



City of Chicago



O2020-3501

Office of the City Clerk

Document Tracking Sheet

Meeting Date:	6/15/2020
Sponsor(s):	Dept./Agency
Type:	Ordinance
Title:	Moratorium on issuance of notices of tenancy for failure to pay rent due to COVID-19 impact
Committee(s) Assignment:	Committee on Housing and Real Estate

ORDINANCE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1.

Definitions. As used in this ordinance:

“Circuit court” means the Circuit Court of Cook County.

“City” means the City of Chicago.

“City Council” means the City Council of the City of Chicago.

“Code” means the Municipal Code of the City of Chicago.

“Covered dwelling unit” has the meaning ascribed to that term in subsection (b) of Section 2 of this Ordinance.

“COVID-19” means the coronavirus disease 2019.

“COVID-19 Impact” means any loss, reduction or delay in receipt of income, or loss or reduction of employment attributable in whole or in part to COVID-19.

“Days” means calendar days.

“Dwelling unit” has the meaning ascribed to that term in Section 5-12-030(a) of the Code.

“Executive Order” means Executive Order 2020-10 (COVID-19 Executive Order No. 8) issued on March 20, 2020, and Executive Order 2020-30 (COVID-19 Executive Order No. 28) issued on April 23, 2020, by the Governor of the State of Illinois and any extension, amendment, supplement, reissuance or addition thereto.

“General Administrative Order” means General Administrative Order 2020-01 initially issued on March 23, 2020 and amended on April 13, 2020 and amended again on May 28, 2020 by Chief Judge Timothy Evans and any extension, amendment, supplement, reissuance or addition thereto.

“Good faith” means honesty in fact and conduct involving timely and reasonable acts that avoid taking unfair advantage.

“Landlord” has the meaning ascribed to that term in Section 5-12-030(b) of the Code.

“Moratorium” means the moratorium established pursuant to Section 2(a) of this Ordinance.

“Rent” has the meaning ascribed to that term in Section 5-12-030(f) of the Code.

“Rental agreement” has the meaning ascribed to that term in Section 5-12-030(g) of the Code.

“Single-room occupancy building” has the meaning ascribed to that term in Section 17-17-02163 of the Code.

“Tenant” has the meaning ascribed to that term in Section 5-12-030(i) of the Code.

“Tenant Notice of COVID-19 Impact” means any digital, electronic or other written communication, together with any supporting documents, from the tenant to the tenant’s landlord that reasonably informs such landlord that the tenant is experiencing a COVID-19 Impact.

“Unpaid rent” means the amount of rent that the tenant is legally required to pay to the landlord but does not pay due to a COVID-19 Impact experienced by the tenant during the moratorium. A COVID-19 Impact shall not extend to any unpaid rent balance that existed before the moratorium.

SECTION 2.

(a) *Moratorium – Established.* A moratorium is hereby imposed on the issuance in the City of any notice of termination of tenancy for failure to pay rent due to a COVID-19 Impact by any landlord to any tenant who resides in a covered dwelling unit, except in conformity with this Ordinance. Except as otherwise provided in Subsection 3(g) of this Ordinance, such moratorium shall remain in effect until 60 days after the Executive Order or General Administrative Order, whichever extends furthest, expires.

(b) *Scope of Ordinance – Covered dwelling units.* Subject only to the exclusions set forth in Subsection 2(c) herein, this Ordinance applies to every rental agreement for a dwelling unit located within the City, regardless of where the agreement is made, including dwelling units subject to rental agreements operated under subsidy programs of agencies of the United States or the State of Illinois, to the extent that this Ordinance is not preempted and does not directly conflict with statutory or regulatory provisions governing those programs (collectively, “covered dwelling units”). This ordinance shall be liberally construed and applied to promote its purposes and policies.

