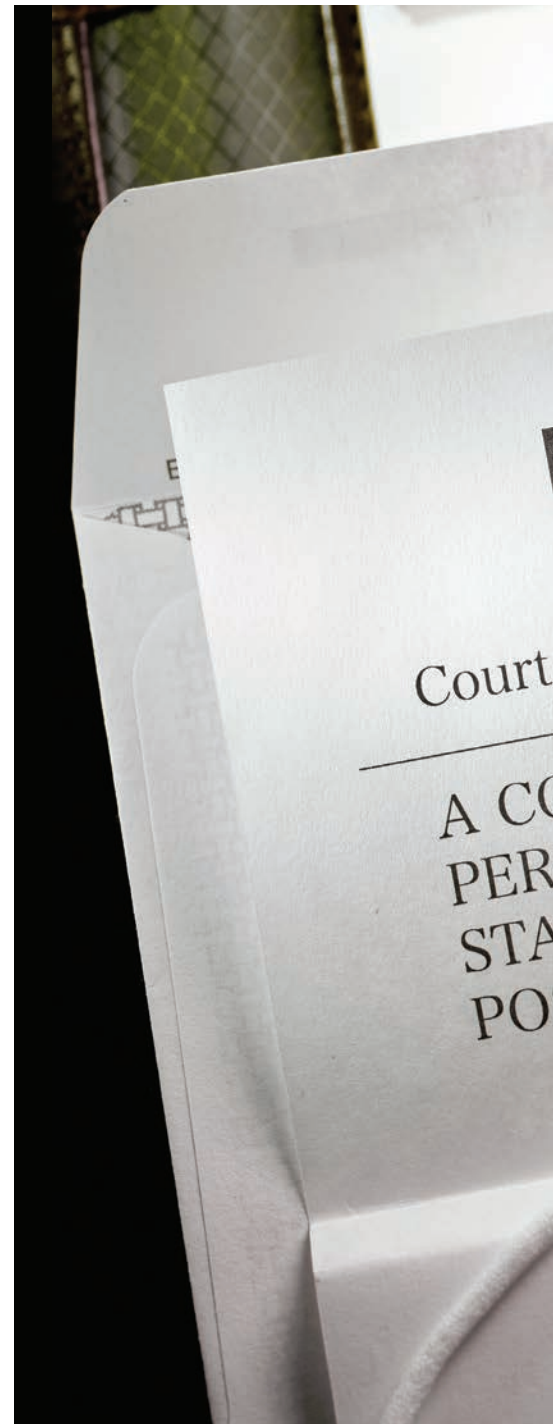


COVID-19 Interrupts Housing Law in Connecticut

BY KELSEY BANNON

THE CONNECTICUT SUPREME COURT describes the singularity of summary process law this way: “It is well established that the summary process statute provides landlords with an expedited eviction process that is in derogation of the common law action in ejectment.”¹ The legislature carved out a statutory scheme intended to provide landlords quick relief. The Court balances this *summary* process by requiring strict compliance with statute. In 1953, the Connecticut Supreme Court succinctly declared, “The purpose of the action is to enable the landlord upon [lease] termination to recover possession from the tenant. Because of the summary nature of this remedy, the statute granting it has been narrowly construed and strictly followed.”²



In March 2020, this statutory scheme was abruptly thrust into turmoil. Renters in Connecticut and throughout the country were at the mercy of COVID-19 and the resulting economic consequences. In August 2020, *The Washington Post* cited numerous employee surveys, including Nielsen data, the American Payroll Association, and others showing “somewhere between 50 percent and 78 percent of employees earn just enough money to pay their bills each month.”³ For all of those

Image credit: Bill Oxford/Stock/GettyImage Plus

NOTICE OF EVICTION

Case Number: 5579-897-12

Tenant In Possession: John Smith

COURT ORDER HAS BEEN ISSUED REQUIRING THAT ALL PERSONS BE REMOVED FROM THESE PREMISES. STATE STATUTES DIRECT THAT THIS FINAL NOTICE IS POSTED.

families, one missed paycheck likely means one missed rent payment. By August 2020, the US Department of Labor recorded “32 million Americans have filed for some sort of unemployment assistance.”⁴ Tenants desperately required relief, but the much-needed rent assistance *required time*.

