



COVID-19 Evictions:

What is the Tenant Holding Over Loophole?

What Does “Tenant Holding Over” Mean? There are multiple legal means by which a landlord can evict a tenant. The most common is by filing a failure to pay rent (FTPR) suit. Another kind of lawsuit is called tenant holding over (THO), in which the lease has expired and not been renewed. In Maryland law, it is legal – and quite common – for tenants to remain in rental units on a month-to-month basis without a lease after the term of the last lease expires. The landlord may then terminate the month-to-month tenancy with a 30-day or 60-day “Notice to Vacate.” Because the current State and federal moratoria against evictions only apply to FTPR cases, landlords have dramatically increased their use of THO lawsuits in order to evict tenants, even when the tenants have a valid defense related to loss of income due to the pandemic.

Don’t the State and federal eviction moratoria protect against evictions? Current eviction protections, both at the state and federal levels, are limited, subject to change, and proven to be insufficient to keep Marylanders stable and housed. Governor Hogan’s Executive Order is a trial defense, not a ban on evictions. If a renter proves “substantial loss of income” related to COVID-19 at trial, then the judge delays eviction until after the State of Emergency. The CDC Order is similar in process but delays eviction until March 31, 2021. Neither order protects against lease non-renewals.

What is the evidence that landlords are using THO suits as a way around the moratoria? The latest data of the Maryland Judiciary show that, in August to November 2020, the number of THO claims filed in Maryland increased by 84% year over year (with 100+% increases in September and October, prior to the courts’ partial closure in November). Because there are executive orders that apply to FTPR cases, landlords are using THO actions instead.

Does emergency rental assistance help prevent evictions in these cases? Providers of emergency rental assistance cannot require landlords to make a “no eviction” guarantee. Some landlords will take the federal rent relief and continue to pursue evicting tenants whose incomes have been dramatically decreased because of the pandemic. So while landlords are made financially whole, tenants still face housing instability and eviction.

What can be done to solve this problem?

Pass HB 1312/SB 910, the COVID-19 Eviction and Housing Relief Act of 2021. The legislation requires landlords to use rental assistance and repayment plans before they can resort to the court process. These bills also close the loophole that allows landlords to evict tenants during the emergency based on lease expiration or lease non-renewal.



The Tenant Holding Over Loophole hurts renters, wastes rent relief

Melinda is a nurse who lost work due to multiple coronavirus exposures. When she fell behind on rent in July 2020, she communicated frequently with her "small landlord" who would not accept partial payments. In a November Failure to Pay Rent (FTPR) eviction case, Melinda had an attorney and raised a defense under Gov. Hogan's executive order, showing substantial loss of income due to the pandemic. This resulted effectively in a stay of eviction until after the state of emergency. In the meantime, Melinda applied for the newly opened Emergency Rental Assistance Program (ERAP), but her landlord terminated their month-to-month lease with a Notice to Vacate and filed a THO action. The landlord refused to rescind the Notice given the pending ERAP application and refused to allow Melinda to stay in the home for 6 additional months after ERAP's payment -- unless she agreed to a \$200/mo. rent increase and to make 2 immediate full rent payments. Neither Gov. Hogan's executive order nor the CDC Order could help Melinda, who is moving out now even though the landlord received \$6,000 in rent relief.

Victor is a renter and the father of three children. He had been renting on a one-year lease starting in 2019. Then his partner left him, and he lost his job with a ride-sharing service shortly after the pandemic began. Victor quickly fell behind on the rent. His landlord filed a FTPR action against him, but Victor had a defense under the CDC Order and the Governor's Order. In response, the landlord sent Victor a 60-day Notice to Vacate, and when Victor was unable to find alternative housing, the landlord filed a THO action. At the first hearing in early November 2020, Victor was able to secure a continuance with the aid of an attorney, who then also helped to expedite Victor's application for rental assistance. The local ERAP awarded \$7,400 in rent relief directly to the landlord. However, the landlord refused to drop the THO case, which is now pending a March trial date. Because of the THO loophole, the rental assistance has become a bailout to the landlord without actually helping Victor obtain stable housing. He has no defense to eviction during the ongoing pandemic.

Joyce was a nursing assistant that lost her job during the pandemic because of her high-risk status. Once she notified her landlord of this and that she would be applying for rental assistance, her landlord began contacting her night and day with repeated voicemails and text messages telling her to "just leave my property." The court granted a judgment in favor of Joyce in a FTPR eviction case filed by the landlord. Yet, the landlord has continued every effort to evict Joyce, refusing to participate in the local ERAP and, instead, sending Joyce a Notice to Vacate. She now faces a THO eviction action. Because Maryland does not require the landlord to use rent relief money in lieu of eviction, and because executive orders do not apply to THO actions, Joyce has little recourse to stop the THO eviction.

John is a father of 2 renting at Prince George's County apartment complex. He lost income during the pandemic and struggled to access his full unemployment benefits. As he fell behind on rent, his landlord refused to make critical repairs to the unit and would not accept a repayment plan. John received a notice that his lease will not be renewed in April. He is terrified that he is going to be evicted through a THO action because there is no defense under existing executive orders. John and his children have nowhere to go.