(c) *Exclusions.* This Ordinance shall not apply to and shall specifically exclude: (1) any dwelling unit or housing accommodation identified in subsections (b), (c), (d), (e) and (f) of Section 5-12-020 of the Code; and (2) any hotel or inn that has a contract with the City, County, State or Federal Government to provide shelter and accommodations to persons who are

in need of a premises in order to abide by the Executive Order, self-isolate, or recover from any exposure or potential exposure to COVID-19, or who are otherwise experiencing a COVID-19 Impact. With respect to hotels and inns described in item (2) of this subsection (c), the City Council expressly finds that the residents of such hotels and inns and the owners thereof do not have a landlord-tenant relationship, and, as such, are not subject to the Residential Landlord and Tenant Ordinance, Chapter 5-12 of the Code, or to this Ordinance.

SECTION 3.

Except as otherwise provided in subsection (g) of this Section 3, and notwithstanding Section 5-12-130(a) or any other Code provision to the contrary, the following processes shall apply during the moratorium to any notice of termination of tenancy for failure to pay rent:

(a) *Tenant's failure to pay rent during the moratorium – Five-day notice of termination of tenancy.* If, during the moratorium, all or any portion of a tenant's rent is not paid when such rent is due, the landlord may issue to the tenant a written notice of termination of tenancy for failure to pay rent informing the tenant that the landlord intends to terminate the tenant's rental agreement if the outstanding rent is not paid within five days after receipt of such notice of termination of tenancy. Such written notice of termination of tenancy for failure to pay rent shall be accompanied by a written statement provided by the landlord to the tenant informing the tenant that such tenant has five days to provide the landlord with a Tenant Notice of COVID-19 Impact. The Department of Housing shall post on its website an example of the form that such written statement may take. Provided, however, that if, at any time prior to or during this five-day period, the landlord receives from the tenant a Tenant Notice of COVID-19 Impact, the landlord shall wait an additional seven days ("negotiation period") after expiration of the five-day period in the notice of termination before filing either an eviction action against the tenant or maintaining an action for rent and/or damages without terminating the rental agreement.

(b) *Seven-day negotiation period – Required.* During the additional seven-day negotiation period specified in Subsection 3(a), the landlord shall make reasonable attempts to contact, and engage in good faith negotiations with, the tenant to reach a mutually satisfactory agreement for repayment of the unpaid rent. In engaging in good faith negotiations, no landlord shall request from a tenant information regarding retirement accounts, assets, or personal property. The terms and conditions of any such agreement may include an offer by the landlord to: (1) accept a repayment plan that amortizes each missed rent payment over not less than 60 days; (2) submit the matter to mediation or to binding arbitration; (3) apply the tenant's security deposit and/or interest on the security deposit toward the unpaid rent to reduce the amount of the rent owed; (4) provide the tenant with an opportunity to move out of the dwelling unit, in a reasonable time that takes into account any delays caused by COVID-19 to either party or to the rental market, in exchange for a complete or partial waiver of any unpaid back rent; or (5) enter into a lawful agreement containing other mutually acceptable terms and conditions to otherwise compensate the landlord for the unpaid rent. Any such agreement shall be written in plain language and shall clearly describe its material terms, including, in the case of a repayment plan, the applicable payment amounts, interest rates and payment due dates. A landlord shall not reject

an agreement for the repayment of unpaid rent because such repayment relies on a third-party funding source, such as public rental assistance funds.

(c) *Proof of compliance.* If the seven-day negotiation period applies and the landlord files an action in Circuit Court to evict the tenant for unpaid rent, with or without a claim for unpaid rent and/or damages, and the landlord received from the tenant a timely Tenant Notice of COVID-19 Impact, such landlord must plead that the landlord made reasonable attempts to contact the tenant and engage in good faith negotiations with the tenant to reach a mutually satisfactory agreement pertaining to the unpaid rent. Proof of good faith negotiations by the landlord with the tenant may include affidavits, written notices and communications, and other contemporaneous documentation.

(d) *Affirmative defense.* The tenant may raise as an affirmative defense to an eviction action filed by a landlord during the moratorium that: (1) the tenant did experience a COVID-19 Impact that materially or substantially affected his or her ability to pay rent; (2) the tenant did file with the landlord a timely Tenant Notice of COVID-19 Impact; and (3) the landlord failed to make reasonable attempts to contact the tenant or to engage in good faith negotiations with the tenant to reach a mutually satisfactory agreement pertaining to the unpaid rent in violation of subsections (a), (b) and (c) of this Section 3. Nothing in this subsection (d) shall be construed to limit any other affirmative defense in law or in equity that the tenant is entitled to raise.

