



Session 1 :
**MANAGING RENTAL
PROPERTY DURING
COVID-19**

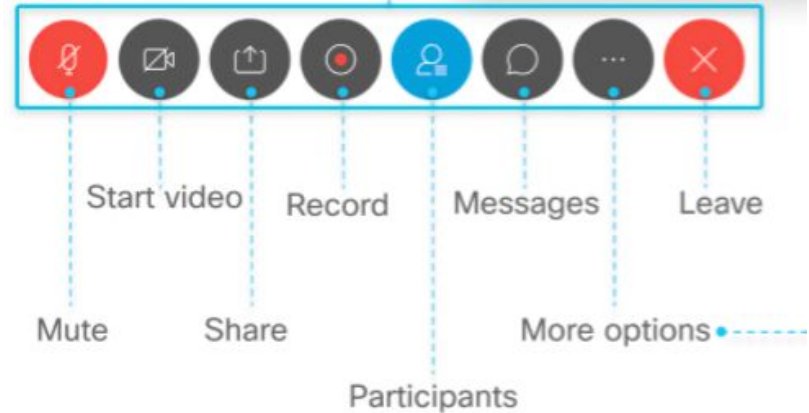
**Landlord Engagement Series
7/9/2020**



Using WebEx

We ask that all participants follow these guidelines :

- (1) Please mute yourself at all times.
- (2) Use the chat feature (messages in the image to the right) to submit your questions.
- (3) Time for Q&A allotted at end





Agenda

- Welcome and Introductions
- The NYS Tenant Protection Act of 2019 (with Q&A)
- The End of the New York Moratorium on Evictions
- Resources Available to Tenants Unable to Pay Rent
- Q&A
- Future Webinars and Evaluation



Guest Speakers

Susan Lamadue

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Housing Stability and Tenant Protection Act of 2019

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Topics

General Changes to the Landlord-Tenant Relationship

Changes to the Eviction Process

Changes to the End of the Landlord-Tenant Relationship



Tenant Protection Act



The Housing Stability & Tenant Protection Act of 2019

- As of October 12, 2019, all provisions of the Tenant Protection Act (“TPA”) are in effect.
- The TPA made wide-sweeping changes to the:
 - New York Real Property Law (RPL);
 - New York Real Property Actions and Proceedings Law (RPAPL);
 - New York General Obligations Law; and
 - New York Judiciary Law



General Changes to the Landlord-Tenant Relationship



Limitation on Fees

- Landlords cannot charge for a payment, fee, or charge for the processing, review, or acceptance of an application.

- ❖ RPL § 238-a(1)(a)

Landlords may charge a fee or fees for conducting credit or background checks, so long as the charges are limited to the actual costs of the checks or \$20.00, whichever is less.

- ❖ RPL § 238-a(1)(b)

- Late fees cannot be charged unless rent is more than five days late. Late fees are limited to \$50.00 or 5% of the monthly rent, whichever is less.

- ❖ RPL § 238-a(2)



Changes to Security Deposits

- After a tenant has signed a lease, but before occupying the unit, landlords must provide the opportunity to inspect the unit.
- If the parties inspect, their findings should be reduced to writing outlining the condition of the unit.
- Any conditions noted in the initial inspection cannot be the basis for retaining the security deposit.
 - ❖ General Obligations Law (“GOL”) § 7-108(c).



Changes to Security Deposits (cont.)

The amount of deposit cannot exceed one month's rent.

❖ GOL § 7-108(1)(a)

Upon a tenant vacating, the entire amount of the security deposit is refundable except for itemized costs due to:

- Damage beyond normal wear & tear;
- Unpaid utilities charges to the landlord; and
- Moving and storage of a tenant's belongings.

❖ GOL § 7-108(a)(b)

A landlord has 14 days from the tenant moving out to return the security deposit less any of the itemized costs described above.



Landlord's Duty to Provide Receipts

- Where payments are received by a tenant in cash, a landlord must provide a written receipt to the tenant.
 - The landlord must retain receipts for three years.
 - ❖ RPAPL § 711(2).
- For all payments other than those made by personal check, a landlord has an obligation to provide a written receipt.
 - Receipts must be maintained by the landlord for three years.
 - ❖ RPL § 235-e.



