

Understanding Eviction Protections

Are tenants in Otsego County still protected from eviction? Most may be... but it's complicated.



As many, if not all, renters in New York State know, Governor Cuomo issued an Executive Order on March 20, 2020 that put a moratorium on evictions for nonpayment of rent in an effort to ensure people remained safe and housed during the public health emergency caused by COVID-19. The eviction moratorium was extended beyond the initial timeframe with subsequent Executive Orders. The final Order pausing eviction proceedings expired in June 2020 but tenants living in properties with federally-backed mortgages (FHA, VA, USDA) continued to be protected by the Coronavirus Aid, Relief, and Economic Security (CARES) Act until July 31st.

In August 2020, the NYS Office of Court Administration issued a new directive mandating that no existing or new residential eviction warrants can be executed until October 2020. This directive essentially instructed judges across the state to issue no decisions on eviction cases. The directive expired on October 1, 2020.

With the Governor's Executive Order, the NYS Office of Court Administration's directive, and the federal CARES Act eviction protections now expired, what is in place to keep renters housed during the still active pandemic? Fortunately for most NYS renters, two pieces of protection have been enacted, one state and one federal. But, again, ensuring a tenant receives the

stated protections is complicated. Following is summary of New York's Tenant Safe Harbor Act and the Centers for Disease Control (CDC) Eviction Moratorium.

Tenant Safe Harbor Act:

The Tenant Safe Harbor Act was signed into law by Governor Cuomo on June 30, 2020 and went into effect immediately and gives tenants some protections against eviction for nonpayment of rent. Tenants facing eviction for nonpayment of rent must prove financial hardship in court and show they experienced the hardship during the "covered period". The covered period in the legislation is defined as the start of the Governor's declaration of a public health emergency on March 7th and for as long as there exists a statewide health emergency. The covered period has since been extended through an Executive Order issued on September 28th to cover the period prior to March 7th and until January 1, 2021.

In order to potentially receive the protections of the Act, tenants petitioned to court for nonpayment of rent should be able to show that the entire household income has been affected during the covered period and the financial hardship is preventing tenants from paying the rent due during the covered period. Proof of financial hardship could include, but is not limited to, tenants' paystubs prior to the pandemic and paystubs during the pandemic showing a decrease, tenants' eligibility and/or receipt of public assistance, SNAP, Disability income, and unemployment insurance benefits, and/or uncovered medical bills related to COVID-19 or other health issue(s).

If a judge determines that a tenant has proven financial hardship and that it occurred during the covered period, a non-

possessory judgement may be issued. This means that the landlord is granted an award for the amount of the unpaid rent but the payment is NOT tied to the tenant's right to stay in the property and is not tied to a warrant of eviction.

CDC Eviction Moratorium

The Centers for Disease Control issued a federal eviction moratorium on September 4, 2020 in an effort to prevent the displacement of tenants into overcrowded, congregate living arrangements and homeless shelters that could cause the continued spread of the COVID-19 virus. The moratorium is in effect through December 31, 2020. The protections cover tenants in any residential property in any state in which there are documented cases of COVID-19 and only applies in states that do not provide the same or greater level of protection. In consultation with an attorney

with Legal Services of Central New York, it is currently understood that there has been no guidance issued stating

that the CDC Order is not applicable in New York State, but ultimately that determination will be up to the Courts. At this time, it appears safe to say that the CDC order is more protective than the NYS Tenants Safe Harbor Act (TSHA) and therefore applies in New York State. This is primarily because it can stop an eviction of tenants and residents (the TSHA appears to only protects tenants, and may not protect those who reside with the person(s) named on a lease) at any stage of an eviction process, not just when a tenant has been ordered to appear before a judge. More detailed guidance on the CDC moratorium can be found on the National Housing Law Project website which has comprehensive guidance and interpretation of the CDC moratorium:

<https://www.nhlp.org/campaign/protecting->

[renter-and-homeowner-rights-during-our-national-health-crisis-2/](#).

In order to receive the CDC eviction protection, every adult on the lease must sign and submit to their landlord a [declaration](#) which affirms (under penalty of perjury) that the following is true:

- You have used your “best efforts” to obtain government rental assistance. *Several agencies in Otsego County have resources to help you obtain assistance;*
- You do not expect to earn more than \$99,000 in 2020 (or \$198,000 if you are married and filed a joint tax return), or you did not need to report income to the federal government in 2019, or you received an Economic Impact Payment this year (aka, \$1,200 stimulus check);
- You have been experiencing a “substantial” loss of household income because of a layoff or reduced work hours, or you have “extraordinary” out-of-pocket medical expenses (defined as an unreimbursed medical expenses that exceed 7.5% of your adjusted gross income for the year. *Example, your annual adjusted gross income in 2019 was \$30,000 and your out-of-pocket medical expenses this year total \$3,000.*);
- **You have been making your best effort to make partial rent payments as close to the full amount due as possible;** and
- Being evicted would cause you to become homeless or you would have to move in with a friend or family member (live “doubled up”).



As stated previously, the CDC order is interpreted to mean that submitting the signed declaration to the landlord would prevent the

start of any eviction proceeding or stop any action that has already started. However, a landlord may decide to move forward with the process. Therefore, tenants (again, each adult on a lease) who decide to submit the signed declaration are encouraged to keep a copy and send the original via certified mail in order to have proof of submission if they are ordered to appear in court. If ordered to appear in court, tenants should also be prepared to provide documents that support the statements in the declaration are true.



While both the state and federal acts are meant to keep people safely housed during the public health crisis, it is important to know and remember that neither offers any form of rent relief. This means that, while a judge may not order a warrant of eviction for nonpayment of rent, the full amount of back rent and ongoing rent will continue be owed to the landlord. It is also important to understand that neither will likely stop an eviction for reasons other than nonpayment and explicitly do not protect against evictions for things such as damaging the premises, threatening the health and safety of others, and/or violating building codes.

As the circumstances and legal guidance around evictions and COVID-19 are ever evolving and change frequently, tenants with questions on how the NYS Tenant Safe Harbor Act and/or the CDC eviction moratorium may offer protections in their specific circumstances should contact:

Legal Services of Central New York Legal Helpline at 1.877.777.6152 or visit www.lscny.org to fill out an online application for services.

Rural Law Center of New York, Inc. at 1.518.561.5460 or visit www.rurallawcenter.org.