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CONNECTICUT LANDLORD-TENANT AND HOUSING COURT DEVELOPMENTS

Update Dated June 15, 2020

A prior alert dated March 31, 2020 addressed several likely questions from landlords and tenants across the State of Connecticut about their obligations, rights, and remedies in light of the COVID-19 pandemic. This alert supplements the prior alert based upon the information available as of June 15.

- **Do any of Governor Lamont’s pandemic executive orders impact the obligation to pay rent?** The answer is, “**Yes, with qualifications.**” Executive Order 7X includes a section entitled “Protections for Residential Renters Impacted by COVID-19,” and applies to landlords and tenants of “dwelling units,” i.e., residential tenancies, only. That section provides that, effective March 10, 2020, no landlord of a dwelling unit may serve a notice to quit or serve or return to court a summary process action except in a case of serious nuisance prior to July 1, 2020. Also, that section creates an automatic sixty (60) day grace period for the payment of April 2020 rent, and provides a sixty (60) day grace period for the payment of May 2020 rent upon the tenant’s written request for the grace period “because he or she has become fully or partially unemployed or otherwise sustained a significant loss in revenue or increase in expenses as a result of the COVID-19 pandemic.” Notably, Executive Order 7X provides a grace period for the payment of rent only and not an abatement or extinguishment of the obligation to pay rent: “Except as expressly provided herein, nothing in this order shall relieve a tenant of liability for unpaid rent or of the obligation to comply with other terms of a rental agreement or statutory obligations pursuant to Connecticut law.”
- **Has any federal government action impacted the obligation to pay rent?** The answer is, “**Yes, with qualifications.**” 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 loans (as defined in the statute) 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, which period has been extended to June 30, 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, which period has been extended to June 30, 2020; and (3) provides that, during the 120-day period beginning on the date of enactment of that Act, the landlord 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 charge fees, penalties, or other charges to a tenant related to such nonpayment of rent.

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- **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 still, “**No, at least until Aug. 1, 2020.**” By Order dated June 9, 2020, the Connecticut Superior Court extended its stay of all issued executions on evictions and orders of ejection from June 1, 2020 through August 1, 2020. That Order has the effect of precluding a landlord from evicting a tenant, residential or commercial, even if the landlord prevailed at trial and obtained a judgment of possession. Regarding the ability to get a trial in housing court, the Superior Court’s in-person operations are still limited to priority matters only, but the court has been expanding its capability to conduct proceedings remotely. According to the most recent informal guidance from the Superior Court, the court is exploring handling contested hearings remotely, but no firm plans are in place at this time. Given the Superior Court’s existing orders, and the practical operational limitations currently in place, it is possible to serve a notice to quit; serve and file a summary process eviction action; get an uncontested judgment for possession that cannot be enforced prior to August 1 at the earliest; and, in contested cases, proceed up to the point of trial. Under the circumstances, a landlord cannot actually get a trial in a contested matter or force a tenant to leave the premises until further notice from the court.
- **Is there a provision in the lease that excuses the obligation to pay rent because of the Pandemic?** 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 remains, “**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.
- **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 remains, absent special circumstances, “**Not likely.**”
- **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:

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