice Pattillo granted an interlocutory injunction, restoring possession to a tenant based on his finding there was ***more than an arguable case*** a landlord wrongfully breached the CTA by purporting to terminate a lease less than 12 weeks from the date of CERS approval during the “eviction moratorium”, even where there was a question as to whether notice of CERS approval was properly given to the landlord.³⁹

47. Most recently, Duty Free was approved for CERS on November 8, 2021, and sent a copy of that approval to the Landlord by email on November 12, 2021.⁴⁰

48. Accordingly, Duty Free has satisfied the prescribed criteria for the purposes of section 80(2) of the CTA, and it is entitled to the “non-enforcement” protections set out in Part IV of the CTA during the “non-enforcement period”, for at least 12 weeks from its November 8, 2021 CERS approval, which would run until January 31, 2021.

49. It is respectfully hard to imagine a business that would more perfectly meet the purpose and intent of this government program than the Duty Free business. That business is inseparable from

³⁷ [Non-Enforcement Period - Prescribed Tenancies, O.Reg. 763/20 ss.2\(1\) and \(2\).](#)

³⁸ [Non-Enforcement Period - Prescribed Tenancies, O.Reg. 763/20 s.1\(2\).](#)

³⁹ [Blue Health Consultants v. Blue Health Services, 2021 ONSC 2841](#), at para. 20 to 27 and 43.

⁴⁰ Pearce Affidavit, *supra*, paras. 46, 47, Exhibit “F” and Exhibit “G”, Motion Record, Tabs 2, 2F and 2G.

the travel restrictions ordered by the government (which also happens to effectively be its landlord), which effectively rendered its business moot for an extensive period of time. It is more than reasonable to provide such a business with a period of time during which it can safely negotiate with its Landlord and build up some resources from more normal business operations before having to face the obligation to meet pre-pandemic commercial terms and enforcement practices. That appears to be the intent of the statute, which would be thwarted by allowing the threats of landlord enforcement to cause a receivership.

Adjournment Request is Appropriate

50. Given the facts set out above, and the foregoing law, the Landlord is legally prohibited from following through on its threat to terminate the Lease or enforce its rights, even if it were otherwise legally in a position to do so, which is not admitted.

51. Since the Landlord is prevented from terminating the Lease or enforcing its rights of distraint as a result of the eviction moratorium under the *CTA*, there would be no prejudice to RBC in having its receivership adjourned for two months.

52. The business is rebounding following border closures caused by the pandemic and its future looks brighter. Particularly in the month of December, as a result of a decrease in travel restrictions and increase in holiday travellers, it is expected that actual sales will out perform projections.⁴¹

53. Allowing the parties additional time to negotiate a commercial resolution is in the best interests of all stakeholders and is a more cost-efficient way of resolving issues regarding the Notices of Default and the Lease. On the contrary, a receivership may actually harm the business

⁴¹ Pearce Affidavit, *supra*, paras. 66-68, Motion Record, Tab 2.

in the short-term in that the regulatory complexities of the business will make it difficult for the Receiver to maximize value, particularly in the short-term and during an important time for sales.⁴²

PART IV - ORDER REQUESTED

54. Duty Free requests an Order adjourning the receivership application until February 14, 2022.

ALL OF WHICH IS RESPECTFULLY SUBMITTED BY:

Date: December 13, 2021



David T. Ullmann
Counsel for the Respondent

⁴² Pearce Affidavit, *supra*, paras. 53-54, Motion Record, Tab 2.

SCHEDULE A – AUTHORITIES

1. [Blue Health Consultants v. Blue Health Services, 2021 ONSC 2841](#)

SCHEDULE B - STATUTORY PROVISIONS RELIED UPON

Ontario Regulation 763/20 under the [Commercial Tenancies Act, RSO 1990, c L.7](#)

Non-enforcement period

1. (1) The prescribed date for the purposes of clause (a) of the definition of “non-enforcement period” in section 79 of the Act is the 45th day after the day this Regulation comes into force.

(2) The prescribed period for the purposes of clause (b) of the definition of “non-enforcement period” in section 79 of the Act is the period that begins on December 17, 2020 and ends on April 22, 2022.

Prescribed tenancies

2. (1) The following criteria are prescribed for the purposes of subsection 80 (2) of the Act:

1. The tenant has been approved to receive the Canada Emergency Rent Subsidy.
2. The tenant has provided proof of the approval referred to in paragraph 1 to their landlord.
3. Not more than 12 weeks have passed since the day the tenant was approved.

(2) For greater certainty, a tenancy may satisfy the criteria in subsection (1) in respect of more than one approval for the Canada Emergency Rent Subsidy.

[Commercial Tenancies Act, RSO 1990, c L.7](#)

PART IV

Non-enforcement period

79 In this Part,

“non-enforcement period” means,

- (a) in respect of a tenancy referred to in [subsection 80 \(1\)](#), the period that begins on the day [subsection 1 \(1\)](#) of Schedule 5 to the *Protect, Support and Recover from COVID-19 Act (Budget Measures)*, 2020 comes into force and ends on the prescribed date, and
- (b) in respect of a tenancy referred to in [subsection 80 \(2\)](#), the period prescribed for the purposes of this clause. 2020, c. 36, Sched. 5, s. 1 (1).

