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MEMORANDUM

Date: July 28, 2020

To: Chicago Residential Landlords

Re: COVID-19 Eviction Protection Ordinance - UPDATE

Last month, the Chicago City Council passed a “COVID-19 Eviction Protection Ordinance” that provides additional protections to Chicago residential tenants beyond those already granted by the federal CARES Act and the Executive Orders of Governor Pritzker. Below is a summary of some of the relevant portions of the Ordinance applicable to Chicago landlords. **Additionally, the City of Chicago has now released the “Notice of COVID-19 Impact” document that must now be attached to every notice for nonpayment of rent served on a residential tenant during the new moratorium period.**

Moratorium

The Ordinance establishes a “moratorium” that prevents Chicago landlords from issuing any notice for nonpayment of rent to a residential tenant, unless the notice also includes a “Notice of COVID-19 Impact.” Pursuant to Section 2 of the Ordinance, the moratorium will remain in effect for an additional sixty days beyond the expiration of the Pritzker Executive Order regarding residential evictions and the Cook County Circuit Court’s administrative order regarding COVID-19.

As of the date of this memorandum, the Pritzker Executive Order is set to expire on August 22, 2020. The Cook County Circuit Court’s administrative order 2020-02 regarding residential evictions is set to expire on July 31, 2020, but it is subject to further extensions, as well. Accordingly, the moratorium under this Ordinance will be in effect at least through October 21, 2020.

Notices for Nonpayment of Rent – Additional “COVID-19 Impact” Notice

The Ordinance requires residential landlords to include an additional notice with any notice served on a tenant for nonpayment of rent. Pursuant to Section 3(a) of the Ordinance, every landlord must now inform the tenant that the tenant has five days to provide the landlord with a “Tenant Notice of COVID-19 Impact.” **A copy of the current Notice of COVID-19 Impact issued by the City of**

Chicago is attached to this memorandum and must be attached to every notice to a tenant for nonpayment of rent during the moratorium imposed by this ordinance. The City’s Notice of COVID-19 Impact form is subject to change and is publicly available on the Department of Housing’s website, at:

<https://www.chicago.gov/city/en/depts/doh/provdrs/landlords/svcs/covid-19-protection-ordinance.html>

Additionally, due to Section 4024(c)(1) of the federal CARES Act, any notices for nonpayment of rent relating to dwellings located in properties covered by the CARES Act will have to provide the tenant with a period of thirty days, rather than five days.

Additional 7-Day “Negotiation” Period

If a tenant provides the landlord with a “Notice of COVID-19 Impact,” during or before the five-day period after receiving the landlord’s notice, then the landlord is required to wait an additional seven days after expiration of the period in the notice of termination. A “Notice of COVID-19 Impact” means any digital, electronic, or other written communication from the tenant that reasonably informs the landlord that the tenant has experienced a “loss, reduction or delay in receipt of income, or loss or reduction of employment attributable in whole or in part due to COVID-19.”

Pursuant to Section 3(b) of the Ordinance, the landlord is required to make reasonable attempts to contact and engage in good-faith negotiations with the tenant to reach a mutually satisfactory agreement for repayment of unpaid rent during the negotiation period. Landlords should document all of their efforts to comply with this requirement. A landlord may not proceed with an eviction action until after the expiration of the seven-day negotiation period.

Restrictions on Repayment Agreement Terms / Negotiations with Tenant

Pursuant to Section 3(b) of the Ordinance, a repayment plan may amortize each missed rent payment over not less than 60 days. Pursuant to Section 3(f) of the Ordinance, no repayment plan may include an interest rate on unpaid rent that exceeds the rate of interest on security deposits (currently 0.01% *per annum*). No repayment plan may include any late fee, charge, cost, or other penalty on unpaid monthly rent in excess of \$10.00 per month on the first \$500.00 in unpaid monthly rent, plus five percent (5%) per month for any amount in excess of \$500.00 in unpaid monthly rent. Any agreement with the tenant must be written “in plain language” and shall clearly describe its material terms, including in the case of a repayment plan, the applicable payment amounts, interest rates, and payment due dates. A landlord may not reject a repayment plan due to the tenant relying on a third-party funding source, such as public rental assistance funds.

Non-Disclosure Agreements (NDA’s) & Certain Waivers Are Expressly Prohibited

Pursuant to Section 3(e) of the Ordinance, no landlord shall require any tenant to execute a non-disclosure agreement as part of any agreement resolving or otherwise pertaining to unpaid rent. Landlords may not require a tenant to execute an agreement waiving any other right related to the condition or habitability of the premises.

Restrictions on Eviction Actions

In any eviction action filed after a seven-day negotiation period, a landlord must plead that it made reasonable attempts to contact the tenant and engage in good-faith negotiations with the tenant as required by the ordinance. Proof of such negotiations may be made by affidavits, written notices, or other documentation. If a landlord commenced an eviction action prior to the effective date of the ordinance, it does not have to follow such pleading requirements, but it must still demonstrate that the landlord made reasonable attempts to contact and engage in good faith negotiations with the tenant.

Administrative Rules

Pursuant to Section 5 of the Ordinance, the Commissioner of the Department of Housing is authorized to promulgate rules to assist in the implementation of the Ordinance and to develop standards, procedures, and forms. We are unaware of any such rules at this time.

Effective Date / Retroactivity

Pursuant to Section 7 of the Ordinance, it is effective immediately. Additionally, Section 7 states that the Ordinance is retroactive to March 21, 2020. It is our opinion that this “retroactivity” provision may constitute an impermissible *ex post facto* law, especially as to the validity of agreements already executed by landlords and tenants prior to the passage of this Ordinance. We will monitor any litigation challenging the validity of the Ordinance on these or other grounds.

Please feel free to contact us if you have any questions regarding this ordinance.

Sincerely,

Christopher R. Johnson

Cary G. Schiff & Associates