

Eviction Moratorium Extension: Landlords Continue to be Locked Out

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Just two days before the nationwide eviction moratorium was set to expire on March 31st, the Biden administration re-extended it through June 30th. The extension allows tenants who continue to struggle financially during the COVID-19 pandemic to avoid eviction for non-payment of rent. Tenants who qualify for protection from eviction, based on financial hardship, must provide proof via CDC Affidavit. Landlords cannot legally pursue an eviction/possession when a tenant produces an Affidavit. Any attempt to force eviction or ignore Affidavit protection can result in stiff financial penalties for landlords. As months pass without rent collected, tenants cannot however escape the responsibility of accrued rent arrearages; tenants can be sued for back rent once the moratorium ends.

With almost 90 days remaining in the moratorium extension period, the legal validity of the moratorium has come into question via two pending lawsuits, in Texas and Ohio. Federal Judges in those states – reviewing lawsuits filed by landlord groups against the CDC – have ruled that the eviction moratorium was unconstitutional. In *Terkel v. Centers for Disease Control & Prevention*, No. 6:20-CV-00564, 2021 WL 742877 (E.D. Tex. Feb. 25, 2021), the court found that the moratorium exceeded the scope of Congress' powers under the Commerce Clause, and the Necessary and Proper Clause, of the Constitution. Two weeks later, a Cleveland-area federal judge ruled in *Skyworks, Ltd., v. Centers for Disease Control & Prevention*, No. 5:20-CV-2407, 2021 WL 911720 (N.E. Ohio Mar. 10, 2021) that the CDC lacked the authority under the Public Service Act to issue a nationwide moratorium. While both courts ruled that the moratorium was unconstitutional, neither court granted an injunction – which would have prevented further enforcement of the moratorium. It is also worth noting that the Department of Justice announced that they are appealing both rulings.

More litigation surrounding the eviction moratorium will undoubtedly continue due to its re-extension until June 30th. While landlords in other states cannot rely upon these rulings as controlling precedent, they may indicate how courts will interpret the law. The same or a sufficiently similar legal challenge must be mounted by landlords in other states to benefit from these recent rulings. Whether appellate review will yield a definitive answer to the legal challenge remains to be seen. It is certainly possible that the currently pending appeals remain undecided through the June 30th moratorium expiration date.

For more information on the Eviction Moratorium Extension or other COVID-19 business solution topics, contact Ken Scholtz at kscholtz@tuckerlaw.com or Alexandra Boyer at aboyer@tuckerlaw.com. You can also access Tucker Arensberg's recent articles regarding pandemic business solutions at <https://www.tuckerlaw.com/category/covid-19-answers-to-business-challenges>.