Amendments to the eviction framework came from both state and federal government, by way of federal statute, the

Connecticut Governor’s Executive Orders, court procedure and ultimately, by the contracts that landlords and tenants signed with the Department of Housing when applying for rental assistance. Most changes to landlord/tenant law were temporary or tied to specific events. A small number of modifications remain.

Early protections from the state and federal government included near complete halts to eviction cases. Over time these

freezes were weakened, lifted, and in one case struck down by the United States Supreme Court. Ultimately, new eviction filings resumed with few limitations as the Connecticut Department of Housing rolled out its largest rental assistance program, UniteCT.

CHANGES TO EVICTION LAW WERE LARGELY TEMPORARY

On March 27, 2020, the president signed into law the Coronavirus Aid, Relief,

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and Economic Security Act (“the CARES Act”), prohibiting nonpayment of rent evictions for 120 days in certain “covered properties.”⁵ The CARES Act moratorium expired on or around July 25, 2020.

The Centers for Disease Control (CDC) advanced its own protection with the CDC moratorium, a sweeping change to housing law throughout the country. The CDC moratorium suspended nonpayment of rent evictions for eligible renters who were unable to make a full rent payment due to a substantial loss in income and who sought rental assistance. Ultimately, the United States Supreme Court ended this moratorium on August 26, 2021.

Connecticut’s governor, Ned Lamont, issued a broader prohibition on evictions on April 10, 2020. Executive Order 7X prohibited new eviction filings for any reason, except for “serious nuisance.”⁶ Executive Order 9E, Executive Order 10A, and Executive Order 12D expanded the permissible bases for new eviction filings in Connecticut, thereby weakening the protection. As of July 1, 2021, a landlord in Connecticut could resume filing new evictions for any statutory reason.

Additionally, the courts’ closures affected housing law for only a short time. On March 12, 2020, the Judicial Branch declared it would handle only “Priority One Business,” which were primarily criminal and restraining order matters. However, the court was quick to resume non-priority business and by April 15, 2020, the court allowed new filings for non-priority cases. Throughout May, June, July, and August of 2020, the court continued to increase the types of matters being heard remotely, prompting advocacy around the “digital divide” and raising awareness about the harm tenants faced being evicted by telephone.

Finally, the Department of Housing rolled out its rental assistance program, dubbed UniteCT. The Federal Emergency Rental Assistance Plan and the American Rescue Plan set aside more than 45 billion dollars for rental assistance for all 50 states. Connecticut estimates it received more than

410 million funds, with disbursements beginning around August 13, 2021.⁷ UniteCT closed for new applications on February 15, 2022, but approximately 25 percent of the funds are still being processed and distributed for applications that remain in the pipeline.⁸

TWO PRIMARY CHANGES TO SUMMARY PROCESS LAW IN CONNECTICUT REMAIN

When the 120-day federal eviction moratorium expired, the CARES Act provided for an additional, indefinite protection for tenants living in covered properties. A covered landlord must provide a tenant 30 days’ notice of eviction for non-payment of rent. This protection is still in place and directly supersedes Conn. Gen. Stat. §47a-23, which otherwise only entitles renters to a three-day notice period. Plaintiffs are required to certify under penalty of perjury that their properties are not covered by the CARES Act. If they are, the notice to quit alleging nonpayment of rent must provide 30 days to quit possession or else the court is deprived of subject matter jurisdiction.

The UniteCT program agreement continues to provide the most substantial protections for renters in addition to the robust financial benefit available to landlords. Executive Order 12D required all landlords filing nonpayment of rent evictions to apply for UniteCT rental assistance. Governor Lamont explains the context for this requirement,

[T]he CDC found that evictions substantially contribute to COVID-19 transmission, that state and national vaccination efforts have a slower rate of penetration among the populations most likely to experience eviction, and that allowing additional time for rent relief to reach renters and to further increase vaccination rates could decrease the numbers of likely evictions and avert the potential of COVID-19 resurgence among people who experience eviction, their communities, and other regions of the country affected by the resulting transmission.⁹

Notably, Executive Order 12D stopped short of requiring all landlords to continue to participate if the application stalled or the program needed additional information. However, once the application was approved, the landlord is eligible to receive a check for up to \$15,000 per apartment unit, a rental assistance award not previously seen. Following UniteCT approval, a forceful set of mandates apply, including: immediate withdrawal of any pending summary process action, waiver of all court costs and fees that accrued prior to the assistance, and a prohibition on new summary process actions based on nonpayment that accrued prior to the assistance. The landlord is paid and the tenant remains housed. This is the ultimate objective that prior moratoriums made possible.

