

## 400 CMR 5.00: COVID-19 Emergency Regulations

### Preamble

Chapter 65 of the Acts of 2020, *An Act providing for a moratorium on evictions and foreclosures during the COVID-19 Emergency*, requires the Executive Office of Housing and Economic Development (EOHED) to promulgate emergency regulations as necessary to implement section 3 of the Act, which addresses non-essential evictions, and section 4 of the Act, which addresses a landlord's rights and responsibilities with respect to an advance payment of rent for the last month of tenancy. The Act also requires EOHED to (1) develop forms and recommendations for the provision of notice and documentation to a landlord that a non-payment of rent was due to a financial impact from COVID-19, and (2) promulgate a standard form for the notification of tenants under subsection (a) of section 4 of the Act.

#### 5.01 Purpose and Scope.

The purpose of these emergency regulations is to comply with the mandates in sections 3(g) and 4(c) of the Act, to ensure that certain provisions in the Act are implemented consistently, and to otherwise advance the stated purposes of the Act. These regulations shall apply to all tenancies under a lease, sublease, written tenancy agreement or a tenancy at will.

5.02 Definitions. All words and phrases defined in the Act shall have the meanings ascribed to them in the Act, and the following additional words and phrases shall have the meanings set forth below:

“Act” means chapter 65 of the Acts of 2020.

“Advance rent payment” means money paid by a tenant and received by landlord to cover rent for the last month of tenancy pursuant to section 15B of chapter 186 of the General Laws.

“Approved form of notice of non-payment of rent” means, for a residential tenancy, the form of notice referenced in section 5.04(2), and for a tenant in a small business premises unit, the form of notice referenced in section 5.04(3).

“EOHED website” means the following URL: <https://www.mass.gov/lists/moratorium-on-evictions-and-foreclosures-forms-and-other-resources>

“Financial impact from COVID-19” means a loss of income or additional expense that (1) is caused directly or indirectly by the COVID-19 pandemic or by the local, state or federal response to the pandemic, and (2) is of a magnitude that makes it impossible or impractical for a tenant to make a payment of rent on the date such payment is due.

“Landlord” or “Lessor” means the lessor under a lease, a sublease, or tenancy at will for a residential dwelling unit or small business premises unit, and for the purposes of any provision in these regulations related to the delivery of a notice to a tenant, or receipt of a notice from a tenant, shall include any management agent or other third party acting as agent for the landlord.

“Leased premises” means either a residential dwelling unit or a small business premises unit, as the context shall require.

“Residential dwelling unit” means a house or building, or portion thereof, occupied as a home or residence of one or more persons.

“Small business” means a business that qualifies as a small business under the size standards established by the federal Small Business Administration at 13 C.F.R. Part 12; provided, that neither the business nor any party that controls, is controlled by or is in common control with the business: (i) operates multi-state; (ii) operates multi-nationally; (iii) is publicly traded; or (iv) has 150 or more full-time equivalent employees.

“Tenant” means a tenant in possession of a residential dwelling unit or small business premises unit under a lease, sublease, or tenancy at will.

### 5.03 Obligation to Pay Rent; Notice of Rent Arrearage.

(1) Throughout the period during which these emergency regulations are in effect, every tenant shall remain obligated to pay rent on the date due if and to the extent the tenant has the means to do so.

(2) In order to minimize the risk that a tenant will face eviction for an accumulated non-payment of rent once the Act expires, and to promote the prompt resolution of such situations without resorting to the court system, landlords should provide tenants of residential dwelling units a written notice of each missed rent payment. If a landlord delivers such a notice, the notice must include the following statements, prominently displayed on the first page:

“THIS IS NOT A NOTICE TO QUIT. YOU ARE NOT BEING EVICTED, AND YOU DO NOT HAVE TO LEAVE YOUR HOME. An emergency law temporarily protects tenants from eviction during the COVID-19 emergency. The purpose of this notice is to make sure you understand the amount of rent you owe to your landlord.”

“For information about resources that may help you pay your rent, you can contact your regional Housing Consumer Education Center. For a list of agencies, see <https://www.masshousinginfo.org/regional-agencies>. Additional information about resources for tenants is available at <https://www.mhp.net/news/2020/resources-for-tenants-during-covid-19-pandemic>.”

“You will not be subject to late fees or a negative report to a credit bureau if you certify to your landlord in writing within 30 days from the missed payment that your non-payment of rent is due to a financial impact from COVID-19. If possible, you should use the approved form at: <https://www.mass.gov/lists/moratorium-on-evictions-and-foreclosures-forms-and-other-resources>. If you cannot access the form on this website, you can ask your landlord to provide the form to you. You may also send a letter or email so long as it contains a detailed explanation of your household loss in income or increase in expenses due to COVID-19.”

The notice may also include other information that will promote the prompt and non-judicial resolution of such matters, such as the total balance due, the months remaining and the total of lease payments expected to be made on a lease for a term of years, information on how to contact the landlord to work out a revised payment arrangement, and a reminder that after the state of emergency ends the tenant may face eviction if rent remains unpaid.

(3) If a landlord knows that the tenant is not proficient in English, the landlord should use reasonable efforts to deliver the notice in a language that the tenant understands. Landlords are encouraged to include with the notice a statement that the notice is important and should be translated, a form of which is available on the EOHEd website.

