

MASSACHUSETTS COVID-19 EVICTION MORATORIUM APRIL 20, 2020

On April 20, 2020, Governor Charlie Baker signed into law a so-called “moratorium” on evictions and foreclosures for residential and certain small business tenants. In basic terms, this law now prohibits an owner from issuing any notice to quit or commencing any eviction cases for non-payment of rent, failure to vacate at the conclusion of a tenancy, or for material lease violations which do not involve allegations of criminal activity or activity which directly impacts health and safety. The following memorandum is intended to provide guidance in relation to the requirements of this law.

1. What does the law cover?

The law applies to all “non-essential evictions”. A non-essential eviction includes cases for:

- (a) non-payment of rent;
- (b) no fault (i.e. expiration of lease term or termination of tenancy at will);
- (c) material lease violations UNLESS based on criminal activity or other conduct prohibited by the lease which ALSO impacts the health and safety of persons on the property; and
- (d) foreclosures.

It should be noted that, for residential tenancies, the law applies regardless of whether the arrears or lease violations occurred prior to the COVID-19 pandemic and regardless of whether the tenant has suffered any economic or health related impact. The law also applies regardless of the tenant’s financial ability to pay or any economic impact on the property owner.

2. What does the law prohibit?

Effective this date, a landlord may not serve any notice to quit or other notice requesting or demanding that a residential tenant vacate the apartment for any “non-essential eviction”. This means that notices to quit for non-payment of rent may not be served for any reason. Likewise, a demand letter for rent may not contain any language requiring the tenant to vacate. Notices Terminating Tenancy may not be served unless they allege criminal activity or lease violations which impact health and safety. A Notice Terminating Tenancy at Will may not be served, nor may a Notice of Non-renewal.

In addition, the law prohibits all courts from accepting new eviction cases or proceeding with any pending “non-essential” cases. Courts are further prohibited from accepting any filings, conducting any mediations or hearings, entering any judgments, or issuing any executions in any “non-essential eviction”. Thus, while the Housing Court Standing Orders had prohibited tenants from being “evicted”, but had allowed the court to accept agreements and perform mediations, this law both prohibits parties from filing new actions, conducting mediations, or having any other “court event”, other than for cases which involve criminal activity and/or lease violations related to health and safety. In cases where an execution has been issued by the Court allowing

for a tenant to be removed, the Statute prohibits the use of same. However, the expiration date of the execution, as well as all other deadlines in any pending actions, are stayed.

Finally, no late fee may be imposed if the tenant provides a notice of economic impact to the landlord within thirty (30) days of the date a rent payment is due.

3. How long does this law remain in effect?

This law remains in effect through August 20, 2020 or forty-five (45) days from the lifting of the State of Emergency, whichever occurs first. However, Governor Baker may extend the law in increments of not more than ninety (90) days, but in any event not to exceed forty-five (45) days from the lifting of the State of Emergency.

4. May a landlord use a last month's rent?

This Statute specifically permits a landlord to use a tenant's last month's rent deposit to pay certain stated expenses, so long as the landlord provides written notice to the tenant confirming: (a) that the funds have been so utilized; (b) that the landlord remains liable to apply this amount to last month's rent; and (c) that the tenant continues to be entitled to interest on such deposit. However, it is important to note that landlords were already permitted by G.L. c. 186 §15B to commingle last month's rent with their own funds and use same for any purpose. As such, this provision of the Statute appears to be somewhat contradictory to current state law and owners should be weary of employing same.

5. Does the law apply to commercial tenants?

As noted, this Statute also applies to "small business" tenants. The Statute defines a "small business premises unit" as a premises occupied by a tenant for commercial purposes, whether for-profit or not-for-profit. However, the Statute does not apply if the tenant or a party that controls or is controlled by or is in common control with the tenant: (i) operates in multiple states; (ii) operates multi-nationally; (iii) is publicly traded; or (iv) has not less than 150 full-time employees.

Unlike a residential tenant, a commercial landlord may still serve a notice of default upon a small business tenant. However, unless the basis for the eviction is a default prior to the emergency declaration or the expiration of the lease, a landlord may not commence a new summary process action and the courts are prohibited from entering judgment for possession, issuing an execution or scheduling a court event (including a trial) in a commercial eviction action. In effect, while a Notice of Default may be issued, the same prohibitions on new court filings and processes still apply.

