

New York State Landlord/Tenant Law and Evictions During the COVID- 19 Pandemic

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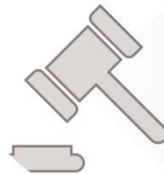
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We make every effort to keep legal educational materials up to date. However, the situation is rapidly evolving. The information contained in this material is not legal advice. Legal advice depends upon the specific facts of each situation. These materials cannot replace the advice of competent legal counsel.

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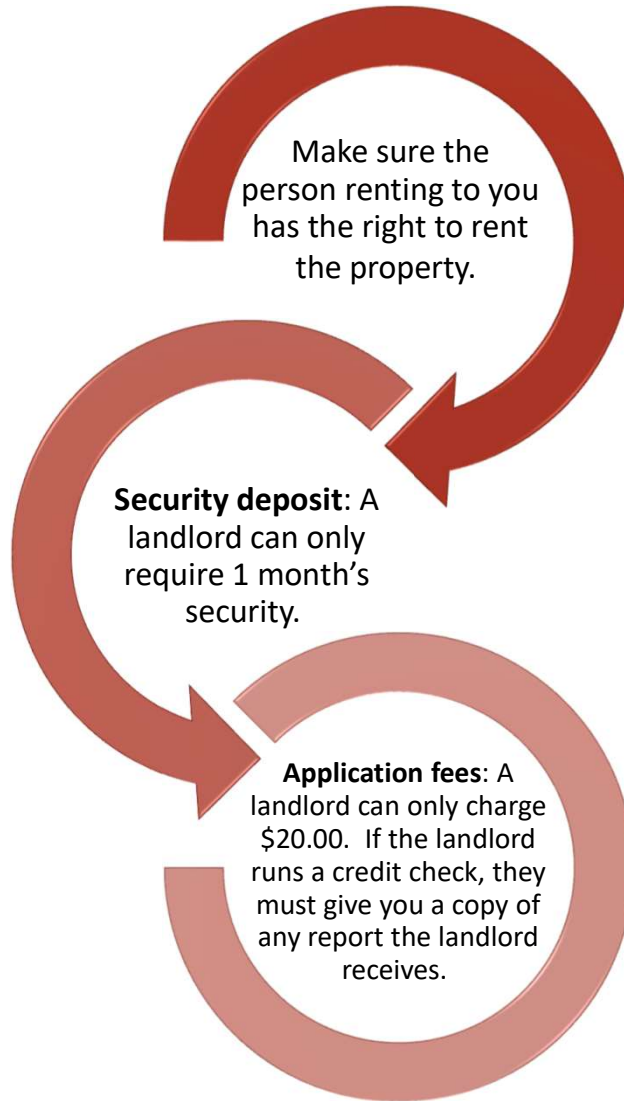


Offices in Hempstead, Islandia, Riverhead



Before You Rent:

Protect yourself from fraud



If the landlord doesn't have a rental permit that is a red flag.

- Some towns prohibit a landlord from collecting rent without a valid rental permit.
- In most towns, a tenant is required to pay the rent even if the landlord does not have a permit. While an owner could be fined for renting without a permit, a tenant can be fined for living in an illegal apartment too.

Before You Rent:

What is a lease?



A lease is an agreement between the landlord and tenant to rent the property. It can be in writing or oral.

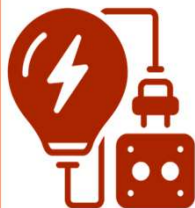
1. Written leases

- Specific Length of time
 - If a lease is for a specific length of time, it must be in writing.
 - That length of time is called the “term” of the lease.
- A written lease should describe the landlord’s responsibilities and the tenants’ responsibilities.
- It must contain the rent amount.
- May include late fees, but the maximum amount is \$50 OR 5% of the rent, whichever is less.

2. Oral Leases

- Generally, the parties’ actions show their agreement.

What to Expect From your Landlord



1. Who pays the utilities?

- Unless there is a written lease that says the tenant will pay the utilities (heat, water, electricity), a court will presume that the landlord is responsible.
- BUT If the lease doesn't say anything about utilities and the tenant puts the utilities in their name this is evidence that the tenant is responsible for those utilities.