Rent Increases & Notices to Terminate

- To terminate a tenancy or to increase rent by 5% or more, a landlord must provide written notice based on the following notice periods:
 - 30 days notice: When the tenant has occupied the unit for less than 1 year and has a lease term of less than 1 year.
 - 60 days notice: When the tenant has occupied the unit for more than 1 year but less than 2, or has a lease term of more than 1 year but less than 2.
 - 90 days notice: When the tenant has occupied the unit for more than 2 years or has a lease term of at least two years.

❖ RPL § 226-c



Terminating a Month-to-Month Tenancy

- Removes the landlords ability to terminate a month-to-month tenancy on service of a 30-day notice to terminate.
- Now governed by the 30-, 60-, 90-day scheme based on duration of the tenancy.
- Tenants may still give 30 days notice to terminate a month-to-month tenancy.
- Notice must be given prior to the beginning of the next rental period. (i.e. notice given January 31st to move March 1st)
 - ❖ RPL 232-b



Changes to the Warranty of Habitability

- A rebuttable presumption of retaliation is created if a landlord files an eviction or a notice to terminate within 1 year of a complaint regarding the services or conditions to:
 - The landlord;
 - An agent of the landlord;
 - A governmental agency (health department; building inspector; etc.)
- ❖ RPL § 223-b



Prohibition on Blacklisting for Prior Evictions

- Landlords cannot refuse to rent on the basis that a tenant has previously been a litigant in a landlord-tenant matter.
- Landlords cannot use a current landlord-tenant litigation matter as the basis for denial.
- Permits the Attorney General to bring a claim in Supreme Court for civil penalties of \$500-\$1,000.00 per violation

- ❖ RPL § 227-f

Courts are prohibited from selling data regarding residential tenancy, rent, or eviction.

- ❖ N.Y. Jud. § 212(x)



Changes to the Eviction Process



General Eviction Changes

The notice of petition and petition must be served on the tenant between 10 – 17 days before the hearing date.

- Increased from 5 – 12 days
- ❖ RPAPL § 733(1)
- Both parties are entitled to an adjournment of at least 14 days where there is a triable issue of fact.
 - ❖ RPAPL § 745(i)(b)
- Answers may be done orally on the hearing date by the tenant or anyone in possession.
 - ❖ RPAPL § 743
- Landlord cannot maintain a summary proceeding where the utilities have been shut off due to landlord failure. Proceedings are stayed until utilities are restored.
 - ❖ RPAPL § 756



Tenant failure to pay rent

- If rent isn't received within five days of the date it is due, the person authorized to receive the rent shall send a written notice informing the tenant of the delinquency.
 - If rent is usually due on the 1st of the month, a landlord may send this notice on the 6th of the month.
- The written notice to the tenant must be sent by certified mail.
- Failure to provide the delinquency notice may be used as an affirmative defense in a nonpayment proceeding.
 - ❖ RPL § 235-e(d).



Notice to Pay-or-Quit

- Before a nonpayment action can be commenced, the landlord must serve a 14-day notice to pay-or-quit.
 - Increase from 3 days previously.
- This notice must be served in the same manner in which the notice of petition and petition are served.
 - Previously, notice could be either written or oral and there was no service requirement.
 - ❖ RPAPL § 711(2). Service requirements under RPAPL § 735.



Evictions for Non-Payment of Rent

- A tenant may only be evicted for past due rent.
- Rent is defined as the monthly or weekly amount charged in consideration of occupancy.
 - ❖ RPAPL § 702
- Payment of the full amount of delinquent rent to the court at any time prior to execution of the warrant of eviction shall vacate the warrant.
 - ❖ RPAPL § 749(3).



Unlawful Evictions

- Landlords cannot evict or attempt to evict a person who has been an occupant for 30 or more days or who has a lease by:
 - Using or threatening to use force;
 - Engaging in conduct which interferes with or intends to interfere with the comfort, repose, peace, or quiet of the occupant, including interruption of essential services;
 - Engaging in other conduct such as removing the door, removing the occupant's possessions, rendering locks inoperable, or changing the locks without provide a new key.
- Any violation is a class A misdemeanor, and each violation is charged as a separate offense. Violations may result in both criminal and civil penalties.



