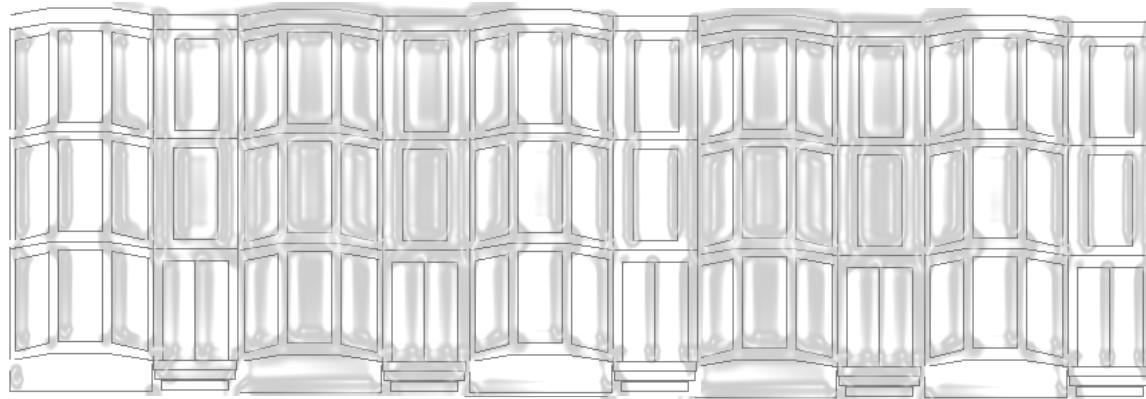


Navigating Landlord-Tenant Law in a COVID-19 World



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COVID-19

During these unprecedented times, it is important to work together and maintain a level of flexibility in the landlord-tenant relationship. This may involve both parties re-negotiating rent rates as well as the duration of the lease, given the difficulties with move ins & outs.

Regardless of the situation, it is important for both the landlord and tenant to maintain an open line of communication. It is also of utmost importance to ensure that any revisions or changes be formalized in writing.

At CPL Law, we are here to help you navigate through these uncertain times.

Regulatory Changes

- NYS has issued a moratorium on all eviction proceedings through August 20th.
- NYC Housing Court is only accepting “essential applications” such as landlord lockouts, repair orders, and serious housing code violations.
- In addressing “essential applications”, judges will exercise judicial discretion in a manner designed to minimize court appearances and general traffic in the courts.
- While rent demands and 14-day non-pay notices can still be sent and served, you cannot purchase an index number and initiate a Court proceeding even after the 14-day notice expires. Nor can you serve the tenant with a petition to appear in Court.
 - The idea here is that serving the 14-day notice gives you a head start when the Courts re-open and a landlord wants to commence a non-payment proceeding.

Senate Bill S8125

- Sponsored and introduced by State Senator Michael Gianaris, this bill proposes a 90-day freeze or suspension of all rent payments for tenants who have lost their jobs.
- In regard to commercial tenants, this bill proposes suspending payments for businesses which were forced to close due to the government mandate.
- Back-rent would not be owed once the freeze is lifted.
- The bill would also require a landlord to provide both residential and commercial tenants with automatic leases at the same rent rate for those leases expiring during this 90-day period (left unclear is the required duration of the leases).
- The bill is currently with the Senate Judiciary Committee. If signed into law, it would take effect immediately.

NYS Tenant Safe Harbor Act

- Introduced on April 8th, this new legislation would add to Governor Cuomo's 90-day moratorium on eviction by preventing landlords from evicting tenants due to non-payment of rent that accrued during the state of emergency which began on March 7th.
- The protected period would also cover rent payments which were not made for the six months following the conclusion of the state of emergency.
- Landlords can still seek monetary judgments for unpaid rent, however, evicting a tenant for failure to pay rent during this period would not be an option.

Amending or Revising the Lease Terms

- As different situations arise (tenant hardship, ownership change, scheduled move in/out, lease expirations) many landlords and/or tenants will find themselves in a position whereby they need to amend or revise the current terms of the lease.
- Regardless of whether you're revising the rent amount, lease duration, or any other term, it is of utmost importance that both parties ensure that any amendments or revisions are formalized in a written agreement. Verbal agreements should not be relied on.
 - As a broker, you should avoid drafting these documents as all drafting should be left to attorneys.
- It is also important to make sure amendments are made before the lease term expires which will allow Landlords to avoid having a tenant in a month-to-month or licensee situation.