2. Rent Receipts

- The landlord must give you a rent receipt unless you pay by personal check.
- If you pay by check and ask for a receipt, your landlord must give you one.





When Something Goes Wrong:

Eviction Proceedings

1. A landlord can only make you leave your home by bringing an eviction proceeding in court.
2. The courts have been accepting new eviction cases for filing since June 2020, but have only begun to schedule them in November 2020.
3. **Landlords can now bring tenants to court for new eviction cases.**





Nonpayment Proceedings

RPAPL 711 (2)

Summary Eviction Proceedings:

Non- payment Proceedings

Based on a landlord-tenant relationship.

- Generally, if the tenant pays the overdue rent, they will not be evicted.
- Before starting the proceeding, the Landlord must:
 - Send tenant a notice by certified mail that the rent has not been received within 5 days of the due date ([RPL 235-e](#)); and
 - Serve a 14-day rent demand following the same rules for **servicing** a petition ([RPAPL 711 and 735](#))
 - “Servicing” a document means delivering a document in a special way.

Summary Eviction Proceedings:

Holdover Proceedings Where a landlord/ tenant relationship exists RPAPL 711(1)

Based on nonrenewal of tenancy
or violation of lease.

- If lease expired, or if there is a month-to-month tenancy, Landlord must give written notice of nonrenewal
- Amount of notice is based on how long the tenant has lived at the premises (RPL 226(c):
 - 30 days if tenant has lived at the unit or has a lease for less than 1 year
 - 60 days if the tenant has lived there between 1-2 years
 - 90 days if the tenant has lived there more than 2 years
- If the holdover proceeding is based on violation of lease, then the notice rules in the lease apply.





Summary Eviction Proceedings:

Holdover Proceedings with no landlord/ tenant relationship ([RPAPL 713](#))

10-day notice must be served before starting the proceeding.

Post-foreclosure proceedings [RPAPL 1305](#)

10-day notice or 90 days if the tenant resided at the premises as a bona fide tenant before the foreclosure started.

Eviction Process

****IT IS ALWAYS
BEST TO SPEAK
WITH AN
ATTORNEY BEFORE
COURT.***



1. The tenant must be **served** a notice between 10-17 days before the first court date.
 - Anyone other than the landlord can serve the notice
 - Notice does not have to be delivered directly to the tenant

2. On the first court date, the tenant can request, and the court **must** grant, a two-week **adjournment**.
 - “Adjournment” means that the court date will be rescheduled.
 - After the first adjournment, the judge does not have to reschedule again.
 - Most judges do not to grant further adjournments unless there are exceptional circumstances.




Eviction Process (continued)

****IT IS ALWAYS
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ATTORNEY BEFORE
COURT.***

Most cases are settled between the parties without going to trial.

- A settlement is a formal agreement between the parties.
- The court may direct you to a mediator.
- A mediator is a person who tries to settle cases.




Tenant Protections during the COVID-19 Pandemic

- Executive Orders 202.8; 202.28; 202.48; 202.55; 202.55.1; 202.64; 202.66; 202.72
- Tenant Safe Harbor Act (Laws of New York 2020, Chapter 127)

New York State

- CARES Act (expired)
- Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19
CDC and HHS Order under Section 361 of the Public Health Services Act 42 U.S.C. 264 and 42 CFR 70.2

Federal



New York Tenant Safe Harbor Act

Not a blanket moratorium on evictions:
Only applies in specific circumstances.

A court **cannot order the eviction** of a tenant who failed to pay rent because of a financial hardship during the COVID-19 covered period.

The court **can award a money judgement** for the rent due.

Covered period is March 7, 2020 until the restrictions that shut down the county are lifted.

Chapter 127, Laws of New York. June 30, 2020.

New York Tenant Safe Harbor Act



The protections are not automatic.

A tenant can raise financial hardship during the covered period as a **defense** in a summary proceeding.