Changes to the Warrant of Eviction

- A warrant of eviction may not execute sooner than 14 days following the date it is served and must execute on a business day between sunrise and sunset.
 - Increased from 72 hours with no weekday restriction.
 - ❖ RPAPL § 749(2)(A)
- Where there is extreme hardship to the tenant or the tenant's family, the court may stay execution of the warrant of eviction for up to one year.
 - ❖ RPAPL § 753



The End of the Landlord-Tenant Relationship



Landlord's Duty to Mitigate Damages

- If a tenant leaves prior to the natural conclusion of their lease, the landlord must make good faith efforts to take reasonable action to rent the unit for the same rate or market value, whichever is lower.
- Once the unit has been rented, the new tenant's lease terminates the original tenant's lease and damages are mitigated.
 - ❖ RPL § 227-e



The Return of Security Deposits - Disputes

- Within 14 days of the tenant vacating, the landlord must provide a itemized list of deductions to the deposit along with any remaining balance to the tenant.
 - ❖ GOL § 7-108(e)
- Where a dispute arises regarding the amount of the deposit that has been retained, the landlord has the burden of proving reasonableness.
 - ❖ GOL § 7-108(f)
- A landlord that is found to violate GOL § 7-108 may be found responsible for actual damages to the tenant, as well as punitive damages up to 2x the amount of the deposit if it is found to be willful.
 - ❖ GOL § 7-108(g)



Contact Information

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NEIGHBORHOOD
LEGAL SERVICES, INC.



The NYS Eviction Moratorium

Rashied McDuffie, Esq.

Assistant Corporation Counsel for the City of Buffalo



Initial Moratorium (Executive Order 202.8)

- **90 day moratorium** due to COVID-19
 - Signed March 20, 2020
 - Expired June 20, 2020
 - No filings or eviction proceedings of any kind were allowed due to the public health emergency



Certain evictions permitted after 90 days

- **Effective June 20th:**
 - Landlords are able to file eviction actions unrelated to nonpayment of rent (holdover eviction proceedings), if local Courts allow.
 - Landlords are able file nonpayment eviction actions if the tenant's failure to pay rent is not related to COVID-19, if local Courts allow.
- **Effective July 7th:**
 - Civil officers are able to execute on warrants of eviction served prior to the moratorium.



First Moratorium Extension (Executive Order 202.28)

- Moratorium extended until **August 20th** if the non-payment of rent involves a tenant who is eligible for unemployment insurance or benefits under state or federal law or who is “otherwise facing financial hardship due to the COVID-19 pandemic.”
- Prohibition against the initiation of evictions not as expansive as the first moratorium – the tenant needs to be receiving UIB or impacted by COVID-19.



Additional features of first extension to August 20th

Security Deposits

- A residential tenant may request that any security deposit being held by the landlord be applied toward rent payments that are overdue or will become due, and the landlord must agree to this request if:
 - (1) the residential tenant is eligible for unemployment insurance or benefits under state or federal law, or
 - (2) the residential tenant is otherwise facing financial hardship due to COVID-19.
- Additional rules apply on how to use the deposit and payback period. For more information, see <https://ag.ny.gov/coronavirus#tenantrights>.



August 20th moratorium cont'd

Late Fees

In addition to the option to apply security deposits toward rent payments and arrears, no late fees are permitted for failing to pay rent during the period from March 20, 2020 through August 20, 2020.



Second Extension: The Tenant Safe Harbor Act

- The Tenant Safe Harbor Act, passed July 1st, provides that courts **may not issue a warrant of eviction** against a tenant, or a possession of judgment to a landlord, where a tenant or lawful occupant has suffered a COVID-19-related financial hardship and cannot pay the rent that accrues during the covered period.
- The covered period begins March 7th and extends until all nonessential gatherings and businesses are allowed to reopen in a tenant's county. This means no evictions of COVID-impacted tenants for the foreseeable future.



Tenant Safe Harbor Act cont'd.

- Landlords may initiate evictions after August 20th but **tenants may raise a financial hardship defense** in eviction proceedings, and the court will examine several factors, including the tenant's income prior to the covered period and tenant's current income and resources.
- A tenant who has the means and willfully withholds rent, or who has not suffered a hardship due to COVID-19, will not be protected from legal action.
- Will tenants be able to raise COVID-related financial hardship defenses in eviction cases that do not involve nonpayment of rent?
 - The Tenant Safe Harbor Act covers eviction actions for nonpayment of rent but does not cover eviction actions for reasons other than nonpayment of rent.