Commercial Leases- Taxes

- Many commercial spaces are uniquely suited for a specific business (e.g. restaurant, laundromat, etc.).
- As such, the landlord is already restricted to a relatively small pool of potential tenants.
- One way to ease the tenant's rental burden is to amend the portion of taxes the tenant is responsible for (where applicable) with the hope that the City issues an overall reduction.

Mortgage Payments

- Lenders at both the State and Federal level have been ordered to suspend mortgage payments for all homeowners who are unable to make payments due to COVID-19. The suspension would also include the waiver of late or online fees as well as no negative reporting to credit bureaus.
- Missed payments would be added to the back end of the mortgage period, thereby extending its term.
- Fannie Mae has stated they will suspend all mortgage payments for multi-family landlords who have suspended evictions for non-paying tenants.

FAQ

1. Can a tenant be evicted if there is pending eviction date?

No, New York State placed a 90-day moratorium on all evictions. This applies to both residential and commercial tenants.

2. Has the State issued a freeze/suspension for monthly rental payments?

No, currently there is only a suspension for homeowners unable to make mortgage payments due to COVID-19.

3. What relief, if any, can renters expect in the event they cannot make their payments?

Senate Bill S8125A, which was introduced on March 23, 2020, proposes a 90-day rent freeze for all renters who lost their jobs due to COVID-19. It would also freeze payments for businesses that were forced to close due to the government mandate.

4. What should a tenant do if their lease is about to expire?

If Senate Bill S8125A is signed into law, it will also require landlords to renew any leases expiring within 90 days at the same rent rate. Absent this becoming law, it is in the best interests of both landlord and tenant to reach a mutual agreement for a lease renewal/extension.

5. What should a tenant do if their lease is expiring and the landlord refuses to offer a renewal?

As mentioned above, landlords are currently prohibited from evicting tenants. If a tenant remains in the premises past the expiration of a lease term, a month-to-month tenancy will have been established.

6. Is it advisable for a landlord to issue a short-term renewal to tenant (non-regulated) with an upcoming lease expiration?

It is certainly advisable for landlords to provide short-term renewals as opposed to simply letting a lease term lapse. We are working with many clients to draft short-term renewals with creative mutual termination options.

FAQ

7. Can a landlord commence legal action against a tenant?

NY Housing Courts are essentially in a standstill and currently only accepting “essential applications” such as landlord lockouts, repair orders, and serious housing code violations.

8. Does this include non-pay cases?

While landlords are unable to serve a tenant with a petition to appear in court for non-payment of rent, they can still serve tenants with rent demands and 14-day notices. This allows the landlord to proceed directly with a petition once the Housing Courts re-open.

9. What happens if a tenant signed a lease and is now unable to move in by the commencement date?

Unfortunately, this is currently a common scenario. While there is no clear-cut directive on how to hand this situation, it is important for both landlord and tenant to maintain a level of flexibility and work together towards a solution, which makes life easier for everyone. This may include amending the lease commencement date as well as providing the tenant with an abatement until they can take possession.

10. Should a tenant inform their landlord that they will be unable to make rent payments?

Absolutely. Regardless of whether you are unable to make either a portion of or the entire rent payment, as a tenant you should certainly communicate this to your landlord in the hope that they will be sympathetic and understanding. Communication is key, now more than ever.

11. Are movers deemed “essential” under the PAUSE executive order?

Yes, as per Governor Andrew Cuomo’s office, moving companies are deemed essential and the current guidance permits you to hire one should you require it.

12. Is there any sort of relief for landlords who are losing rent revenue?

Fannie Mae has stated that they will suspend mortgage payments for all multi-family landlords who suspend evictions. Furthermore, should Senate Bill S8125A be signed into law, it would allow landlords to apply for a mortgage waiver equal to the amount lost in rent.

CHAVES
PERLOWITZ
LUFTIG
LLP

Andrew I. Luftig, Esq.

al@cpllawfirm.com

212-791-5993

516-864-3245 (cell)

David Z. Goldfischer, Esq.

dzg@cpllawfirm.com

212-897-5691

845-596-9537 (cell)

www.cpllawfirm.com

111 John Street | Suite 312 | NY, New York 10038

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