Not all tenants achieved that goal; many did not benefit from the assistance. Some renters did not have access to the resources necessary to complete the application, perhaps due to language barriers or mental health disabilities. Many landlords refused to participate, choosing eviction over the financial award. UniteCT is now closed for new applications; however, the need for rental assistance is still great.

THE STATUS QUO HAS RETURNED FOR LANDLORDS, NOT FOR TENANTS

Nearly all changes to summary process law are now recent history. Landlords enjoy the full quiver of summary process strategies that existed prior to the pandemic. However, for tenants living on the edge of homelessness, the pandemic exacerbated long standing barriers to stable housing. Currently, those families’ economic outlooks look even gloomier. The number of families experiencing rent burden is growing as well as the rent burden itself.¹⁰ This leaves little room in family budgets to weather normal life events like flat tires, child-care interruptions, or even rising inflation.

The vacancy rate in Connecticut is 2.1 percent, one of the lowest in the country.¹¹ Renters are stuck in increasingly expensive apartments with too few options to

move to a more affordable unit. The long-term solution is well understood—build more affordable housing. The short-term response looks different.

As one would expect, two primary factors affect the outcome of an eviction case: (1) access to an attorney and (2) access to rental assistance. With the help of federal dollars, the state has funded a Right to Counsel Program (RTC) so as many tenants as possible can have access to an attorney. Now, part two is needed. Access to short-term rent assistance provides housing stability for the tenant and compensation for the landlord. The state has the infrastructure to distribute rental assistance. Connecticut landlords and tenants need state and federal funds to ensure reliable access to that assistance. ■

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she practiced fair housing law and represented clients facing housing discrimination in Western Massachusetts. Attorney Bannon earned her JD from the University of Connecticut School of Law in 2018 where she was the editor-in-chief of the Connecticut Public Interest Law Journal.

NOTES

1. *Fellows v. Martin*, 217 Conn. 57, 62 n.8, (1991).
2. *Jo-Mark Sand & Gravel Co. v. Pantanella*, 139 Conn. 598, 599-601 (1953).
3. Ilyce Glink and Samuel J. Tamkin, *A breakdown of what living paycheck to paycheck looks like*, Wash. Post, August 17, 2020, <https://www.washingtonpost.com/business/2020/08/17/breakdown-what-living-paycheck-to-paycheck-looks-like>.
4. *Id.*
5. This moratorium only protected tenants in certain properties, including those with mortgage loans sold by government sponsored enterprises like, Fannie Mae or Freddie Mac; tenants living in buildings otherwise financed by the federal government; tenants that had a federal “Section 8” voucher; or tenants of public housing authorities. 15 U.S.C. §9058 (2022).
6. CONN. GEN. STAT. §47a-15, defines serious nuisance as “(A) inflicting bodily harm upon another tenant or the landlord or threatening to inflict such harm with the present ability to effect the harm and under circumstances which would lead a reasonable person to believe that such threat will be carried out, (B) substantial and wilful destruction of part of the dwelling unit or premises, (C) conduct which presents an immediate and serious danger to the safety of other tenants or the landlord, or (D) using the premises or allowing the premises to be used for prostitution or the illegal sale of drugs or, in the case of a housing authority, using any area within fifteen hundred feet of any housing authority property in which the tenant resides for the illegal sale of drugs.”
7. *UniteCT Main Dashboard*, DEPARTMENT OF HOUSING, <https://app.powerbigov.us/view?r=eyJrJoiZDEwODU3YWQ1ZTRiY00YzE0LTkyMDItZDM0YTU4NTdjYWQ2IiwidCI6IjExOGI3Y2ZlLWWEzZGQ-tNDhiOS1hMDI2LTMxZmY2OWJiNm4Y-iJ9&pageName=ReportSection> (last visited September 27, 2022).
8. *Id.*
9. Governor Lamont, Exec. Order No. 12D, <https://portal.ct.gov/-/media/OF->

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Wellness

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lowed for our feeling, then what? When you face an unpleasant situation, what do you do? Do you focus on the unpleasant situation or finding a solution? If there isn't a solution, do you focus on the situation, the lack of solution, or do you shift to something else? When you hit a dead end, are you frustrated and hopeless? Or do you see your journey down this path as a learning opportunity and look to try another path? We are not in control of events, but we are in control of what we pay attention to, how we respond, and whether we continue forward or stop. We can create a world of excitement, curiosity, learning, opportunities, and hope or we can create one of fear, hardships, barriers, and despair. This is our choice, our power.

