

September 8, 2020 D.3
Update on Eviction Moratorium

Speakers: Dina Levine Lipsted, Jewish Family and Community Services East Bay; Marianna Moore, Ensuring Opportunity Campaign; Christy, Raise the Roof Coalition; Name Unknown; Nicole Zapata; Domini Barhi; Sophia Wing, Legal Aid Contra Costa; Edith Pastrano, Richmond; Terry; Patricia.

Mary Ann Mason, Deputy County Counsel, proved a report to the Board on eviction moratoriums.

Since the Board's last meeting there has been quite a bit of action at the state and federal levels in regard to eviction protection for the residential tenants. The most significant thing that happened is that the state legislature at the end of the legislative session passed the Covid-19 Tenant Relief Act. It was urgency legislation. It was signed almost immediately by the Governor and it is now effective as of August 31st, 2020.

This legislation largely occupies the field of eviction and rent relief for persons, residential tenants who have been economically harmed by Covid-19. In addition, on September 4th, the Director of the Centers for Disease Control and Prevention (CDC), a federal agency, issued a nation-wide order appreciating certain residential evictions of tenants impacted by Covid-19. Now, this order protects these tenants through December 31st of 2020.

However, the order provides that it does not apply to tenants earning more than \$99,000 a year and it does not apply in states that have adopted the same or greater protections than the federal order. Contra Costa has yet to receive guidance from the state on which law the state thinks takes primacy, in our analysis we believe that it is the state law that will be controlling in California.

The Covid-19 relief act passed by the State protects all residential tenants regardless of immigration status and regardless of income level from eviction through January 31st. That's a longer period of time and a broader group of people than the federal order.

Counsel has based it's analysis on the suggestions that it is the state law that will take primacy here. The state law makes a number of very significant changes. Basically, it takes all of the past due rent owed from early March through August 31st, and says that this rent, the failure to pay in rent, can never be the basis for an eviction. Instead, it's convertible to consumer debt. This allows a landlord to go to court beginning March 1st of 2021 to obtain a judgment for repayment of that debt. But it doesn't provide a basis to evict people from their homes.

The state law also addresses the period between September 1st and January 31st. For that period of time, tenants must pay 25% of the rent due for each month but they don't have to pay it month by month. They could pay it five days before January 31st. And be protected from eviction starting on February the 1st. Assuming they have paid that 25% of the rent then the remaining 75% over those five months is also convertible to consumer debt that a landlord could begin to collect on March 1.

The tenants protected are the tenants that are able to file a declaration explaining what hardship, what financial hardship they have suffered as a result of Covid-19, that has harmed their ability to pay their rent.

So it's a particular group of tenants but is not limited by income. The area of law providing relief on the basis that they have been financially harmed due to Covid-19 and can't pay their rent is now occupied by the state.

And the state law very specifically says that the county cannot extend its current ordinance which ends September 30th, and legislate in this particular area, until February 1st of 2021. So really the state law is what controls between now and February 1st and the County is unable to extend its provisions prior to that date as to nonpayment of rent due to financial harm from Covid-19.

However, the state law doesn't occupy every area of eviction protection and rent relief. Counsel looked at the different areas that still remain available to the board and that the board could consider and provide direction on today.

One area is with regard to the grace period and eviction protection for the small commercial tenants. That currently ends September 30th. These are the commercial tenants with less than 100 employees. So if the board wished, the board could choose to extend protections for these tenants.

The state legislation also specifically acknowledges that local entities including the County might choose to provide greater protection for just cause evictions and ensure that evictions have a just cause. This has to be separate in nonpayment of rent but it could be due to other issues. For example, our ordinance has a specific provision that allows a tenant to move in a family member due to Covid-19 and that cannot be used as a basis for eviction. That is something the board may wish to continue under the new just cause authority.

However, the state has prescribed how we're supposed to exercise that authority. There are certain findings that the board would have to make and the board's ordinance would have to be more protective than what the state is already doing in terms of just cause. For example, the state does not allow a tenant who has been living in a location for 12 months to be evicted without just cause. So perhaps there is room for this board to address those tenants living there less than 12 months and just cause as to them.

There are various things like that, that Counsel is still analyzing, that if the board wishes to address those issues, there will be some room to legislate but it least to be consistent with the requirements of the new state law.

The new state law also does not address the board's current moratorium on residential rent increases. It's simply not a topic that is addressed in the law at all. So it doesn't affect the board's ability to legislate there. The board cannot regulate rent for commercial tenants. The state act also provides enhanced remedies, when we have landlords who improperly lock out tenants or cut off their utilities. So there are new penalties that are in place. Those will certainly take effect in this County after September 30th. The board's own ordinance with its remedies should apply after September 30th as to violations of our own ordinance as opposed to the state law.

Finally, there is the issue of the grace period for residential tenants. Your board put in place a four month grace period. So basically for rent that was due through September 30th, your ordinance said that tenants had until January 31st to pay that rent. And that time frame lines up with the new state law but the difference is that the state law converts the unpaid rent to consumer debt.

Counsel thinks it is likely that a court will say the state laws takes primacy here, on the question of which takes primacy, the state remedy as to the back rent through September 1st or the county remedy, which was eviction protection but then requiring full payment, but that is an open question.

But once we reach September 30th, the County ordinance has no role as to that issue of repayment of rent.

Ms Mason provided clarification on the impact to small landlords:

There are some protections for small landlords that were put into place by the Covid-19 Tenant Relief Act. One of them is this ability to begin collecting the unpaid rent starting March 1st in small claims court. The level of the small claims court jurisdiction is lifted so that landlords have access to this relatively easy process in small claims court up to any amount that is owed to get the judgment of the consumer debt.

Another assistance is that there was a homeowners bill of rights passed earlier and it had anti-foreclosure protections, and these protections have now been extended to small landlords who have only one to four units that are nonowner-occupied.

There are also provisions allowing more accountability and transparency for the small landlords who have mortgages.

And they're requesting the Federal CARES Act compliant forbearance from their mortgage holder. So they will have additional time and notice. And they have a new cause of action against the lender if the lender unfairly denies the forbearance without just cause.

There are some protections, though it does not address the issue of those small landlords who own their properties outright and don't have mortgages. But it is increased protection for the small landlords with mortgages, and all small landlords do get the easier process of small claims court regardless of the amount of rent owed for recovery.

DIRECTED County Counsel to return to the Board on September 22, 2020 with a draft urgency ordinance to align County ordinance provisions with the new State and Federal actions and to address the extension of protections under the discretion of the County, countywide.