

**Law 24-39 – “Public Emergency Extension and Eviction and Utility Moratorium Phasing Temporary Amendment Act of 2021”**

*Summary of Rental Housing Provisions<sup>1</sup>  
Effective 9/1/21-6/9/22<sup>2</sup>*

*L24-39 Summary of Rental Housing Provisions*

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**Authorization to extend the PHE:**

- Authorizes the Mayor to extend the Public Health Emergency (PHE) through October 8, 2021 (and for additional 15-day periods thereafter, as under already-existing law and previous authorizations).
- *The Mayor declined to extend the PHE – it was terminated 12:01 a.m. 7/25/21* ([Mayor’s Order 2021-96](#)).
- However, Mayor’s Order 2020-119 (dated October 15, 2021) extended the Public Emergency (PE – distinct from the PHE) through January 7, 2022.

**Writs issued and other eviction actions filed prior to the PHE:**

- ***Pre-PHE writs may be executed:*** Beginning July 25, 2021 (first day after the PHE), landlords may re-schedule with the U.S. Marshals evictions authorized prior to the PHE (prior to March 11, 2020).
- ***Extended notice of rescheduled eviction date:*** The landlord is required to provide the tenant with a 30-day notice of a re-scheduled date for an eviction authorized prior to the PHE. The general 21-day notice requirement period applies to evictions authorized after March 11, 2020.

<sup>1</sup> This document is for informational purposes only and does not constitute legal advice. If you have a relevant dispute with your landlord, you should contact OTA’s intake line at (202) 719-6560 or otherwise seek the advice of an attorney.

<sup>2</sup> See also emergency legislation ([A24-125](#)), effective 7/24/21-10/22/21).

- **Additional requirements for evictions involving nonpayment of rent filed pre-PHE<sup>3</sup>:**
  - Before going through with an eviction for nonpayment of rent filed before March 11, 2020, the landlord must determine whether the tenant has a pending STAY DC or ERAP application. To do so, the landlord must contact the Department of Human Services between five (5) days and 48 hours prior to carrying out such an eviction and seek this information. If an application is pending, the landlord must reschedule the eviction for at least three weeks later.
  - For a pre-PHE eviction for nonpayment of rent that is scheduled to take place on or after November 16, 2021, the 30-day or 21-day notice of the eviction date (whichever applies) must include the following information:
    - The total amount of past due rent;
    - The amount of past due rent accrued prior to March 11, 2020;
    - The amount of past due rent accrued from March 11, 2020 to date;
    - Information about the availability of rental assistance through STAY DC and ERAP; and
    - Contact information for both the Office of the Tenant Advocate and the Landlord-Tenant Legal Assistance Network.

**Phasing-out of PHE eviction moratoria:**

- **New post-PHE eviction prohibitions:** Prior to January 1, 2022, eviction filings and service of summons are prohibited *EXCEPT* where one of the exceptions below applies.
- **Exceptions to post-PHE eviction prohibitions:**
  1. **Public safety exception:**<sup>4</sup> The landlord may file an eviction action where the tenant’s continuing presence at the building presents a current and substantial threat to the health and safety of tenants or others through the unlawful possession of a firearm, threats or acts of violence, or assault.
  2. **Property damage exception:** The landlord may file an eviction action where the tenant has willfully or wantonly caused significant damage to the unit or the property.
    - **Affirmative defense:** The tenant has an affirmative defense if the tenant can demonstrate with substantial evidence that the housing provider willfully or negligently contributed to the significant damage of the unit, premises, building, or property that are the subject of the complaint.
  3. **Nonpayment of rent exception:** On or after October 12<sup>th</sup>, 2021, the landlord may file an eviction action for nonpayment of rent in certain circumstances.
    - **Requirements:** The landlord must document that:

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<sup>3</sup> These requirements were added by Act 24-178, the “Foreclosure Moratorium Extension, Scheduled Eviction Assistance, Public Emergency Extension, and FOIA Tolling Emergency Amendment Act of 2021” (effective 10/7/21-1/5/22); 225-day temporary legislation (Bill 24-377) pending Council, Mayoral, and Congressional review.

<sup>4</sup> This exception was originally enacted under A24-67, the “Eviction Moratorium Public Safety Exception Emergency Amendment Act of 2021” (effective 5/3/21-8/1/21).