Victor Frankl famously noted: "When we are no longer able to change a situation, we are challenged to change ourselves." I hope that you join me and rise to the challenge, cultivate an IRAC mindset through continual practice, and create that better world for yourself! ■

NOTES

1. Satterfield, J. M., Monahan, J., & Seligman, M. E. P. (1997). Law school performance predicted by explanatory style. *Behavioral Sciences and the Law*, 15, 95-105.

DE&I

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Diversity, Equity, and Inclusion Committee co-chair Salihah R. Denman provided closing remarks for the Summit, thanking those who attended, stating, "With your help, our diversity, equity, and inclusion efforts will move forward." She pointed to the CBA Future of the Legal Profession Scholars Program as one of many important projects being undertaken to increase diversity in the legal profession.

Thank you to the presenters and Diversity, Equity, & Inclusion Summit Committee members for organizing an interactive and engaging event and to all our sponsors for making the event possible. ■

Top Lessons Learned

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addressed above, including: whether vaccines can and should be mandated; whether COVID-19, "long COVID," and complications of pre-existing conditions which were caused by COVID-19 qualify as a disability under Americans with Disabilities Act and corresponding state law; whether work-from-home accommodations will be more often considered a "reasonable accommodation" by the courts; whether certain expenses incurred by employees who work from home, such as cost of equipment and household utilities, must be reimbursed by employers; what other work-related activities constitute on-the-clock work versus off-the-clock work, such as requiring testing or checking emails from home; and whether COVID-19-related injuries are compensable claims under the Worker's Compensation Act. What remains clear, however, is that employers and employees must continue to have open conversations about these matters. An employer's focus on employees' needs, desires, well-being, and engagement have substantial impacts on employees. Despite the pandemic, it is important that we, as humans in a workforce, are professional, appreciate others' efforts, and recognize the hard work of the members on our team. ■

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Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-12D.pdf.

10. In April 2022, the Washington Post reported that rents in Hartford County increased 10.1% since 2019. By comparison, of the counties that make up New York City, the largest increase was in Brooklyn at a 2.8% increase. Abha Bhattarai, Chris Alcantara and Andrew Van Dam, *Rents are rising everywhere. See how much prices are up in your area*, WASH. POST, April 21, 2022, www.washingtonpost.com/business/interactive/2022/rising-rent-prices.

In 1960, 11.9 percent of Connecticut renters paid over half of their income on housing costs. That number steadily increased over time. 58 years later, in 2018, 21% of renters paid over half of their income on housing costs. Over the next two years, that number exploded to 26.9% of renters paying over half of their income towards housing costs in 2020. Connecticut saw a nine increase over 58 years, versus a six percentage increase in 2 years. One might imagine what the 2022 data will show. PARTNERSHIP FOR STRONG COMMUNITIES, HOUSING IN CT 2022, (Jan. 2022), <https://www.pschoosing.org/sites/default/files/Housing%20in%20CT%20finale%202022.pdf>.

11. Camila Vallejo, *In Connecticut, rental vacancy rates are the lowest in the U.S., leaving renters with few options*, CONN. PUBLIC, August 26, 2022, www.ctpublic.org/news/2022-08-26/in-connecticut-rental-vacancy-rates-are-the-lowest-in-the-u-s-leaving-renters-with-few-options

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Young Lawyers

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erly understand the intricacies of a case or close a complex transaction. We do not shy away from the tough conversations in those situations. It's time we start putting in the hard work and make that same effort for each other. Our profession will be better for it. ■

President's Message

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the old short calendar system. Mentors of old taught us how to be lawyers and the long-gone short calendar motion practice was our playground to earn our litigation stripes. We cannot fail our younger lawyers. Together we can create an efficient calendar that helps to lay the foundation for successful litigation careers. ■

NOTES

1. www.americanbar.org/groups/litigation/committees/commercial-business/practice/2018/how-judiciary-is-helping-younger-lawyers-close-the-experience-gap
2. *Id.*
3. *Id.*