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June 11, 2020

Dear Judge Marks,

As co-coalition leaders of Underoneroofny, we are writing this letter to you 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 are suffering and may not be able to sustain their small businesses without immediate assistance. We have been made aware of several groups requesting to extend Governor Cuomo’s Executive Order 202.28, to August 20 for all evictions in the State of New York. We urge you to reject that proposal. In fact, there has been precedent set already in New York City Housing Court that certain matters should move forward.

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 in the month of April was 25%, and that number increased to 38% in the month of May. Currently as of June 11, the percentage of tenants that have not paid their rent is \_\_\_\_%.

To ensure that 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 Executive Order 202.28:

* Those cases that were filed prior to March 7, 2020, should be calendared for courts dates commencing on June 22, 2020, 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, should be reserved by 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. These 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.
* 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.

Nonpayment matters

* For those matters, where a property owner has documentary evidence of an attempt(s) to reach the tenant to find out why a tenant has not paid the rent, and where a property owner has no personal knowledge that a tenant is “Covid financially affected”, or eligible for unemployment, defined as the situation where a tenant has not made any contact with the landlord since March 7, 2020 and/or the tenant has not asked for the security deposit to be applied to rent pursuant to Executive Order 202.28, we propose the following:
  + The matter be allowed to be filed by the landlord on June 22, per the plain language of the Executive Order 202.28.
  + That the court provide the tenant the opportunity to explain why rent has not been paid.
  + That the court insist that a means test be applied where the tenant would have the burden of showing that due to COVID 19, the tenant was unable to pay the rent agreed upon in the contractual lease between the parties.
    - We propose to define COVID financially affected as follows:
      * A tenant who can show by documentary evidence that the amount of lawful income (including unemployment benefits received during the period of March 7 to present) is insufficient to pay the amount of rent owed to the landlord due to loss of a job, furlough, reduced hours, nonessential worker whose business was unable to open under PAUSE Order; or
      * A tenant who can show by documentary evidence that they are eligible for unemployment and have in fact been approved to receive benefits due to the fact that they had tested positive for the virus, were the primary caretaker of a child whose school was closed.

Without the following adopted practices, the small business landlords in the State of New York will not be able to maintain continuity of operations. With the federal unemployment scheduled to expire in July, if these matters are not conferenced now, with an attempt to work through these issues with the tenants and help them to maintain their homes, this will be an even greater issue than we are facing right now. 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.

Respectfully,

Deborah Pusatere Jaime Michelle Cain, Esq.

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