6. What does this mean?

As legal counsel for the Greater Boston Real Estate Board, it should be noted that considerable time and effort was expended in an attempt to address the significant issues raised by this Statute. While the law does specifically confirm that tenants are not excused from their

obligation to pay rent, many tenants and tenant organizations will likely employ this statute as a basis to refuse to pay their rent. Unfortunately, such a decision will often lead to serious negative consequence for tenants when they ultimately appear in court and are unable to pay the rent or enter into reasonable repayment agreements. Likewise, by removing the right to access the Courts, parties are arguably being denied their constitutional rights to access justice and will also be denied access to the considerable services which are available through the court system, such as RAFT funds and social services through the Tenancy Preservation Program. Of course, the economic consequences for property owners and third-parties who rely on them for work and income, cannot be overstated. However, landlords should consider some of the following available options in order to limit the negative impacts of this law:

1. Payment Agreements: The law does not prohibit parties from continuing to work together to address unpaid rent. While a Notice of Quit or other demand to vacate is prohibited, parties should continue to work together to address non-payment of rent cases through referrals to charitable organizations and governmental programs. Although some needy residents may be denied RAFT funds because they cannot be served with a notice to quit as required by the program, entering an agreement with a resident may actually ensure that they are able to retain their housing. We would also suggest that residents be reminded that the rent remains due and payable as provided by the Statute and counter any misinformation that may be disseminated.
2. Material Lease Violations: Landlords continue to have an obligation to address material lease violations. This can often be accomplished through the use of warning letters or notices to cease and desist. However, in cases where such informal interventions fail to resolve the lease violations, landlords may still be able to address these behaviors despite the limitations of this Statute. Landlords should carefully consider whether the lease violation does in fact “impact” health and safety, and therefore comes within the exception to this Statute. For example, while this Statute removes the legal process for tenants creating unreasonable noise, such disturbances could be alleged to be essential evictions if a neighbor alleges that the noise is impacting their health by preventing them from sleeping or affecting their mental health. Likewise, while smoking in and of itself would no longer be conduct which would enable a landlord to initiate legal action, such a lease violation could be actionable if a neighbor asserts the smoking is impacting their health and safety. As such, there may be the opportunity to address serious lease violations in accordance with this law and where a demand letter fails to resolve the lease violation.

Finally, this law does not prevent an owner from filing a civil action for a restraining order to address serious lease violations and actions which interfere with quiet enjoyment or endanger the property or persons thereon. Such action could seek an order prohibiting a person from continuing to allow unauthorized occupants to reside in the apartment, from smoking or tampering with life safety devices, or from otherwise violating the lease. During these challenging times, residents continue to rely on landlords to ensure their quiet and peaceful enjoyment. While this Statute creates impediments to assisting innocent neighbors, landlords do have other means by which to creatively resolve such issues.

3. Pending Cases: Prior to this law, the Housing Courts had already postponed all non-emergency cases until the expiration of the State of Emergency. However, the Courts were encouraging and authorizing the parties to resolve their cases in order to prevent the courts from being overwhelmed at the conclusion of this period. Unfortunately, this Statute will now delay all filings such that the courts will be faced with an avalanche of filings once the law expires. It remains unclear how the court will address this backlog and continue to administer justice. Pending matters, however, continue to be on hold and will likely be scheduled for hearing as soon as this law expires. Until then, landlords should continue to attempt to address their legal matters with tenants in order to determine whether informal agreements can resolve lease violations and potentially preserve housing.

The foregoing is for informational purposes only and should not be considered legal advice. If you have any questions or need legal assistance with any matters, please feel free to contact our office. We are available to assist you with your all your legal needs as the housing industry navigates these novel and complex issues.

We hope you are remaining safe and vigilant as we work through these challenges together.

Jeffrey C. Turk
jturk@tqlawfirm.com

Caitlin Milone
cmilone@tqlawfirm.com

Therese Quijano
tquijano@tqlawfirm.com