

Insights

U.S. COVID-19: PROTECTIVE TIPS FOR NEW YORK LANDLORDS AND TENANTS DURING COVID-19

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As New Yorkers grapple with the economic consequences of COVID-19, landlords and tenants must evaluate their relationship from a novel perspective. On March 7, 2020, Governor Cuomo issued [Executive Order 202](#), which declared a state of emergency and provided for a moratorium on residential and commercial evictions through June 20, 2020. Pursuant to [Executive Order 202.28](#), such moratorium was extended through August 20, 2020, with one important modification: landlords are prohibited from evicting residential and commercial tenants for the non-payment of rent only if such tenant can demonstrate financial hardship due to COVID-19. However, landlords are permitted to commence eviction actions against commercial and residential tenants for defaults under leases that are not related to the non-payment of rent during the COVID-19 Period (as defined below).

On June 30, 2020, the [Tenant Safe Harbor Act](#) (the “**TSHA**”) was enacted, which expands residential tenants’ protection from eviction by prohibiting a court from ever evicting a residential tenant who suffered financial hardship due to COVID-19 for the non-payment of rent that accrues between March 7, 2020 and the to-be-determined date on which all COVID-19 restrictions on non-essential gatherings and businesses are lifted in the county in which the tenant resides (the “**COVID-19 Period**”). Unlike Executive Order 202.28, the TSHA only applies to residential, and not commercial, tenants. Further, the TSHA does not protect tenants who willfully withhold rent payments or those who have not suffered financial hardship caused by COVID-19. However, the TSHA does not waive or forgive missed rent payments accrued during the COVID-19 Period; and landlords are permitted to seek monetary judgments from tenants for such missed rent payments. Below are some practical tips for landlords and tenants to navigate disputes during the COVID-19 Period.

Practical Tips for Landlords:

1. Grounds for Eviction

- **TIP: Landlords must conduct a good faith investigation into whether a tenant is experiencing financial hardship due to COVID-19 before initiating an eviction proceeding because, in order to**

commence a nonpayment proceeding, the landlord's attorney (or the landlord) will have to certify that the proceeding conforms with all federal, state and local requirements.

- While landlords are permitted to commence eviction proceedings as of June 20, 2020, limitations and restrictions remain. Chief Administrative Judge Lawrence K. Marks issued a memorandum regarding residential and commercial eviction proceedings in New York City. Effective June 20, 2020, commencement documents in eviction proceedings must include (1) an affirmation from petitioner-landlord's attorney (or from petitioner if self-represented) that the eviction proceeding complies with all federal, state, and local requirements and is being pursued in good faith, and (2) a notice to respondent-tenant(s) of the opportunity to request an extension. In light of the protections the TSHA affords residential tenants, if a tenant is in arrears, landlords should consider whether a tenant will be able to successfully demonstrate tenant suffered a financial hardship during the COVID-19 Period as a defense to eviction for the non-payment of rent. Pursuant to the TSHA, in determining whether a residential tenant suffered financial hardship during the COVID-19 Period, courts shall consider, among other factors, (1) the tenant's income prior to and during the COVID-19 Period, (2) the tenant's liquid assets, and (3) the tenant's eligibility and/or receipt of public assistance programs. Landlords should request from their tenant, documentation sufficient to demonstrate such financial hardship is due to COVID-19, prior to initiating an eviction proceeding. Ultimately, landlords should carefully consider whether, in the current environment, disputes can be more efficiently resolved outside the courthouse. To view a copy of Judge Marks' memorandum, please click [here](#).

2. Rent Gouging

- **TIP: The NYS Attorney General is looking for instances of rent gouging.** New York Attorney General James has issued guidance on landlord-tenant issues during the COVID-19 Period, reminding renters that landlords are prohibited from "rent gouging" and financially capitalizing on the pandemic. Rent gouging is generally defined as an increase in rent that is beyond what is considered reasonably fair. Further, landlords are reminded that they are not permitted to increase rent during a lease term. More information on permissible rent increases and notice periods for rent stabilized and market rate leases can be found [here](#). For the criminal definition of rent gouging under the New York Penal Code Sections 180.54-57, please click [here](#).

3. Missed Rent Payments

- **TIP: Landlords may not charge fees to residential or commercial tenants for missed or late rent payments through the COVID-19 Period (subject to Governor Cuomo's Executive Orders). Instead, landlords may consider applying the security deposit to cover missed payments in the interim.** Executive Order 202.28 prohibits landlords from charging fees for missed or late rent payments. With tenant's consent, landlords may use a tenant's security deposit to cover missed rent payments. Tenants are obligated to replenish any portion of the security deposit

applied towards rent payments to be paid at the rate of 1/12 the amount used on rent per month.

4. Public Health

- **TIP: Landlords cannot discriminate against any tenant by identifying individuals who tested positive for COVID-19 in notices to other tenants.** For purposes of public health and safety, a landlord can post a notice stating that someone within the building has contracted COVID-19 without identifying anyone/apartment units specifically.

Practical Tips for Tenants:

1. One Shot Deal

- **TIP: Residential tenants can apply for “One Shot” emergency grants to help cover large expenses during COVID-19.** One Shot Deal is an emergency grant assistance program administered by the New York City Human Resources Administration. The overarching goal of the program is to assist qualifying individuals who need money for emergency payments towards rent during unforeseen circumstances, such as COVID-19. Tenants should note that One Shot Deals are only available one time annually, and in some instances, the applicant may be required to pay back the emergency grant by the end of the year. To determine if a tenant may qualify, click [here](#).

2. Apartment Access

- **TIP: Tenants should document all correspondence with their landlord about their COVID-19 concerns with respect to apartment access.** According to the New York State Attorney General's Office, landlords must provide tenants with at least 24 hours written notice prior to entering a tenant's apartment (except for emergencies). During COVID-19, landlords are still permitted reasonable access to apartments to show prospective tenants. However, if a tenant is concerned about contracting COVID-19, then such tenant should document their concern about landlord's access in a written notice to the landlord. According to [the Attorney General's Office](#), it is not reasonable for a landlord to show an apartment to a potential tenant if the current tenant is elderly, immunocompromised, or has concerns about contracting COVID-19. Instead, tenants can offer a video of their apartment that landlords can show prospective tenants.

3. Anti-Discrimination

- **TIP: Tenants can report discrimination claims if such tenant believes their landlord has discriminated against them because the tenant or someone the tenant lives with, has contracted or had COVID-19.** Federal, state, and local law, including the New York State Human Rights Law, protects individuals from being discriminated against on the basis of, among

other things, a physical, mental, or medical impairment, which may include COVID-19. Discrimination claims can be reported [here](#).

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MEET THE TEAM



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