

# New Quebec decision on COVID-19 Rent Abatement

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On July 16, 2020, the Superior Court of Québec released its decision in [Hengyun International Investment Commerce Inc. v 9368-7614 Québec Inc.](#) The decision included granting the Tenant, a gym, a complete abatement of rent during the period the Tenant was required to be closed in connection with COVID-19. In this regard, the judge found in favour of the Tenant that the Landlord had breached its covenant for “peaceable enjoyment”. The Tenant had been prohibited by law from operating the premises for its permitted use as a gym. Under the [Civil Code of Québec](#), a landlord is obligated to ensure that the premises can be used for the purpose for which it is leased (although this Article of the Civil Code is not of public order, and can be contracted out of or modified). The judge held that the governmental decree requiring the closure of non-essential businesses in Québec in connection with the COVID-19 pandemic resulted in a breach by the Landlord of this obligation.

The Lease did include a force majeure clause that specifically stated that force majeure did not excuse the Tenant from its obligation to pay rent. However, since the abatement of rent was not decided on the basis of a force majeure claim, the force majeure clause was not relevant in this context. Instead, the judge found that the force majeure clause could not relieve the **Landlord** from its obligation to provide “peaceable enjoyment”, since the force majeure clause only addressed situations of delay in performance, rather than the Landlord’s complete inability to meet its obligation in this regard.

There are a number of questions at this juncture, including:

1. Was this case rightly decided? Will it constitute “good law” in Québec? It will be interesting to see if this case is appealed and whether the decision would be upheld on appeal.
2. How much of the decision turned on the particular lease provisions? As the covenant for “peaceable enjoyment” can be modified between the parties, it is possible that other lease provisions in another lease could limit the impact of this covenant, and lead to a different result.
3. How applicable is this decision to the rest of Canada? Québec is the only province in Canada with a civil code. The rest of Canada uses the common law. While there is a common law obligation to provide “quiet enjoyment”, the scope of this obligation may be different.



In any event, this decision is a reminder of how far a Court may go in its reasoning to achieve the result that it considers to be just and reasonable in particular circumstances.

If you have any questions or would like to obtain legal advice on your lease covenants and your obligations over the course of the COVID-19 pandemic, please contact any lawyer in our [Commercial Leasing Group](#).

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