

Update on California's COVID-19 Tenant Protections and Their Impact on Senior Communities

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On March 16, 2020, due to the COVID-19 pandemic, Governor Gavin Newsom issued an executive order authorizing local governments to halt evictions. Over the next two years, through executive orders, judicial council rules, and legislation, all three branches of California's government issued various eviction protections for California tenants. These rules, which imposed limitations and obligations on California "landlords" seeking to evict for non-payment, applied equally to owners and operators of senior communities.

Effective March 31, 2022, the tenant eviction protections will largely come to an end, and landlords will be able to more easily pursue evictions for non-payment in court. That said, some protections will continue to apply for existing tenancies with past-due balances. In some cases, landlords will be required to include outdated language in termination notices. This alert provides an overview of the remaining tenant protections.

Termination Notices for Amounts Due Through September 30, 2021

Under California's COVID-19 Tenant Relief Act, landlords serving eviction notices for non-payment of rent and other fees due on or before September 30, 2021, must include special language in termination notices for that period. Such termination notices must also be accompanied by a Notice of Rights, if one was not provided to the tenant prior to July 31, 2021, as well as a blank COVID-19 declaration for the tenant to sign under oath if their non-payment was due to COVID-19-related financial distress.

The advice to tenants set forth in the language required in the termination notice and in the Notice of Rights is now outdated. As of October 1, 2021, tenants are also no longer protected from eviction if they return a signed COVID-19 declaration to their landlord. Nevertheless, because the law has not been updated to remove the outdated requirements, landlords should comply with these legal requirements in any termination notices served for amounts due prior to September 30, 2021. To avoid confusion, landlords may want to preface outdated language with a statement that it is required by law.

Termination Notices for Amounts Due Between October 1, 2021, and March 31, 2022

Under California's COVID-19 Rental Housing Recovery Act, landlords serving eviction notices for non-payment of rent and other fees due between October 1, 2021, and March 31, 2022, must include specific language advising tenants of their right to avoid eviction if they complete an application for rental assistance on or before March 31, 2022. Landlords may be required to issue two separate termination notices if past-due amounts span the time periods ending September 30, 2021, and beginning October 1, 2021.

Eviction Lawsuits Filed Between October 1, 2021, and March 31, 2022

Between October 1, 2021, and March 31, 2022, landlords seeking to evict for non-payment due to COVID-19 hardship must prove that they applied for government rental assistance. This requirement applies whether the underlying termination notice is for amounts due through September 30, 2021, or beginning October 1, 2021, or both. Specifically, landlords must prove that their application for government rental assistance was denied or that they properly applied for government rental assistance, but the application remained incomplete for fifteen days due to the tenant's failure to complete the tenant's portion of the application. However, this requirement does not apply to tenancies that begin on or after October 1, 2021.

Beginning April 1, 2022, landlords may pursue evictions for non-payment in court, without first applying for governmental rental assistance. That said, termination notices for amounts due between October 1, 2021 and March 31, 2022, will still be required to include the language advising tenants of their right to avoid eviction if they apply for rental assistance. Again, beginning April 1, 2022, landlords may want to preface the outdated language with a statement that it is required by law.

Termination Notices for Amounts Due More Than One Year Ago

Under existing California landlord/tenant law, landlords may not include in termination notices any rent that came due more than one year ago. This requirement may not apply in certain cities or counties where landlords could not issue termination notices due to local COVID-19 protections. Communities should consult legal counsel to determine their rights in specific cases.

Lawsuits to Recover Unpaid Rent and Other Fees

If a tenant returned a signed COVID-19 Declaration for amounts due from March 1, 2020, through August 31, 2020, the landlord may never evict the tenant for the nonpayment during that period. If a tenant returned a signed COVID-19 Declaration and paid 25 percent of amounts due from September 1, 2020, through September 30, 2021, the landlord may never evict the tenant for the nonpayment during that period. In these situations, landlords may recover amounts due through governmental rental assistance programs or through lawsuits to recover unpaid rent.

If eviction is not feasible or appropriate, landlords seeking recovery from tenants can bring lawsuits to recover unpaid rent and other fees in court, including small claims court. When filing the complaint in court, the landlord must include documentation showing that the landlord made a good faith effort to investigate whether governmental rental assistance is available to the tenant, seek governmental rental assistance for the tenant, or cooperate with the tenant's efforts to obtain rental assistance from any governmental entity, or another third party. If the landlord refused to obtain financial rental assistance for an eligible tenant for whom funding was available, the court may reduce the damages awarded to the landlord.

Conclusion

The legal requirements imposed by California's COVID-19 tenant eviction protections are complicated and onerous. Landlords, including owners and operators of senior communities, must take great care to determine the applicable legal requirements, and must consider a variety of factors, including when the residency began, when the unpaid fees came due, and the availability of governmental rental assistance. Moreover, many localities continue to impose tenant eviction protections beyond those afforded by the state. Communities pursuing resident evictions should consult with legal counsel to ensure compliance with applicable law.