Federal CARES Act

- The Federal CARES Act (Coronavirus Aid, Relief, and Economic Security Act) provides for an **eviction moratorium through August 20th**. **This provision of the CARES Act applies to:**
 - **Federally Subsidized Tenancies (including Section 8 voucher holders)**
 - **Tenants who live in properties where the landlord has a federally-backed mortgage.**
 - **You can look up information about your building here:**
<https://nlihc.org/federal-moratoriums>



Housing Court Procedures

- How quickly will new eviction cases be heard?
 - Buffalo City Court will soon inform us as to when and how hearings will be held. We don't know whether these hearings will be virtual or in-person.
 - The timeframes and the procedural requirements for eviction cases may change.
 - Social distancing protocols may require some courts to hear fewer cases each day.
 - **Buffalo City Court is not accepting new eviction filings until August 14th but this could change anytime.**



Landlord Best Practices

- The supplemental unemployment benefit of \$600 expires July 31st.
- If a tenant lets you know that they will have a hard time paying rent, we recommend entering into an agreement to accept what's possible for both parties. We're all in this together.
- Remember, late fees accrued during the moratorium period are not permitted.
- Most tenants will not have the ability to fully pay arrears on September 1st or, for COVID-impacted tenants, whenever the eviction moratorium is lifted.



Landlord Best Practices cont'd

- If property owners and tenants disagree about what rent is due or the meaning of the moratorium, we recommend you seek third party assistance to clarify rights and resolve the conflict. You can call the City's Fair Housing Office at 851-4212.



COVID-19 Related Rental Assistance

SUSAN LUMADUE

Senior Human Resources Planner for the City of Buffalo's Department of
Community Services



HUD Grants

- Entitlement Funds
 - From HUD
 - Address homelessness and housing stability
- Two grants
 - Emergency Solutions Grant (ESG)
 - Housing Opportunities for People Living with HIV/AIDS (HOPWA)

Coronavirusu

- CARES Act has allocated additional money to each of these to prevent, prepare for, and respond to COVID-19



How Much is Available?

- ESG Entitlement Amount for 2020-21: \$1.2 Million
 - Maintains existing homelessness programs
- ESG-CV Amount: \$7.1 Million

- HOPWA Entitlement Amount for 2020-21: \$0.8 Million
 - Maintains existing HOPWA programs
- HOPWA-CV Amount: \$0.1 Million



What new funds can be used for

- **ESG-CV and HOPWA-CV Prevention funds are limited to those who have lost their income, or part of it, due to the COVID pandemic. Clients must provide proof of lost income**
- **ESG-CV Eligibility**
 - Low-income, lost their income due to COVID, and are 21 days away from eviction- can pay up to 3 months of back rent
- **HOPWA-CV Eligibility**
 - Same as ESG-CV and clients have an AIDS/HIV diagnosis
- All ESG-CV and HOPWA-CV payments are made directly to the landlord or utility company



Programs within ESG

- Eviction Prevention
 - Address imminent threats to an individual or family losing their housing
 - Assists with rent, utilities, landlord remediation, legal representation, and case management
- Requirements
 - 21-Day notice of eviction from current lease
 - Up to three months' rent can be paid
 - Client's income must be under the 30% median
 - Housing requires inspections for lead and general habitability
 - Rent must be reasonable with other rents in the area
 - Lease



Programs within ESG (continued)

- Rapid-Rehousing (RRH)
 - Successfully house clients by ensuring suitable, affordable housing
 - Assists with rent and utilities, connects clients with case managers, and guides clients towards financial independence
- Requirements
 - Currently Homeless
 - City of Buffalo tenancy
 - Clients are enrolled into Coordinated Entry
 - Housing requires inspections for lead and general habitability
 - Rent must be reasonable with other rents in the area



When Will These New HUD Funds be Available?

- Rapid-Rehousing (RRH-CV)
 - Programs have begun.
 - **If you have a current vacant apartment in the City**, please contact Steve Dalton at Housing Opportunities Made Equal (HOME) at sdalton@homeny.org or 716-854-1400
- Eviction Prevention (ESG-CV)
 - Still in the planning stages and working on an intake process
 - Application details will be shared with local media once dates are finalized and the program is ready
 - Target date: on or around August 3, 2020



What Can Landlords Do Now?

