

Senate Bill 278 and the CDC Moratorium Extension

Substantial changes in landlord-tenant law are in effect under the mandates of SB 278, signed into law on June 24, 2021. These changes are temporary but dramatically impact your rights to terminate for nonpayment through February 28, 2022. To further complicate matters, the CDC has extended their eviction moratorium through July 31, 2021.

Effective July 1, 2021, [SB 278](#) requires that when serving a notice for nonpayment, the landlord must include a notice about a tenant's rights to be protected from eviction. This [notice](#) must also be included with any court summons for eviction for nonpayment. "Nonpayment" means the nonpayment of a payment that is due to a landlord, including a payment of rent, late charges, utility or service charges or any other charge or fee as described in the rental agreement or ORS 90.140, 90.302, 90.315, 90.392, 90.394, 90.560 to 90.584 or 90.630.

The required notice can be found at the [ORHA website](#), and the ORHA forms store site, and has been added to nonpayment forms on the forms store, including [10-Day Notice to Pay or Vacate for Nonpayment of Rent – ORHA form 4A](#), [13-Day Notice to Pay or Vacate for Nonpayment of Rent, ORHA form #44A](#), and [Notice of Termination with Cause – ORHA form #38](#) (just in case you're using a for-cause notice to require payment of other charges).

If, after serving a notice of termination for nonpayment, the Tenant provides the Landlord with documentation that they have applied for rent assistance, a Landlord may not deliver a termination notice for nonpayment or initiate or continue an action for possession based on the notice for nonpayment for 60 days. "Documentation" includes electronic mail, a screenshot or other written or electronic documentation from a rent assistance provider verifying the submission of an application for rental assistance.

If an eviction action has been filed and the Tenant provides the required documentation at or before the first appearance in court, the Tenant will be entitled to a 60-day stay of the action, while the rent assistance application is pending.

If, after the 60-day waiting period, the nonpayment balance remains unpaid, The Housing and Community Services Department shall provide a grant to a third party to make distributions to compensate landlords who, under section 2 of this 2021 Act, have delayed termination notices or eviction proceedings. A landlord may apply for compensation for nonpayment that accrued during the delay if the landlord demonstrates that:

- (1) The tenant's application for rental assistance was denied; or
- (2) Sixty days have passed since the tenant provided documentation of application for rental assistance without the landlord receiving rental assistance.

Courts will dismiss eviction actions for nonpayment if the court determines that:

- (A) The landlord failed to attach the notice as required.

- (B) The tenant's nonpayment was substantially caused by the landlord's failure to reasonably participate with a rental assistance program.
- (C) The landlord receives rental assistance covering the rent owed under the notice.
- (D) The tenant provided the landlord with documentation of application for rental assistance as described in subsection (2) of this section before the claim was filed.

If a Landlord violates this section:

- (a) A tenant may obtain injunctive relief to recover possession or address any other violation;
- (b) The tenant has a defense to an action for possession by the landlord.

Notwithstanding ORS 105.137 (4), if a claim for possession is dismissed under this section, the tenant is not entitled to prevailing party fees, costs, or attorney fees if the landlord:

- (a) Delivered to the tenant all notices required under subsection (3) of this section as required;
- (b) Did not know, and did not have reasonable cause to know, at the time of commencing the action that the tenant had provided documentation of application for rental assistance under subsection (2) of this section; and
- (c) Promptly dismissed the action upon becoming aware of the documentation of application for rental assistance.

CDC Moratorium Extension

The [CDC moratorium](#) prohibits eviction of "covered persons," and applies in states whose rules are less restrictive than the CDC rules. Since the implementation of the CDC rules months ago, Oregon's rules have been considered by many to be more restrictive; however, with this one-month extension, and the new rules imposed by SB 278, we are unsure if this is still the case.

This CDC moratorium prohibits Landlords from taking action against Tenants based on nonpayment if they have provided their Landlord with a [declaration](#) asserting various conditions that prevent them from paying. You can read the CDC moratorium rules and find the Tenant Declaration at: <https://www.cdc.gov/coronavirus/2019-ncov/covid-eviction-declaration.html>

The Takeaway

Housing providers are strongly encouraged to seek legal advice prior to serving any notice of termination for nonpayment as we cannot be sure how the two laws intersect, or which one a court may rule takes precedence over the other. If the CDC moratorium is not extended beyond July 31, 2021, housing providers will only be required to comply with the mandates of SB 278; however, it is important to note that the protections offered to renters by the bill remain in effect through February 28, 2022.