To decide whether the law protects a tenant, a court may consider:

1. The tenant's income before the COVID-19 covered period;
2. The tenant's income during the COVID-19 covered period;
3. The tenant's savings;
4. The tenant's eligibility for public assistance, SSI, disability, HEAP, or unemployment benefits.

Executive Order 202.66



1. Executive Order 202.66 extends the Tenant Safe Harbor Act to more people.
 - The extension prevents: “for any residential tenant suffering financial hardship during the COVID-19 state disaster emergency declared by Executive Order 202, the execution or enforcement of such judgment or warrant, including those cases where a judgment or warrant of eviction for a residential property was granted prior to March 7, 2020 through January 1, 2021.”
2. In other words, evictions cannot be carried out until after January 1, 2021 if the tenant suffered financial hardship during the pandemic.



CDC Orders:

Temporary Halt in Residential Evictions to Reduce the Spread of COVID-19

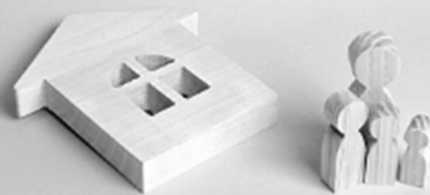
Order from Federal Center for Disease Control and Health and Human Services.

Effective September 4, 2020 through December 31, 2020.

Intent is to stop the spread of COVID-19.

Does not apply anyplace with a moratorium on evictions that provides the same or greater public-health protection.

Order Under Section 361 of the Public Health Service Act (42 U.S.C. 264) and 42 CFR 70.2. Published in the federal register on September 4, 2020.



CDC Orders:

Limitations



Tenants are still required to pay the rent and follow the other rules in their lease.

The order does not stop evictions based on:

- Engaging in criminal activity at the premises;
- Threatening the health and safety of other residents;
- Damaging or posing an immediate and significant risk of damage to the property;
- Violating building code, health ordinance or regulations relating to health and safety; or
- Violating any other contractual obligation.

CDC Orders:

Declarations

All adults listed on the lease/ rental agreement must sign the Declaration.



The Declaration must be sent to the landlord.

In the Declaration, the tenant swears under the penalty of perjury that:

1. Best efforts to obtain government assistance for rent or housing;
2. Expect to earn less than \$99,000 (\$198,000 for joint tax returns) in 2020, had no reportable income in 2019, or received a CARES Act Economic Impact Payment (stimulus check);
3. Unable to pay full rent due to
 - Loss of income;
 - Loss of work hours; or
 - Extraordinary medical expenses

CDC Orders:

Declarations (...continued)



4. Best efforts to make partial payments
5. If evicted would become homeless or move into shared housing.
6. Understand they must pay rent or make a housing payment and comply with other tenant obligations.
- 7. Understand that they may be subject to fees, penalties, or interest for not paying rent on time.**
- 8. Understand that on December 31, 2020 may be subject to eviction if rent is not paid in full.**

False or misleading statements or omissions may result in criminal and civil actions for fines, penalties, damages or imprisonment.