- Consider re-structuring your lease to keep a good tenant in place
 - With so many people out of work, you may find it more useful to work with the tenant you have
- Encourage tenants to pay what they can now as they work to re-gain employment and income
 - Be willing to accept that you may not be paid in full
- Encourage tenants to take advantage of other resources as well:
 - FEMA funds available through United Way partner agencies
 - Erie County DSS Emergency Cash Assistance
 - Gerard Place Homelessness Prevention Program



For Tenants

1. Gather documentation for applications
 - a. Proof of loss of income due to COVID-19 (layoff letter, furlough notice, etc.)
 - b. Photo Identification
 - c. If applying to DSS, Birth Certificates & Social Security Cards
 - d. Proof of Income
 - e. Proof of residence & household composition
 - f. Immigration Status, if not a US Citizen
 - i. I-94, Permanent Resident Card, Employment Authorization, etc.
 - g. **Eviction Letter, written and signed by your landlord, including your name, address, a listing of each month and how much you still owe, and your landlord's contact details**
 - h. Other resources
 - i. May include bank statements and retirement accounts



For Tenants (continued)

2. Seek rental assistance from Erie County DSS
 - a. Emergency Services:
 - i. 460 Main St., 2nd Floor
 - ii. 716-858-8000
 - b. Shelter arrears payments
 - i. Generally **limited to once every five years**
 - ii. Made as interest-free loan or as a grant, covering a **maximum of 4-6 months of back rent owed**, depending on household income and composition
 - iii. Cannot be used for late fees, court costs, or attorney fees.
 - c. Interest-free loans for shelter arrears generally must be repaid within 12 months.
 - d. If denied, ask for a copy of denial letter, which will be required if seeking ESG funds



For Tenants (continued)

3. Handle Utility Arrears if you are responsible for them in your lease
 - a. Clients may seek utility relieve from the Utility companies and Erie County's Home Energy Assistance Program (HEAP) regular and emergency benefits (open until 8/31/20 or until funds run out)
 - b. Contact 716-858-7644 or heaphotline@erie.gov
 - c. If HEAP is unavailable, check with utility companies for other options. Be sure to request a financial statement.
 - i. National Fuel: go in person to 409 Main Street
 - ii. National Grid: call 1-800-443-1837
 - iii. NYSEG: call 1-888-315-1755
4. Pay what you can now - encourage tenants to pay what they can as they wait to return to work and recoup lost wages.



Bottom Line

- There are some resources available for low-income tenants impacted by Covid.
- Tenants should reach to Erie County for Emergency Cash Assistance first. If they are denied, they will then be directed to other resources as applicable.
- More resources will likely be needed however. The HEROES Act and the Emergency Housing Protections and Relief Act in Congress currently allocates an additional \$100 billion in rental assistance to low-income renters. It passed the House but is stalled in the Senate.
 - There is a virtual lobby day on July 21st to push the Senate to provide much needed relief to Americans suffering the fallout from the global pandemic.



NEXT SESSION: Interfacing with the Department of Permit & Inspections Services (DPIS)

- Wednesday, July 29th at 10 AM through Webex
- 2nd of 6 monthly sessions
- Attendees of at least 4 of the 6 sessions will receive a commendation letter from Mayor Brown along with a folder of webinar content and other useful information.
- Please complete the poll to suggest topics for later sessions



Mayor Byron W. Brown and The Division of Citizen Services Present

NEW CITY OF BUFFALO LANDLORD AND TENANT ENGAGEMENT SERIES

THURSDAY, JULY 9, 2020
10:00am - 11:30am

JOIN THE FREE WEBINAR FOR INFORMATION ABOUT:

Managing your rental property during the COVID-19 emergency
The end of the New York moratorium on evictions
Resources available to tenants unable to pay rent
The NYS Tenant Protection Act of 2019

FEATURED SPEAKERS:

SUSAN LUMADUE / Senior Human Resources Planner / City of Buffalo Dept. of Community Services
RASHIED MCDUFFIE / Assistant Corporation Counsel / City of Buffalo Department of Law
KATELYN NIEDERMIER / Attorney / Neighborhood Legal Services

The webinar will start promptly at 10:00 am

REGISTER AT:

<https://www.buffalony.gov/850/Landlord-Training>

For more information, contact the Division of Citizen Services at
citizenservices@ch.ci.buffalo.ny.us

Part of a new City of Buffalo Landlord Engagement Series

On behalf of Mayor Byron W. Brown and the planning committee :

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Thank You!