Housing Law and Policy in the Time of COVID-19
New York Law School
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Overview

• Primary focus today on Housing, not Real Estate, not Landlord-Tenant Law
  • The question of what does or doesn’t get done through law and policy in this time of pandemic to enable people to stay in their homes.
  • This is an extraordinary time that calls for extraordinary measures
Today, will cover:

- Brief, but important, overview of housing law history
- Discussion of the current state of affairs:
  - The existing and looming crisis
  - Measures already taken – eviction moratorium and closing the courts
- Select legal issues of particular relevance:
  - Health and safety
  - Protections from Discrimination
  - Breaking a lease
  - Subletting and temporary rentals
  - The rent, the rent, the rent
- What next?
Housing = Health
A brief but important history of NY housing law

- Major developments in housing and landlord-tenant law respond to crises; often health crises
- Today, more than ever – Housing = Healthcare
Developments in Housing and Landlord-Tenant Law

- **1730’s**: Regulation of livestock, slaughterhouses, and leather tanning in city limits. In response to a yellow fever epidemic; these uses moved to where Foley Square is now.
- **1820**: Summary Eviction Proceedings Adopted. To give landlords a quick remedy in court and avert self-help and violence.
- **1840’s-50’s**: Feudal Tenure Abolished. In response to anti-rent wars in the Hudson Valley.
- **1905**: First Comprehensive housing code in US enacted. In response to social activism and fears of cholera and spread of fire.
- **WW!**: First Rent Regulation. In response to housing crisis brought on by war.
Reinstatement of Rent Regulation

Civil Rights Protections and Shift From Conveyance to Contract Theory

Creation of NYC Housing Court

Rollback of Rent Stabilization Protections

First Public Housing

1930's

WWII

2019

1974

1997

In response to the Great Depression and social activism

In response to war effort; retained in NY but not many other places

In response to the civil rights movements

In response to deterioration of housing stock

In response to political pressure

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DEVELOPMENTS (3)...

- 2017: Right to Counsel for Tenants
  - In response to grassroots tenant organizing and growing homelessness

- 2019: Housing Stabilization and Tenant Protection Act
  - In response to activism and gentrification and displacement

- 2020: COVID-19 Pandemic-related changes
  - What was next?

- The FUTURE...
  - What should be done?

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RIGHT TO COUNSEL for tenants – a game changer

NYC first in the nation to establish a right to counsel in eviction cases in 2017

4 other jurisdictions – San Francisco, Newark, Philadelphia and Cleveland – have followed, and many others are considering

Counsel to be guaranteed for all tenants under 200% of federal poverty guidelines; pending legislation would raise cap to 400%

Being rolled out by zip codes over a 5-year period
Results of right to counsel in NYC so far:

• Representation rose from 1% in 2013 to 38% in 2019
• Evictions dropped 41% since 2013, including a 15% drop in 2019 alone;
• Eviction filings dropped 30% since 2013, including a 20% drop in 2019 alone.
• Default judgments dropped 34% since 2013;
• Orders to Show Cause dropped by 38% - tenant representation is ensuring that issues are addressed right at the start of the case;
• Overall, 84% of tenants who were represented by counsel remained in their homes.
TODAY - THE PANDEMIC AND ITS EFFECT ON HOUSING AND HOUSING LAW AND POLICY
Clip from PATRIOT ACT, with Hasan Minhaj . . .
And some additional local data …

• Over 1.6 million wage earners in NYC have applied for Unemployment Insurance since the beginning of the shut down.

• About 25 percent of New York City apartment tenants skipped rent altogether in May (CHIP).

• 36.9% of New Yorkers don’t have the money to pay rent TODAY on June 1, and another 29% will struggle to pay the rent (PropertyNest).
AND, the crisis will fall most heavily on vulnerable populations – 85% are renters who disproportionately live in small buildings, so small building owners are especially vulnerable to lost rent.
And COVID-19, like economic distress, has a disparate impact on people of color

- The same population that appears as respondents in Housing Court – low-income people of color – is most affected by the health and economic effects of the pandemic.

  e.g.:
  - *Louisiana* data shows that African Americans account for 70 percent of all deaths in the state.
  - In *Milwaukee County*, 81 percent of those that have died are Black.
  - In *Chicago*, 70 percent of COVID-19-related deaths are Black.
What has been done so far?
• The CARES stimulus bill
  • Prohibits landlords from filing eviction proceedings for 120 days after March 27, 2020
  • for nonpayment of rent against tenants in covered housing,
  • covered housing includes, but not limited to, Public Housing, Section 8 housing and housing with federally-backed mortgage loans.
STATE AND LOCAL ACTION
STATE ACTION – Courts (constantly changing)

- Housing Court and all NY courts closed to all filings and litigation except essential matters by Chief Judge DiFiore since March.
- In Housing Court, “essential matters” include:
  - Housing conditions dangerous to life, health and safety
  - illegal lock-outs,
  - post-eviction relief
- Hearings became possible in April on two-attorney cases where both attorneys agree to appear via Skype
- NYS statutes of limitations tolled until June 6 by Governor’s Executive Order.
Digital Filing Temporarily Available (AO 87-20, Issued by Judge Marks, Effective May 4, 2020):

- Order permits, in pending matters, the filing of digital copies of:
  - Motions, cross-motions, replies and applications
  - Notices of appeal and cross-appeal
  - Stipulations
  - Such other papers as the Chief Admin Judge may direct

- Using the UCS NYS Courts Electronic Filing system (NYSCEF) or the UCS Electronic Document Delivery System (EDDS)
Emergency HP Actions can be filed online

JustFix.nyc

HousingCourtAnswers.org
STATE ACTION - Evictions

- **EVICTION MORATORIUM**

- Declared by the Governor in March – prohibits all evictions until June 20, when courts can open to non-essential business –

- Further extended to August 20, 2020, but only for persons eligible for unemployment insurance or other benefits under state or federal law or facing financial hardship due to the COVID-19 pandemic.
Civil Court Directives May 22, 2020:

• Courts will open June 20 to “non-essential matters”

• Landlords may file new eviction cases if they submit an affidavit from someone with personal knowledge that the tenant has not lost income due to the pandemic.
  • And another affidavit in order to obtain a default judgment
  • And another in order to obtain a warrant of eviction
Practical Concerns

Who will investigate tenant’s situation?