CDC Orders: Penalties

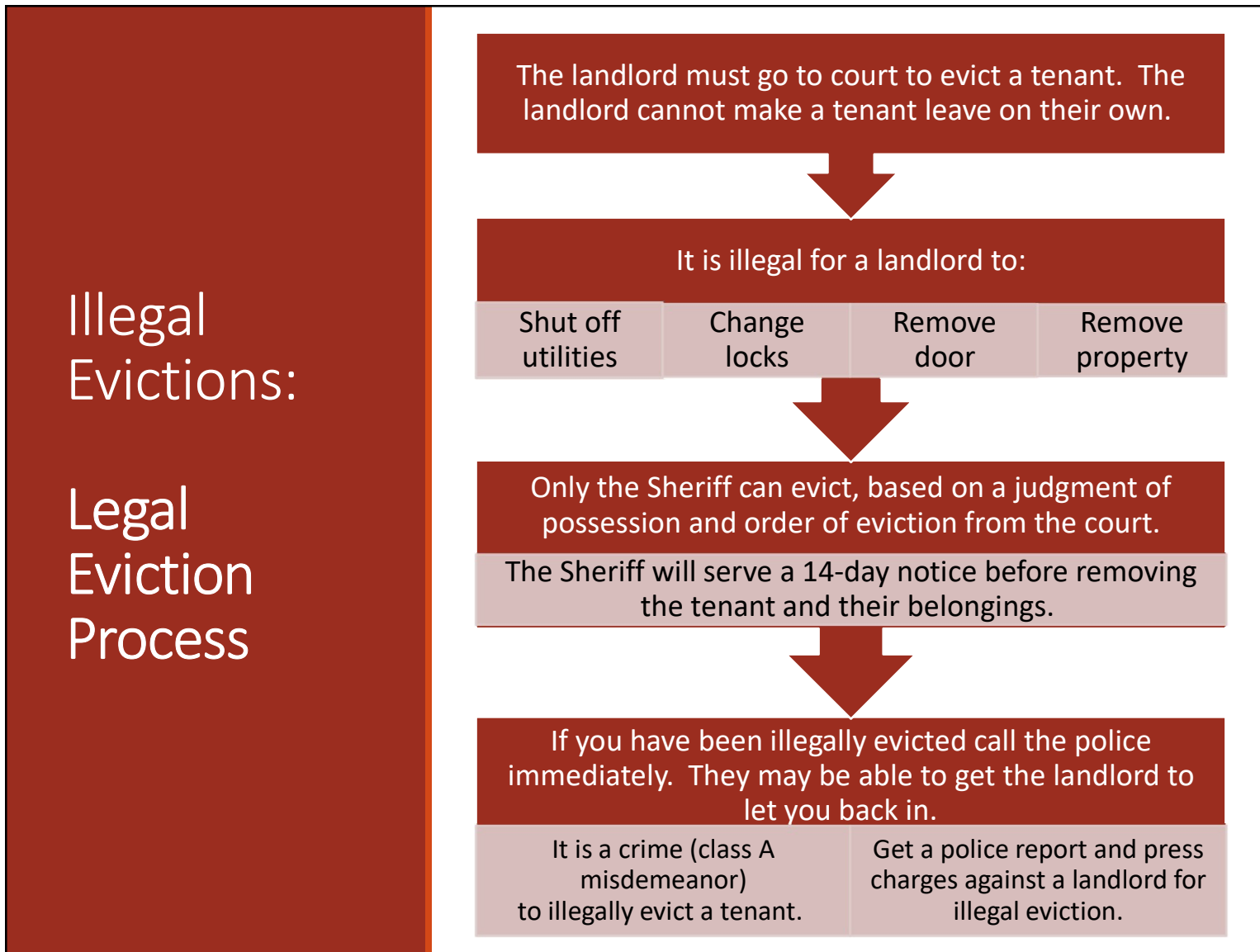


Criminal Penalties for violating the order:

- Fine of no more than \$100,000 if the violation does not result in a death or 1 year in jail, or both.
- Fine of no more than \$250,000 if violation results in a death or one year in jail, or both, or as otherwise provided by law.

An organization violating this order may be subject to a fine of no more than \$200,000 per event if the violation does not result in a death or \$500,000 per event if the violation results in death or as otherwise provided by law.

U.S. Department of Justice enforces.



Illegal Evictions: Getting help



1. A landlord who has illegally evicted a tenant can be charged a civil penalty of \$1,000 to \$10,000 for each violation.
2. A tenant who has been illegally evicted can go to the District Court in their town and file an **Order to Show Cause** asking to be **restored to possession**.
 - This is an order from the court telling the landlord to show why the tenant should not be allowed back into their home.
 - If a tenant wants to sue for money damages, they have to bring a separate court case.
3. File Complaint with the Attorney General
 - If a tenant feels that they are being harassed, and the police aren't helping contact the New York State Attorney General's Office at <https://ag.ny.gov> and follow the links to file a complaint online or call the OAG Helpline at (800) 771-7755.



Thank you for your attention.



If you have any questions please call us at 631-232-2400.

Thank you
for
attending!