



Brenner, Saltzman & Wallman LLP

Attorneys at Law – Established 1963

CONNECTICUT LANDLORD-TENANT AND HOUSING COURT DEVELOPMENTS

Update Dated March 31, 2020

As April 1st approaches, and rent becomes due from tenants to landlords across the State of Connecticut, tenants and landlords likely have questions about their obligations, rights, and remedies. This alert addresses several of those potential questions.

- **Has the obligation to pay rent been excused by government action?** As of the time of this alert, the answer is, “No.” There is currently no state or federal action applicable to the State of Connecticut excusing a tenant from paying rent. The federal “Coronavirus Aid, Relief, and Economic Security Act” or the “CARES Act” enacted on March 27, 2020 does not excuse the payment of rent but does (1) preclude certain servicers of federally backed mortgage loans¹ from initiating any foreclosure process, moving for a foreclosure judgment or order of sale, or executing a foreclosure-related eviction or foreclosure sale for not less than the 60-day period beginning on March 18, 2020; (2) bars a mortgagee of a federally backed loan receiving forbearance from paying its mortgage under the CARES Act from charging late fees or initiating the eviction of a tenant from a dwelling unit located in or on the applicable property solely for nonpayment of rent or other fees or charges during such forbearance period; and (3) provides that, during the 120-day period beginning on the date of enactment of that Act, the lessor of a covered dwelling with a federally backed loan may not initiate a legal action to recover possession of a covered dwelling from the tenant for nonpayment of rent or other fees or charges or charge fees, penalties, or other charges to a tenant related to such nonpayment of rent. Other limitations on a landlord’s ability to evict tenants are discussed below.
- **Is there a provision in the lease that excuses the obligation to pay rent?** Unless the lease expressly provides that the obligation to pay rent is abated during a named event such as a pandemic, a government-ordered closing, or a national health crisis, then the answer is, “**Not likely.**” The lease may contain a provision relating to what happens to certain of the parties’ obligations under the lease when there is a catastrophic event beyond the control of the landlord or tenant. These provisions rarely excuse rent payments and most frequently provide for delays in the performance of specified obligations or the delivery of services. So-called “*force majeure*” or similar “Act of God” clauses are strictly construed by courts, and, unless the payment of rent is expressly excused during the occurrence of an event named in the clause, the obligation to pay rent is not excused by operation of that clause.

¹ The definitions of federally backed loans are set forth in the text of the relevant CARES Act sections.

The information contained herein is provided as an accommodation and for informational purposes only. This information may not reflect the most current legal developments, and it may not be applicable to your specific circumstances. Do not act upon this information without seeking legal counsel. This information does not constitute legal advice or create an attorney-client relationship with BSW. Do not send us information until we authorize you to send that information to us and we have sent you a letter confirming BSW will represent you.



- **In the absence of a lease provision, does the common law excuse the obligation to pay rent?** Connecticut common law pertaining to all contracts such as leases includes the doctrine of impossibility, sometimes known as physical impossibility, frustration of purpose, or impracticability. In order to excuse the obligation to pay rent under that doctrine, a tenant must prove that an event made performance impracticable, the nonoccurrence of the event was a basic assumption on which the lease was made, the impracticability was not the fault of the tenant, and the tenant has not assumed a greater obligation than the law imposes. Generally speaking, a dramatic economic turndown which makes the payment of rent extremely difficult is not the type of “impracticability” that is contemplated under this doctrine, and the burden of proof required to prevail under this doctrine has proven very difficult to meet. Therefore, the answer to the foregoing question is, absent special circumstances, “**Not likely.**”
- **If a tenant fails to pay rent after any applicable notice and cure period, can the landlord evict the tenant?** At this time, the answer is, “**No,**” because the landlord can commence the summary process eviction procedure but cannot regain possession of the leased premises by removing the tenant. The Connecticut Superior Court on March 19 issued an order affecting the operation of the State’s housing courts. The order stays all eviction executions, which is the last step in the summary process eviction procedure, meaning that a landlord can get a judgment of eviction but cannot enforce it and remove a tenant until the stay is lifted. The order also stops the court’s decision-making apparatus, including all hearings and trials, until further notice. Under the circumstances, a landlord can serve a notice to quit and file a complaint in court to which the tenant must respond, but the landlord cannot actually get a trial on its complaint or force a tenant to leave the premises until further notice from the court.
- **If a tenant fails to pay rent after any applicable notice and cure period, is the landlord’s only remedy to evict the tenant?** The answer is, “**No.**” When a tenant fails to pay rent, and the landlord has otherwise fulfilled its obligations under the lease, the landlord has two options. First, the landlord can terminate the lease and evict the tenant through the summary process eviction procedure. Second, in the alternative, the landlord can enforce the terms of the lease against the tenant. Under the second option, the landlord notifies the tenant that the landlord expects the tenant to comply with the provisions of the lease, including the provisions regarding the payment of rent, and, if the tenant does not comply and pay the rent, then the landlord may file a legal action in court to enforce the lease and collect any unpaid rent and enforce any other remedies provided for in the lease such as rent acceleration or late fees. The landlord’s ability to prosecute such a legal action is subject to the court’s order discussed in the prior paragraph, however, which currently prevents hearings and trials until further notice.

The questions and answers above are general guidance only. Obviously, the terms in leases or licenses can differ substantially in important ways. Individual circumstances also matter a great deal. BSW is available to assist landlords and tenants in determining their obligations or rights and in pursuing available remedies. If you would like our assistance or have any other questions regarding these matters, please contact:

Marc Wallman	mwallman@bswlaw.com
Mitchell Jaffe	mjaffe@bswlaw.com
Sean Fisher	sfisher@bswlaw.com