(e) *Non-disclosure and waiver agreements – Prohibited.* No landlord shall require any tenant to execute a non-disclosure agreement as part of any agreement resolving or otherwise pertaining to unpaid rent. Further, no landlord shall require any tenant to execute an agreement waiving any other right related to the condition or habitability of the premises.

(f) *Repayment plans – Interest rates and late fees – Capped.* No repayment plan shall include an interest rate that is charged by the landlord on unpaid rent that exceeds the rate of interest on security deposits, as calculated and published by the City Comptroller pursuant to Sections 5-12-081 and 5-12-082 of the Code. No repayment plan shall include any late fee, charge, cost or other penalty on any unpaid monthly rent in excess of \$10.00 per month for the first \$500.00 in unpaid monthly rent, plus five percent (5%) per month for any amount in excess of \$500.00 in unpaid monthly rent.

(g) *Security deposits applied to unpaid rent – Requirements.* If, pursuant to Section 3 (b)(3) of this Ordinance, the landlord offers to apply the tenant's security deposit or any interest on such security deposit toward the unpaid rent, and the tenant accepts that offer, as evidenced by a mutually satisfactory agreement to such effect as required under Section 3(b) of this Ordinance, such tenant shall be deemed by operation of law to have waived any claims arising under Sections 5-12-080 and 5-12-081 of the Code against the landlord for such security deposit or interest on the security deposit, to the extent that the landlord credited the security deposit and any accrued interest on the security deposit toward payment of the unpaid rent. Such waiver of claims against the landlord shall apply during and after the moratorium imposed under this Ordinance.

(h) *Existing eviction actions.* If a landlord commenced an eviction action prior to the effective date of this Ordinance, the pleading requirements in Section 3(c) shall not apply, and the landlord may defeat the affirmative defense provided for in Section 3(d) by demonstrating that, on or after the effective date of this Ordinance, the landlord met the requirements in Section 3(b) of this Ordinance.

SECTION 4.

Construction of Ordinance.

(a) Nothing in this Ordinance shall prevent any landlord during the moratorium from offering or entering into a repayment plan with a tenant for unpaid rent that contains terms and conditions more favorable to the tenant than those provided for in this Ordinance.

(b) Nothing in this Ordinance shall prohibit any landlord during the moratorium from issuing a notice of termination of tenancy for failure to pay rent to, or from pursuing any other remedy in law or in equity against, any tenant who is in violation of their rental agreement for failure to pay rent, under circumstances where the tenant: (1) has not provided the landlord with a Tenant Notice of COVID-19 Impact in accordance with Section 3(a) of this Ordinance; or (2) has not experienced a COVID-19 Impact.

(c) Nothing in this Ordinance shall prohibit any landlord during the moratorium from issuing a notice of termination of tenancy to a tenant in cases involving material noncompliance with a rental agreement by the tenant, other than failure to pay rent due to a COVID-19 impact, in violation of Sections 5-12-040 or 5-12-130 of the Code.

(d) Except as otherwise provided for in this Ordinance, nothing in this Ordinance shall relieve any tenant from the obligation to pay rent or from complying with the terms of their rental agreement or any applicable repayment plan or other agreements or laws pertaining to the tenancy.

SECTION 5.

Rules. The Commissioner of the Department of Housing is authorized to promulgate rules to assist in the implementation of this Ordinance and to develop standards, procedures and forms necessary or appropriate to assist in educational outreach and interpretation of this Ordinance.

SECTION 6.

Severability. If any provision, clause, sentence, paragraph, section or part of this Ordinance shall, for any reason, be adjudged by a court of competent jurisdiction to be

unconstitutional or invalid, said judgment shall not affect, impair or invalidate the remainder of this Ordinance.

SECTION 7.

Effective date – Retroactivity. This Ordinance shall take full force and effect upon its passage and approval and shall be retroactive to March 21, 2020.