- a. **Tenant arrears:** The tenant owes \$600 or more in rent and any of the following applies:
  - i. The tenant has failed to submit a rental assistance application within 60 days of receiving a notice of past due rent as described below;
  - ii. The tenant's application for assistance was denied or the tenant's application was approved with a balance of \$600 or more remaining, and the tenant and landlord have not established a rent payment plan within 14 days; or
  - iii. The tenant is either two months or \$600 behind, whichever is greater, on a rent payment plan.
- b. **Landlord attempt at STAY DC:** The landlord has applied for STAY DC assistance on behalf of the tenant, or completed the landlord portion of the application. (The landlord must have applied by October 27, 2021, or completed the landlord portion of a tenant-initiated application by November 1);
- c. **Notice to tenant of landlord's application:** The landlord has notified the tenant in writing of the landlord's STAY DC application;
- d. **Notice to tenant of past due rent and other information:**<sup>5</sup> The landlord has given the tenant a notice of past due rent that states:
  - i. Certain statutory language outlining the nonpayment exception, specifically that a landlord may file the eviction action if the tenant owes \$600 or greater and any of the following occur:
    - The tenant has failed to submit a rental assistance application within 60 days of receiving a notice of past due rent;
    - The tenant's application for assistance was denied or the tenant's application was approved with a balance of \$600 or more remaining, and the tenant and landlord have not established a rent payment plan within 14 days; or
    - The tenant is either two months or \$600 behind, whichever is greater, on a rent payment plan.
  - ii. The total rent due including a ledger showing charges and payments for all alleged delinquent periods;

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<sup>5</sup> Evictions for nonpayment of rent are excepted from the general requirements that the landlord provide (1) a notice to vacate and (2) a 30-day notice of the landlord's intent to file an eviction claim. The notice of past-due rent described above is the only legally required notice to the tenant prior to the filing of the claim.

- iii. That the tenant has the right to remain in the unit if the balance is paid in full or current on payment plan;
  - iv. Basic information about emergency rental assistance programs in the District, including eligibility criteria and how to apply;
  - v. Whether an application for rental assistance has been submitted on the tenant's behalf, or if the landlord has completed the landlord portion and is waiting for the tenant to fill out the tenant portion;
  - vi. That the tenant has 60 days to complete the tenant portion of the application; and
  - vii. Contact info for OTA and Landlord-Tenant Legal Assistance Network.
- o **Affirmative defenses:** The case must be dismissed if the tenant demonstrates with substantial evidence provided in testimony that:
    - a. The landlord did not pursue rental assistance timely or in good faith;
    - b. The tenant did not receive notice of the assistance application;
    - c. The landlord did not provide the required notice that includes rent due, information on rental assistance, and giving the tenant 60 days to complete the application.
    - d. The tenant submitted an application for assistance prior to or during the 60 days and it is still pending or awaiting payment; or
    - e. The landlord has not met other prerequisites for a nonpayment of rent eviction under this exception; or
    - f. The landlord did not offer to negotiate a payment plan for rental arrears accrued since March 11, 2020.
  - **Modification of moratorium on notices to vacate:** Notices to vacate pursuant to exceptions (1) and (2) above,<sup>6</sup> and notices of past due rent pursuant to exception (3) above,<sup>7</sup> may be issued starting July 25, 2021. Notices to vacate for any other lawful reason may be issued starting September 26<sup>th</sup>, 2021.
  - **Requirements for notices to vacate / notices of past due rent pursuant to an exception:**
    - o Must state prominently and at the beginning of any such notice that the tenant does not have to vacate the rental unit until and unless a court orders the tenant to do so;

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<sup>6</sup> 30-day notices to cure or vacate pursuant to RHA Sec. 501(b).

<sup>7</sup> Notices of past due rent pursuant to RHA Sec. 501(b-1). Notice period varies depending on DC STAY application status or amount of arrearage on payment plan. See nonpayment of rent exception (exception #3 on p.2 of this summary) for details.

- For cases involving alleged violations of obligations of tenancy, must state prominently and at the beginning of any such notice that the tenant has the right to correct or cease the alleged violation of tenancy and remain in the rental unit;
- For cases involving non-payment of rent, must meet the requirements for notices of past due rent described at 3(d) above;
- Must state prominently and at the beginning of any such notice that the tenant has the right to dispute the landlord’s allegations through the court process and remain in the rental unit until the court reaches a decision on the matter;
- Must include the phone numbers of the Office of the Tenant Advocate and the Landlord Tenant Legal Assistance Network and state prominently and at the beginning of any such notice that both resources may provide or may refer the tenant to free legal services for tenants facing eviction; and
- If the landlord knows the tenant speaks a primary language other than English or Spanish that is covered section 4 of the Language Access Act of 2004 (D.C. Official Code § 2-1933) (Chinese, Vietnamese, Korean, French, or Amharic), must be translated into that language.

