New York Tenants: What Keeps You Up At Night?

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Topics.

Eviction  Rent  Contract
What Tenants Should Know.

- Can my landlord evict me?
- Do I need to pay rent?
- Can I use the force majeure clause?
- What are the strategies when negotiating with my landlord?
Eviction
NYS Eviction Procedure.

- A landlord’s notice of eviction is NOT enough.
New York State.

- Governor's Order No. 202.8 instituted a 90-Day eviction moratorium. [NOTE: This moratorium has now been extended through August 20, 2020].
- Courts stop accepting eviction filings but continue to address essential cases.
- Marshals/sheriffs may not evict until further notice.
Federal.

- The CARES Act imposes a 120-day moratorium on eviction filings and charging fees for non-payment of rent for most of the affordable housing properties.
- The landlord may not ask a tenant to vacate for any reason without a 30 days’ notice, which cannot be issued during the 120-day period.
Proposed Legislations.

- The Tenant Safe Harbor Act prohibits landlords from evicting tenants for non-payment of rent during New York’s current state of emergency and for 6 months after its eventual end.
Rent
Do I need to pay rent?

- The moratoria do NOT excuse tenants' duty to pay rent.
- After the moratoria end, tenants who do not pay rent still face financial and legal liabilities.
• NYS Senate Bill 8125A will provide a cancellation of rents for 90 days for individuals and small businesses.

• The Rent and Mortgage Cancellation Act will offer a nationwide cancellation of rents from 3/13/2020 and would last for a year.
Rent Freeze?

- NYC provides rent freeze programs for seniors and tenants with disabilities who qualify to have the rent frozen at the current level and be exempt from future rent increases.
Rent Freeze?

• For market-rate tenants, landlords can ask tenants to pay more but should give up to 90 days notice if rent increase over 5%.
• A rent payment is late only when received more than 5 days after it is due.
• The amount of late fee is limited to $50 or 5% of the monthly rent, whichever is less.
Contract
Force Majeure.

- Superior force.
- Contract governs.
- New York courts interpret it narrowly.
Force Majeure.

- Is COVID-19 a force majeure event?
- Is the performance excusable?
- Is the failure to perform caused by the force majeure event?
"Force Majeure, for purposes of this Lease, shall mean any and all causes beyond the reasonable control of Landlord or Tenant, as the case may be, including delays caused by the other party hereto or other tenants, Legal Requirements and other forms of governmental restrictions, regulations or controls (including energy and water conservation measures), labor disputes, accidents, mechanical breakdowns, shortages or inability to obtain labor, fuel, water, electricity or materials through ordinary sources, acts of God, war, sabotage, embargo, enemy action, civil commotion, fire or other casualty, but shall not include lack of funds or financial inability to perform."
Impossibility.

- Common law defense.
- The event is unforeseeable.
- The Performance is objectively impossible.
- New York courts interpret it narrowly.
Frustration of Purpose.

- Common law defense.
- The event is unforeseeable.
- The performance is possible, but the value of the contract is dramatically changed.
- New York courts interpret it narrowly.
Constructive Eviction.

- Common law defense.
- The Landlord cannot interfere with the tenant’s use and occupancy of the property.
- Needs to show a wrongful act by the landlord.
Suggestions
Suggestions.

• Read the fine print.
Suggestions.

- Talk to your landlord.
Suggestions.

• Be creative.
Suggestions.

- Put it in writing.
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THANK YOU

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