

AB 3088: California Eviction Protections

The Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020

To address what is expected to be an overwhelming number of residential evictions resulting from the COVID-19 pandemic and associated business closures, California Gov. Gavin Newsom this week signed [Assembly Bill 3088 enacting the Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020](#). The Act extends eviction protections for residential tenants (including mobile home tenants) experiencing a financial hardship relating to COVID-19.

The Act prohibits residential tenants from being evicted for failure to pay rent due to a COVID-19-related hardship occurring between March 1 and Aug. 31, 2020, so long as the tenant provides the landlord with a written declaration of hardship. Residential tenants experiencing a new COVID-19-related hardship between Sept. 1, 2020 and Jan. 31, 2021 are also protected from eviction provided they pay at least 25 percent of the rent due during this period. In addition to providing a written declaration of hardship, tenants with a household income of at least \$100,000 per year, or 130 percent of the median household income, may be asked to submit additional documentation to support their hardship declaration.

Though nonpayment of rent due between March 4, 2020 through Jan. 31, 2021 or unpaid COVID-19-related rent, is not grounds for eviction, all rent from March 4, 2020 through Jan. 31, 2021 is still owed by all residential tenants, and must eventually be paid back. Landlords are permitted to start recovering unpaid rent beginning March 1, 2021. The Act also expands the jurisdiction of the small claims court to allow landlords to file claims for unpaid rent related to COVID-19, regardless of the amount owed, until Feb. 1, 2025.

The Legislature also took steps to create rent-relief uniformity throughout the State. Existing local ordinances may remain in place, but any future local ordinance must be consistent with the Act. All existing and future local ordinances must also comply with the repayment schedule provisions of the Act. If the local ordinance was in effect and required a repayment period to begin after March 1, 2021, or conditioned commencement of the repayment period on the end of the state of emergency or local emergency, the Act now deems that repayment period to begin on March 1, 2021 and requires such period to be complete by March 31, 2022.

Implications for Residential Tenants

Residential tenants facing financial hardship due to COVID-19 should return hardship declaration forms, which landlords are required to provide, within 15 days of receiving the form. As long as a residential tenant follows the procedures of the Act, including making the 25 percent minimum rent payments, they will be protected from eviction, including “just cause” eviction if the landlord attempts to evict the tenant for COVID-19-related non-payment of rent.

Tenants now have additional time to pay rent, because the Act extends the notice period for nonpayment of rent from 3 days to 15 days.

Beginning Oct. 5, 2020, California courts will be permitted to enforce unlawful detainers for

reasons other than non-payment of COVID-19-related rent, such as creating a nuisance, damaging the property or violating other terms unrelated to payments. In addition to complying with the terms of the Act, tenants must continue to comply with all other lease terms to avoid eviction.

Implications for Residential Landlords

The Act requires the landlord to provide hardship declaration forms in the same language in which the lease is written. Landlords must inform their residential tenants of their rights under the Act. Landlords are also prohibited from taking action against tenants or modifying existing leases in retaliation for nonpayment of rent due to COVID-19. The Act has strict penalties for landlords who exercise “self-help” to evict tenants, such as locking tenants out, removing property or shutting off utilities. A landlord engaging in these types of self-help activities can be penalized up to \$2,500 for doing so.

The Act precludes issuing a summons on a complaint for unlawful detainer or entering a default judgment in an unlawful detainer action seeking possession of residential real property before Oct. 5, 2020. After such date, any landlord filing an unlawful detainer action is required to file a cover sheet to indicate whether the property in question is residential or commercial and, if the property is residential, whether the action is based on nonpayment of rent or other charges.

Commercial Properties

The Act specifically excludes tenants of commercial property from the definition of “tenant.” Consequently, commercial properties are not covered by the new Act, and commercial tenants do not receive the same statewide eviction protections provided to residential tenants. Commercial landlords may file unlawful detainer actions against their commercial tenants — unless the properties are located in a city or county that has an eviction moratorium of its own that extends to commercial tenants.

Commercial tenants were previously protected by the California Judicial Council’s Emergency Rule Number 1, which effectively barred unlawful detainer actions in California courts. Emergency Rule Number 1 expired on Tuesday. Some local ordinances also extend eviction protections to commercial tenants. But many local ordinances have either expired or have a shorter effective period than the new Act. Commercial tenants experiencing COVID-19-related financial distress should work closely with legal counsel to determine if a local ordinance might benefit them.

For tenants experiencing COVID-19 hardships, the lack of a statewide framework for commercial tenancies leaves them to rely on local ordinances, which vary in scope and duration. Of course, tenants may also have the alternative of negotiating mutually agreeable terms with their landlords for rent concessions, including abatement, deferral, or reductions to avoid eviction actions.

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