**Evictions generally:**

- ***Landlord documentation required for evictions:*** Prohibits eviction filings where the landlord has not filed a *valid registration or claim of exemption* with RAD, or where the landlord does not have a *current license* for rental housing presented at the time of filing. (The Court may waive this requirement if the landlord can demonstrate that they were unable to obtain or renew the rental housing license due to extenuating circumstances.)
- ***Minimum unpaid amount for nonpayment evictions:*** Prohibits eviction filings over nonpayment of rent less than \$600.
- ***Evictions for consistent late payment:*** Prohibits a landlord from filing for eviction for consistent late payment of rent occurring between March 11, 2020 and September 22, 2021.
- ***Photo evidence of service by posting:*** For an eviction summons or a Rental Housing Act Sec. 501 notice (including notices of past due rent) served by posting, the landlord must provide the Court with photo evidence of the posting including a readable date and timestamp.
- ***Language accommodations:*** If the landlord knows that the tenant speaks a primary language other than English or Spanish that is covered under section 4 of the Language Access Act of 2004 (Chinese, Vietnamese, Korean, French, or Amharic), the landlord must provide the notice to vacate in that language.

- **No eviction by purchaser without deed:** Prohibits evictions by a purchaser where the purchaser has not obtained the deed.
- **Extended notice of eviction summons:** A summons for eviction must be served on the tenant 30 days in advance of the initial hearing.

#### Other tenant protections:

- **No waiver of tenant rights under payment plan:** Clarifies that under a rent payment plan, not only must the tenant retain all rights under the lease, but also the payment plan cannot waive any of the tenant’s rights under District law.
- **End of PHE amenity fee refunds:** Starting July 24, landlords are no longer required to provide pro-rata refunds of fees for amenities shut down due to the PHE. (Applied to rent control units only.)
- **End of common area cleaning requirements:** Starting July 24, landlords are no longer required to clean common areas including high-touch surfaces on a regular basis.
- **No rent increases or rent increase notices before December 31<sup>st</sup>:** Prohibits rent increase notices to the tenant until December 31, 2021. Since landlords must provide a 30-day notice of a rent increase before demanding the higher rent (unless a longer notice period is provided in the lease), a landlord cannot legally charge a higher rent until February 1, 2022. **Vacancy increases** may be implemented starting on December 31<sup>st</sup>.

#### Closure of STAY DC Application Portal; New Defense to Eviction Pending:

- **Closure of STAY DC Rental Assistance Application Portal:** As of October 27, 2021, the Mayor closed the STAY DC application portal to new applications.<sup>8</sup> As of November 1, a landlord may no longer complete the landlord portion of an application originally submitted by a tenant. Nonetheless, a landlord is still required to initiate a STAY DC application or fill out the landlord portion prior to initiating an eviction action for nonpayment of rent until January 1, 2022. Therefore, a landlord cannot file an eviction action for nonpayment of rent prior to January 1 unless the landlord had already applied for STAY DC before the deadline. This is intentional, in order to prevent landlords who failed to timely act before STAY DC was closed from filing an eviction action for nonpayment of rent until January 1, 2022. This also puts a brake on evictions for nonpayment of rent, so the DC government has time to address additional rental assistance needs as warranted.
- **Pending Financial/Medical Hardship Eviction Defense:** Pending emergency legislation<sup>9</sup> would provide a new affirmative defense to an eviction for nonpayment of rent that any tenant may raise in D.C. Superior Court. Where the tenant establishes a financial or

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<sup>8</sup> Note that until December 6, 2021, a tenant may still complete a STAY DC application that had already been initiated by the landlord before the closure of the application portal.

<sup>9</sup> [B24-468](#), the “Tenant Safe Harbor Emergency Amendment Act of 2021” (awaiting Mayoral signature; temporary version B24-469 awaiting second reading, Mayoral signature, and Congressional review).

medical hardship that occurred during the covered period (March 11, 2020 through the end of the Public Emergency declared by the Mayor<sup>10</sup>), such as job or income loss or contracting COVID-19, the Court could not enter a judgment for possession. (However, the Court could still enter a money judgment against the tenant).

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<sup>10</sup> The Mayor initially declared the Public Emergency (PE) as of March 11, 2020 in [Mayor's Order 2020-045](#); she extended the PE until January 7, 2022 in [Mayor's Order 2021-119](#), dated October 7, 2021. The PE is distinct from the PHE, which the Mayor declared on March 11, 2020 and terminated as of July 25, 2021.