Note: On December 8, 2022, [section 79](#) of the Act is repealed. (See: 2020, c. 36, Sched. 5, s. 1 (2))

Application

80 (1) This Part applies to a tenancy in respect of which the landlord satisfies any of the following criteria:

1. The landlord is or was eligible to receive assistance under the Canada Emergency Commercial Rent Assistance for small businesses program.
2. The landlord is receiving or has received assistance under the Canada Emergency Commercial Rent Assistance for small businesses program.
3. The landlord would be eligible to receive assistance under the Canada Emergency Commercial Rent Assistance for small businesses program if the landlord entered into a rent reduction agreement with the tenant containing a moratorium on eviction.
4. The landlord would have been eligible to receive assistance under the Canada Emergency Commercial Rent Assistance for small businesses program as described in paragraph 1 or 3 if applications under that program were being accepted. This paragraph applies only if applications to the Canada Emergency Commercial Rent Assistance for small businesses program are no longer being accepted or if assistance is no longer available under the program. 2020, c. 36, Sched. 5, s. 1 (1).

Application, prescribed tenancies

(2) This Part applies to a tenancy that satisfies the prescribed criteria. However, [sections 83](#) and [85](#) apply, with prescribed modifications, in respect of those tenancies only if so provided by the regulations. 2020, c. 36, Sched. 5, s. 1 (1).

Conflict

(3) This Part applies despite any other Part of this Act or any provision in an agreement or any common law rule. 2020, c. 36, Sched. 5, s. 1 (1).

Note: On December 8, 2022, [section 80](#) of the Act is repealed. (See: 2020, c. 36, Sched. 5, s. 1 (2))

Eviction orders for rent arrears not effective during the non-enforcement period

81 (1) Despite anything in this or any other Act, a judge shall not order a writ of possession that is effective during the non-enforcement period that applies in respect of a tenancy referred to in [subsection 80 \(1\)](#) or [\(2\)](#) if the basis for ordering the writ is an arrears of rent. 2020, c. 36, Sched. 5, s. 1 (1).

Same

(2) Subsection (1) applies in respect of an action or application that was commenced before, on or after the day the applicable non-enforcement period begins. 2020, c. 36, Sched. 5, s. 1 (1).

Note: On December 8, 2022, [section 81](#) of the Act is repealed. (See: 2020, c. 36, Sched. 5, s. 1 (2))

No re-entry during the non-enforcement period

82 No landlord shall exercise a right of re-entry in respect of a tenancy referred to in [subsection 80 \(1\)](#) or [\(2\)](#) during the applicable non-enforcement period. 2020, c. 36, Sched. 5, s. 1 (1).

Note: On December 8, 2022, [section 82](#) of the Act is repealed. (See: 2020, c. 36, Sched. 5, s. 1 (2))

Restore possession and compensate for re-entry

83 (1) If a landlord exercised a right of re-entry during the period that begins on October 31, 2020 and ends immediately before the day [subsection 1 \(1\)](#) of Schedule 5 to the *Protect, Support and Recover from COVID-19 Act (Budget Measures)*, 2020 comes into force, the landlord shall, as soon as reasonably possible,

- (a) restore possession of the premises to the tenant unless the tenant declines to accept possession; or
- (b) if the landlord is unable to restore possession of the premises to the tenant for any reason other than the tenant declining to accept possession, compensate the tenant for all damages sustained by the tenant by reason of the inability to restore possession. 2020, c. 36, Sched. 5, s. 1 (1).

Tenancy deemed reinstated

(2) If a landlord restores possession of a premises to a tenant under subsection (1), the tenancy is deemed to be reinstated on the same terms and conditions unless the landlord and the tenant agree otherwise. 2020, c. 36, Sched. 5, s. 1 (1).

Note: On December 8, 2022, [section 83](#) of the Act is repealed. (See: 2020, c. 36, Sched. 5, s. 1 (2))

No distress during the non-enforcement period

84 No landlord shall, during the applicable non-enforcement period, seize any goods or chattels as a distress for arrears of rent in respect of a tenancy referred to in [subsection 80 \(1\)](#) or [\(2\)](#). 2020, c. 36, Sched. 5, s. 1 (1).

Note: On December 8, 2022, [section 84](#) of the Act is repealed. (See: 2020, c. 36, Sched. 5, s. 1 (2))

Return goods seized before the non-enforcement period

85 If, during the period that begins on October 31, 2020 and ends immediately before the day [subsection 1 \(1\)](#) of Schedule 5 to the *Protect, Support and Recover from COVID-19 Act (Budget Measures)*, 2020 comes into force, a landlord seized any goods or chattels as a distress for arrears of rent, the landlord shall, as soon as reasonably possible, return to the tenant all of the seized goods and chattels that are unsold as of the day [subsection 1 \(1\)](#) of Schedule 5 to the *Protect, Support and Recover from COVID-19 Act (Budget Measures)*, 2020 comes into force. 2020, c. 36, Sched. 5, s. 1 (1).

Note: On December 8, 2022, [section 85](#) of the Act is repealed. (See: 2020, c. 36, Sched. 5, s. 1 (2))

Liability for re-entry and seizure of goods

86 (1) A landlord who contravenes [section 82](#) or [84](#) or who fails to comply with [clause 83 \(1\)](#) (a) or [section 85](#) is liable to the person aggrieved for any damages sustained by the person aggrieved as a result of the contravention or non-compliance. 2020, c. 36, Sched. 5, s. 1 (1).

Same

(2) For greater certainty, subsection (1) applies in addition to any other remedy available by law to the person aggrieved. 2020, c. 36, Sched. 5, s. 1 (1).

No re-entry during the non-enforcement period

82 No landlord shall exercise a right of re-entry in respect of a tenancy referred to in subsection 80 (1) or (2) during the applicable non-enforcement period. 2020, c. 36, Sched. 5, s. 1 (1).

Court File No.

CV-21-00673084-00CL

ROYAL BANK OF CANADA
Applicant

and

PEACE BRIDGE DUTY FREE INC.
Respondent

Email address of recipient: See Service List

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**MEMORANDUM OF FACT AND LAW OF THE
RESPONDENT**
(Motion Seeking to Adjourn the Application of Royal Bank of
Canada)

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