



October 01, 2020

Dear Judge Marks,

As co-coalition leaders of Underoneroofny, we write in follow up to our original correspondence of June 11, 2020, on behalf of all small business property owners in the State of New York. This coalition was formed last year, to address the unintended consequences of the Housing Stability and Tenant Protection Act on both tenants and property owners. Our members are small business owners who provide quality housing to other hardworking New Yorkers and serve as economic drivers in their local communities as well as tenants who live in these properties.

We understand that the climate we are in is unprecedented. However, our coalition members continue to operate under unclear and demanding conditions. Government has continuously relied on this industry sector to support tenants, the only industry that has been asked to continue operations without the cash flow to support their investments. Small property owners may not be able to sustain their small businesses without immediate assistance.

All of the property owners who have signed on to this letter have reached out to their tenants to offer financial assistance in the form of payment arrangements, forbearance agreements, lease extensions or surrender agreements. However, there are a significant number of tenants that have failed to communicate and have ignored the property owners. The rent shortfall for members in this coalition have ranged from 15-40% over the summer months, with no relief in sight.

The Governor's recent press release and Executive Order extends the Tenant Safe Harbor Act (TSHA) until January 1, 2021, applicable to tenants who are COVID19 affected. However, it is unclear to our association members why the upstate courts have yet to entertain residential landlord-tenant matters covered under the TSHA and those landlord-tenant matters that fall outside of the TSHA such as holdover, breach of lease and RPAPL 713 proceedings where no landlord-tenant relationships exist. In fact, there has been precedent set already in New York City Housing Court that certain matters should move forward. We ask that you consider parity in operations between upstate and downstate courts.

Again we reiterate the following: To ensure that residential property owners are able to sustain their business operations, without detrimental consequences to the tenants they house, it is necessary that the court address the following cases in accordance with the plain language of the TSHA and current law:

- Those cases that were filed prior to March 7, 2020, should continue to be calendared for courts dates immediately and should be resolved in the ordinary course of business before COVID 19;

- Warrants that were served but where perfection was stayed due to Executive Order 202.8 and AO/160/20, should be calendared immediately to return to court to decide whether tenant is COVID affected under the TSHA and then allow the sheriff, constable or Marshal, on fourteen (14) days notice to the tenant, unless the tenant is able to pay the full amount owed to the property manager as of the date of the original warrant was to be served.
- For matters that involve a breach of the covenants of the lease, an objectionable tenancy, and illegal behavior, these cases are direct threats to other tenants, management staff and the property in the community, and need to be addressed immediately by the court. There have been serious, egregious matters addressed to the courts during this moratorium period and they must be handled immediately. They are not covered under the TSHA or the CDC Moratorium and must be allowed to be filed and calendared as summary proceedings with the next available return date.
- For tenants who were property noticed under RPL 226-c that the lease was not to be renewed, and who have chosen to holdover without the permission of the landlord, these matters need to be heard now as they too, are not covered under the TSHA or CDC Moratorium.

Nonpayment matters

- Pursuant to the plain language of TSHA property owners should be entitled to file all matters by mail and it should be the tenant's obligation to raise as an affirmative defense, that they are COVID affected.

Without the following adopted practices, the small business landlords in the State of New York will not be able to maintain continuity of operations. No landlord wants to evict a tenant. That is not a business model that any of the following property owners signing this letter subscribe to. However, the rent that was contractually agreed to by the tenants residing in these properties pays for the taxes, water/sewer, mortgage, maintenance costs and costs of employees and independent contractors who keep the properties running. If these property managers do not receive the rent, their own obligations will be defaulted on.

At the very minimum, given the imminent end of AO/160/20, we implore the Office of Court Administration to provide very clear guidance on the applicability of the TSHA in conjunction with the recent CDC guidelines, as it relates to the opening and operations of upstate courts. We are seeking consistency in application across all courts throughout the state.

Respectfully,

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