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Court action unlikely following eviction hold - by Michael Romer and Pierre Debbas

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Despite residential tenant evictions having been put on hold until August, don't expect to see a mad rush to housing court come the end of summer.

Changes to rent regulation legislation in 2019 led to the burden of finding a new tenant be put on the landlord. Therefore, while a landlord does have the right to go to court, this can prove timely, costly, and amount to little net value gained.

If a case did go to court, landlords would need to prove that a good faith effort was made with a tenant to work something out such as reduced rent, partial payments, some forgiveness at the end of the day, or month to month leases.

The following are landlord and tenant actions that are more likely to be seen across the residential real estate market moving forward.

Proof of hardship

While the pandemic has greatly impacted the lives of countless, many are trying to take advantage of this by receiving rent discounts or simply not paying. A landlord is within their rights to request proof of hardship from a tenant requesting any sort of lease negotiation. It is in the best interest of tenants who have been hard hit by the virus' impacts to act in good faith and try to negotiate some payment with their landlord. A good faith effort also increases the odds the landlord will be willing to waive some payment. Honesty, transparency, and flexibility will ensure a landlord is willing to give the help they can when truly needed.

New requirements to secure an apartment

Part of the rent regulation changes in 2019 included landlords only being entitled to one-month rent and one-month security for securing an apartment. With defaults becoming more common, landlords may try to shelter the blow by requiring tenant insurance moving forward. This generally amounts to the cost of one month's rent.

The negotiator not in the room

A lot of negotiations will come down to that between the landlord and the bank. Debt will have to be restructured if landlords have a chance at meeting their obligations. We tend to forget a number of landlords throughout the city are not institutional and rely on cash to pay their costs as they go, so when a tenant gets behind, it can cause a significant ripple effect for their own debt payments.

Putting it in writing

The phrase "Force Majeure" has been raised a good bit in these past few months, but it is unlikely we will see new contract language stating this or specifically relating to the virus. Additionally, with the new rental regulations, there is not much a landlord could put into the contract to protect themselves aside from requiring the aforementioned tenant insurance.

What we will see is provisions relating to move ins, such as if there is a delay in when someone can take control of a property due to regulations that could be COVID related.

The big rumor

The rumblings around town talk about a mass exodus from New York City. It's nonsense. Residential prices and demand will come down a bit for 2020 but don't count New York down for the count. It's one of the most resilient cities in the world and always bounces back. Those that decide to leave the city will do so out of logic, not fear. They are the ones that have been thinking about leaving and now may have the flexibility with remote work. We saw a return after 9/11 and we will after this.

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