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COVID-19 EVICTION MORATORIUMS: MEDIATING RESIDENTIAL LANDLORD-TENANT DISPUTES

Stephanie Schatz

The coronavirus (“COVID-19”) pandemic prompted many unprecedented restrictions to be put in place throughout the world. These restrictions caused businesses to shut down, resulting in lost jobs and income. This led to many individuals’ inability to afford basic expenses, such as rent.¹ Due to tenants’ loss of income and inability to fulfill their lease obligations, in March 2020, many states issued executive orders requiring a moratorium, or a suspension, on commercial and residential evictions for tenants who demonstrated that they were unable to pay rent due to the COVID-19 pandemic.²

In New York State, the eviction moratorium implemented at the beginning of the COVID-19 pandemic for residential and commercial evictions was in effect until January 15, 2022.³ Tenants who suffered financial hardship as a result of the pandemic were under the continued protection of the Tenant Safe Harbor Act.⁴ To remain in their homes throughout the pandemic, tenants were required to submit a Hardship Declaration to their landlords, which protected the tenants from evictions, irrespective of whether an eviction proceeding was already pending.⁵

Prior to the COVID-19 pandemic, mediation was utilized to settle residential disputes between landlords and tenants.⁶ Mediation involves a neutral third party assisting the adverse parties in reaching a mutually acceptable solution to their dispute.⁷ Rather than imposing a binding decision on the case in its entirety, the goal of mediation is to broker a negotiated settlement, which reduces fear and hostility on both sides and allows the parties to cooperate effectively.⁸ Mediation proceedings are confidential and provide the parties with an opportunity to participate by voicing their concerns and listening to each other, all while developing realistic, workable solutions.⁹ Mediation in eviction proceedings offers many benefits. One benefit is that it is relatively

¹ Gabriel Petek, *How Has COVID-19 Affected Renters and Homeowners?*, LEGIS. ANALYST’S OFF. (Jan. 2021), <https://lao.ca.gov/reports/2021/4312/COVID-19-renters-homeowners-011921.pdf> [<https://perma.cc/626A-PNY2>].

² *COVID-19 Evictions Moratorium Mediation*, AM. ARB. ASS’N, <https://go.adr.org/covid-19-evictions-moratorium-mediation.html?amp;amp> [<https://perma.cc/CX8C-FV8Z>] (last visited Jan. 14, 2022).

³ *Governor Hochul Signs New Moratorium on COVID-Related Residential and Commercial Evictions into Law, Effective Through January 15, 2022*, GOVERNOR KATHY HOCHUL (Sept. 2, 2021), <https://www.governor.ny.gov/news/governor-hochul-signs-new-moratorium-covid-related-residential-and-commercial-evictions-law> [<https://perma.cc/B9DH-CCKJ>].

⁴ *Id.*

⁵ *Information and Resources for NYC Tenants Impacted by COVID-19*, N.Y.C. MAYOR’S OFF. PROTECT TENANTS (Jan. 12, 2022), <https://www1.nyc.gov/content/tenantprotection/pages/covid19-home-quarantine> [<https://perma.cc/HSL9-4NJS>].

⁶ D.C. Bar Pro Bono Center, *Settlement and Mediation in Landlord and Tenant Court*, LAWHELP.ORG (Jan. 31, 2018), <https://www.lawhelp.org/dc/resource/settlement-and-mediation-in-landlord-and-tena> [<https://perma.cc/L9VT-KCYS>].

⁷ *Mediation Defined: What is Mediation?*, JAMS, <https://www.jamsadr.com/mediation-defined/> [<https://perma.cc/NRG6-H2FV>] (last visited Jan. 14, 2022).

⁸ Marcia Stewart, *How to Negotiate or Mediate a Landlord-Tenant Dispute*, NOLO, <https://www.nolo.com/legal-encyclopedia/free-books/renters-rights-book/chapter13-2.html> [<https://perma.cc/3J9K-D6EL>] (last visited Jan. 14, 2022).

⁹ *Landlord-Tenant Mediation*, WHATCOM DISP. RESOL. CTR., <https://www.whatcomdrc.org/landlord-tenant-mediation> [<https://perma.cc/36S8-KWDH>] (last visited Jan. 14, 2022).

inexpensive compared to a civil lawsuit.¹⁰ Moreover, it also creates successful outcomes by formulating lasting solutions for both parties, such as establishing repayment terms—now that the moratorium has lapsed—and addressing other lease concerns.¹¹

New York City partnered with nonprofit Community Dispute Resolution Centers (“CDRCs”) to implement the Citywide Landlord-Tenant Mediation Project, which will help hundreds of New Yorkers each month by addressing rent-related issues in a mediation setting.¹² This mediation process will take place outside of the housing court system and will focus on helping the communities that have been worst affected by the COVID-19 pandemic.¹³ Mediation can serve as an alternative to the eviction process; it helps prevent tenants from becoming homeless and it helps landlords who manage a smaller number of units control eviction litigation costs and the loss of further rental income.¹⁴ These programs allow landlords and tenants to improve their relationships by resolving their conflicts outside of the court system, which is generally perceived as more hostile and adversarial. Additionally, the long-term negative effects of an eviction proceeding can be avoided, which include the displacement of vulnerable tenants and the limiting of future housing options.¹⁵

Some cities already have eviction mediation procedures in place.¹⁶ In the San Francisco Bay Area, once a landlord files an eviction petition, a mediator is assigned to the case within forty-eight hours.¹⁷ Here, there is an immediate attempt to find intermediate solutions to overdue payments, so that rent does not pile up while moratoriums are in place.¹⁸ A pilot program in Pittsburgh provides cities with access to housing experts, guidance on how to use available resources efficiently and effectively, and an environment to share ideas and pressure points with each other.¹⁹ Additionally, the Hawaii legislature enacted a law during the COVID-19 pandemic that requires the use of alternative dispute resolution (“ADR”) before an eviction may proceed, in an effort to mitigate the harms to both parties.²⁰ Overall, mediation will serve as an effective tool in helping settle eviction disputes, now that the New York State eviction moratorium has come to an end. Mediation will also help reduce the backlog of eviction proceedings in the courts, as practitioners expect many eviction cases to now be filed.²¹

¹⁰ *Advantages of Mediation*, U.S. OFF. SPECIAL COUNS., <https://osc.gov/Services/Pages/ADR-Advantages.aspx> [<https://perma.cc/6XKW-A3YH>] (last visited Jan. 14, 2022).

¹¹ *See id.*; *see also* Petek, *supra* note 1.

¹² *Mayor de Blasio and Taskforce on Racial Inclusion and Equity Announce Citywide Landlord-Tenant Mediation Project for Housing Security*, N.Y.C. HOUS. PRES. & DEV. (July 21, 2020), <https://www1.nyc.gov/site/hpd/news/032-20/mayor-de-blasio-taskforce-racial-inclusion-equity-citywide-landlord-tenant#/0> [<https://perma.cc/CTW6-LJCX>].

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Alexandra Kanik, *To Halt Evictions, US Cities Turn to Mediation Programmes*, CITY MONITOR (Sept. 28, 2020), <https://citymonitor.ai/housing/what-is-eviction-mediation> [<https://perma.cc/QY9C-77MS>].

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Archive for the ‘Eviction Mediation’ Category*, JUST CT. ADR, <http://blog.aboutsi.org/category/eviction-mediation/> [<https://perma.cc/S6CS-HT6D>] (last visited Jan. 14, 2022).

²¹ *See* Kanik, *supra* note 16.