#### 5.04 Late Fees and Credit Reporting; Notice of Financial Hardship.

(1) Under subsection (e) of section 3 of the Act, a landlord shall not impose a late fee for non-payment of rent for a residential dwelling unit or a small business premises unit or furnish rental payment data to a consumer reporting agency, as defined in section 50 of chapter 93 of the General Laws, related to the non-payment of rent if, not later than 30 days after the missed rent payment, the tenant provides notice and documentation to the landlord that the non-payment of rent was due to a financial impact from COVID-19.

(2) A residential tenant may provide notice to the landlord that the non-payment of rent was due to a financial impact from COVID-19 by completing, signing and delivering to the landlord the form entitled “FORM OF NOTICE AND CERTIFICATION FROM RESIDENTIAL TENANT - FINANCIAL HARDSHIP RELATED TO COVID-19”, as posted on the EOHEd website. If a tenant requests a copy of this form from the landlord, the landlord shall provide a copy within 5 days. A tenant may also deliver an alternative form of written notice as provided in section 5.04(5).

(3) A small business tenant may provide notice to the landlord that the non-payment of rent was due to a financial impact from COVID-19 by completing, signing and delivering to the landlord the form entitled “FORM OF NOTICE AND CERTIFICATION FROM SMALL BUSINESS TENANT - FINANCIAL HARDSHIP RELATED TO COVID-19”, as posted on the EOHEd website.

(4) A tenant who misses multiple rent payments due to a financial impact from COVID-19 is required to provide a separate notice to the landlord for each such missed payment. Notices shall be effective if sent within 30 days of the due date of the missed rent payment. Notices shall be sent to the landlord in accordance with the notice provisions of the lease or in accordance with the parties’ prior customs and practice. If the lease does not contain any notice provisions, or if a tenancy is not subject to a written lease, or if the landlord has communicated with the tenant via email, then notice shall be sent either to the same address as the landlord has designated for the payment of rent, or, if applicable, to the most current email address used by the landlord to communicate with the tenant. A notice from a residential tenant shall also be deemed effective if sent to the landlord address set forth in a notice pursuant to 105 CMR 410.481.

(5) The use of an alternative written form of notice by a residential tenant shall be deemed effective and timely if such alternative written notice includes a statement that the tenant has experienced a financial impact from COVID-19, and states in reasonable detail the cause of such financial impact. Such alternative form of notice shall be deemed to include the certification provided in the approved form of notice of non-payment of rent.

(6) If a court shall determine that any notice provided by a tenant under section 5.04(2), 5.04(3) or 5.04(5) is fraudulent or contains a material misrepresentation by the tenant, then the landlord may impose late fees pursuant to the lease and may furnish rental payment data to a consumer reporting agency.

#### 5.05 Landlord Utilization of an Advance Payment of Rent.

(1) A landlord who received rent in advance for the last month of tenancy pursuant to said section 15B, may access and utilize the advance rent payment. A landlord may utilize the advance rent payment to pay for expenses incurred by the landlord that are related to the residential dwelling unit or small business premises unit leased to the tenant who made the advance rent payment. Such expenses may include, but shall not be limited to, mortgage payments, utility costs, maintenance costs and other operating expenses incurred by the landlord for the leased premises or for the property in which the leased premises is located. The landlord shall not use the advance rent payment to pay expenses that are not related to the tenant's premises, and the landlord shall not deduct from said last month's rent in advance any amount to account for the tenant's nonpayment of rent, unless the landlord and tenant shall agree in writing that some or all of the advance rent payment may be applied to the missed rent payment.

(2) If a landlord shall access and utilize the advance rent payment, the landlord shall notify the tenant in writing that: (a) the landlord utilized such funds before the last month of the tenancy; (b) unless the tenant otherwise agrees in writing, the landlord remains obligated to apply said rent in advance to its intended application as rent for the last month of tenancy; and (c) the tenant is entitled to the same amount of interest from the landlord under said section 15B of said chapter 186 that would have accrued had the landlord not utilized such funds before the last month of the tenancy. The form of such notice shall be in the form entitled "NOTICE TO TENANT - USE OF ADVANCE RENT PAYMENT" as posted on the EOHED website. Such notice must be sent by the landlord not more than five business days after the date on which the landlord used the advance rent payment for the purposes set forth in subsection 1.

(3) Notices required by section 5.05(2) shall be sent to the tenant in accordance with the notice provisions of the lease or in accordance with the parties' prior customs and practice. If the lease does not contain any notice provisions, or if a tenancy is not subject to a written lease, then notice shall be provided to the address of the leased premises, or to the current email address used by the tenant to communicate with the landlord.

(4) The interest due to the tenant pursuant to said section 15B of said chapter 186 shall be calculated as though the landlord had not utilized such funds before the last month of the tenancy. Where the landlord is unable to establish with certainty the rate of interest that would have been paid on the advance rate payment, the rate of interest shall be deemed to be the greater

of (a) the rate of interest received from the bank where the deposit has been held for the month immediately preceding the landlord's utilization of such funds, or (b) the rate of interest received by the landlord during the last month of the tenancy from the bank where the landlord maintains the tenant's security deposit

5.06 Additional Guidance; Expiration

(1) EOHED may from time to time issue additional guidance as necessary or helpful in the application, implementation, or interpretation of the Act or of this emergency regulation.

(2) Pursuant to the Act, this emergency regulation shall expire 120 days after the effective date of the Act, or 45 days after the state of emergency has been lifted, whichever is sooner, unless further extended by the secretary of EOHED.