Will tenants be willing to open their doors to strangers and share personal info?

Will judges hold inquests/seek verification of allegations?

How/when will tenants access counsel?
Housing law has not been altered

The rights and responsibilities of landlords and tenants remain essentially the same, but some specific questions have become more common.
What are a landlord’s responsibilities for the safety of tenants?

- Under the Warranty of Habitability Law (RPL 235-b) a landlord warrants that the premises are “fit for human habitation . . . and that the occupants . . . shall not be subjected to any conditions which would be dangerous, hazardous or detrimental to their life, health or safety. ”

- This means that a landlord must take every reasonable precaution to contain the spread of the virus, including such actions as regular cleaning, making hand sanitizer available and limiting numbers of elevator passengers.
Can a landlord discriminate against a tenant with a COVID-19 affected household member?

- No. The Human Rights Laws at the federal, state and city level provide protection against any form of discrimination based on disability, which includes a “medical impairment.”

- In addition, NYC law adopted last week protects tenants from harassment based on status as a COVID-19 affected person (to be discussed later).
What happens if a tenant breaks a lease?

• Tenants are generally liable for rent for the full term of a lease. However, the Housing Stability and Tenant Protection Act of 2019 brought NY law in line with that of most other states, placing an obligation on a landlord to mitigate damages by making reasonable efforts to re-rent.

• Certain tenants – the elderly, active duty military and victims of domestic violence – are permitted to terminate their leases without any liability.
Can a tenant sublet?

- Yes. Under RPL 226-b, tenants in buildings with 4 or more units may sublet, but must provide notice to the landlord who must respond with any objection within 30 days and cannot unreasonably withhold permission.
What about short-term rentals?

• Short term rentals of less than 30 days are not permitted for multiple dwellings (MDL section 4.8(a) and NYC Admin Code 2702004(a)(8)), and could lead to eviction and fines.

• House guests, lawful boarders or lodgers within the household of the tenant can occupy with the tenant for fewer than 30 days.

What is to be done??
Learn more and get involved with our campaign to #CancelRent!
Many proposals – Few solutions adopted yet
Legislative and Regulatory Measures

Federal proposals:

- **HEROES Act (stimulus 3)** – passed by House in late May, would provide $200 billion in rent relief
- **Ilhan Omar Bill in House** – would cancel rents

NY State Exec Order (May 7)

- Permits tenants to apply security deposits to rent (must replenish w/in 90 days)
- Late fees banned (March 20 – Aug. 20, 2020)
NY State Legislation
Passed both houses of the legislature on May 28:

**Emergency Rent Relief Act (S8419/A10522) -**
- vouchers to landlords for the gap between tenants’ pre-COVID rent burden and their new rent burden, up to 125% Fair Market Rent (FMR).
- on behalf of tenants with increase in rent burden because of income lost as a result of the pandemic
- spending cap is up to $100,000,000 (from federal CARES Act funds).
- coverage period is April 1 through July 31.
- rent burden = when rent is more than 30% of household income.
- Households eligible if they make up to 80% Area Median Income (AMI) prior to March 7
Tenant Safe Harbor Act (S8192/A10290) –

• Prohibits summary proceedings for possession for unpaid rent due between March 7, 2020 and six months following the expiration of the state disaster emergency declared by Governor Cuomo on March 7, 2020

• Prohibits judgment of possession for rent owed between March 7, 2020 and six months following the expiration of the state disaster emergency.

• Creates new special proceedings for money judgments for unpaid rent due between March 7, 2020 and six months following the expiration of the emergency.
Additional state legislative proposals

- S.8125A Gianaris bill to cancel rent if you can prove loss of income
- S.8139 Gianaris bill for state to pay 70% of the contract rent if loss of income is proven
- S.8140A Kavanagh bill to create emergency vouchers for certain households that can prove “substantial loss of income”
- S.8190 Salazar bill to cancel rent if tenant can prove loss of income; landlords can apply for rent if they meet certain conditions.
Intro No. 1936-A - expands definition of harassment to include threats based on status as a COVID-19 impacted person, status as an essential employee, or receipt of a rental concession or forbearance. Violations punishable by a penalty of $2,000 to $10,000.

Passed by the City Council on March 13 and signed by the Mayor on March 26

Rent Guidelines Board — On May 7, the board voted 5-4 to endorse freezing rents on one-year leases and the first year of two-year leases signed on or after Oct. 1, 2020. Second year increase of 1%
WHAT NEXT???

The courts will be opening and a solution must be found
SOME PRINCIPLES TO CONSIDER

1. The health and safety of all New Yorkers needs to be safeguarded and paramount in all decisions.
2. No one should be subject to the trauma of eviction and homelessness because they cannot pay rent.
3. All tenants facing eviction should have a right to counsel.
4. Low-income people of color are bearing the brunt of the pandemic and are the majority of respondents in eviction proceedings, they must not suffer disparate impact from the opening of the courts.
QUESTIONS?