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Answers to post-Hurricane Sandy landlord questions

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Hurricane Sandy hit the N.Y. area at the end of Oct. 2012. As soon as the dust settled in early Nov., two pervasive questions were posed by landlords. First: "Will my tenants have to pay rent if the premises were compromised as a result of the hurricane?," and Second: "How long will it be, before we can proceed with cases commenced and pending prior to Sandy?"

With regard to the first question, the current state of the law for both regulated and unregulated apartments holds the landlord liable for continuing to maintain essential services. The landlord must ensure that the premises are habitable, and that there are no conditions detrimental to the tenant's health or safety. This is commonly known as the implied "warranty of habitability" that is contained in every residential apartment tenancy in N.Y. When the services are diminished the tenant may be entitled to an abatement of rent for the period during which the services were diminished. The fact that the landlord himself is "not at fault" is not necessarily a defense to this implied warranty of habitability. The amount of rent to be paid during any portion of Nov. 2012 and forward will depend on the level of the loss of services.

Clearly, if the tenants are "completely unable" to live in the apartment as a result of the hurricane devastation, the answer is simple-the rent would be 100% abated. On the other hand, if the tenants are still able to reside at the premises, but have lost only some services, then different percentage abatements may apply, depending on the level of service loss.

We may find that the N.Y.C. housing courts will begin using as a basis for deciding Hurricane Sandy cases, a past case decided a decade ago, right after 9/11, as well as those cases relating to flood damage due to weather conditions. The post 9/11 case held the landlord liable for the reduction in services, even though he was not responsible for causing the service interruption. The court found that the implied warranty of habitability applied to circumstances out of the landlord's control, including acts of third parties and natural disasters.

As each circumstance is fact specific, N.Y.C. housing courts generally look at the condition, duration, and what the landlord did to remedy the situation. Of course, if access is not granted by the tenant and access is required, the landlord's ability to make any repair is compromised, thereby limiting the amount of any rent reduction to the tenant.

With regard to the second question, the hurricane affected all landlords throughout N.Y.C. with pending litigation, even those unaffected physically by the storm. The courts were at a basic standstill, due to staff unable to get to work and litigants unable to get to court. Clerical work stalled as a result and no defaults were permitted, causing massive adjournments of scheduled cases into Dec. The city further halted all evictions for almost one month, leaving two weeks of permissible evictions before the mandatory holiday moratorium. This hardship was resoundingly lamented by landlords, as the financial burden due to the downturn in rent collection tightened the normal financial strain of heating season.

As the holiday season has passed, the courts and scheduled evictions are back on track. However, landlords must be aware that the civil court has issued a directive requiring a special affidavit for all default applications where the tenant failed to answer in Sandy zip code affected areas. The affidavit requires a statement that either all essential services remained operational or that all essential services were restored after interruption, and the tenant is not deceased or hospitalized. This affidavit must accompany the default judgment and warrant application, otherwise it will be rejected and the case delayed yet another month awaiting the resubmission of the proper paperwork.

Michele Slochowsky Hering is a partner at Slochowsky & Slochowsky LLP - LandlordsNY.com, Brooklyn, N.Y.

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