IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA
SECOND JUDICIAL DISTRICT

IN RE: TEMPORARY PROCEDURES REGARDING CERTAIN RESIDENTIAL LANDLORD TENANT ACTIONS	:	No. A.D. 2-2021
	:	
	:	Supreme Court Docket No. 44 MM 2020

CLERK OF COURTS
2021 JAN -5 AM 9: 2
LANCASTER COUNTY, PA

ADMINISTRATIVE ORDER

AND NOW, this 5th day of January, 2021, upon consideration of the Pennsylvania Supreme Court's May 27, 2020, Order specifically empowering President Judges to continue to exercise emergency powers under Rule 1952(B)(2) of the Rules of Judicial Administration, and this Court's declaration of a judicial emergency in the Second Judicial District through February 28, 2021, and consistent with the federal Coronavirus Aid, Relief, and Economic Security Act, P.L. 116-136 ("CARES Act"), the Agency Order issued by the United States Department of Health and Human Services Centers for Disease Control and Prevention ("CDC") entitled, "Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19,"[1] and the Consolidated Appropriations Act, 2021,[2] it is hereby ORDERED that this Court's Administrative Order of October 30, 2020, entitled, "In Re: Temporary Procedures Regarding Certain Residential Landlord Tenant Actions" and filed at No. A.D. 52-2020,[3] is AMENDED as follows:

1. Every Landlord/Tenant action filed by a landlord against a tenant in Lancaster County, Pennsylvania for the recovery of possession of leased residential real property on or after September 1, 2020 through January 31, 2021 shall be accompanied by an Affidavit of Compliance with the CARES Act and the CDC's September 4, 2020 Agency Order ("Affidavit of Compliance") in the form attached hereto as Exhibit "A".

2. A landlord shall be precluded from proceeding with a Landlord/Tenant Complaint against a tenant if the leased residential real property is subject to (1) an unsatisfied mortgage securitized by the Federal Home Loan Mortgage

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[1] *See* "Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19," 85 Fed.Reg. 55292-01 (Sept. 1, 2020, effective Sept. 4, 2020 through Dec. 31, 2020).
[2] *See* Consolidated Appropriations Act, 2021, Division N – Additional Coronavirus Response and Relief, Title II – Assistance to Individuals, Families and Businesses, Subtitle B – COVID-related Tax Relief Act of 2020, Title V – Banking, Subtitle A - Emergency Rental Assistance, Section 502 "Extension of Eviction Moratorium", H.R. 133 (Dec. 27, 2020, effective Jan. 1, 2021 through Jan. 31, 2021).
[3] This Administrative Order amended the Administrative Order of September 11, 2020, entitled "In Re: Landlord/Tenant Actions" and filed at No. A.D. 43-2020.

Corporation ("Freddie Mac") or the Federal National Mortgage Association ("Fannie Mae"), or (2) a federally backed multifamily mortgage loan that was in forbearance status that has now expired, and the landlord has not provided the required notice to vacate to the tenant. If the landlord is precluded from proceeding against a tenant with an action for the recovery of the possession of leased residential real property, the Landlord/Tenant Complaint shall not be accepted for filing by the Magisterial District Court.

3. A landlord, owner of a residential property, or other person with a legal right to pursue eviction or possessory action (landlord) shall not evict any covered person from a residential property (tenant) in Lancaster County, subject to the requirements listed in the CDC Agency Order. However,
    a. tenants are not relieved of any obligation to pay rent, to make a housing payment, or to comply with any other obligation that the individual may have under a tenancy, lease, or similar contract; and
    b. a landlord may charge and/or collect fees, penalties and/or interest as a result of the failure to pay rent or other housing payment on a timely basis, under the terms of any applicable contract.

4. In order to invoke the protection of the CDC Agency Order, the tenant must provide to the landlord an executed copy of the form "Declaration for the CDC's Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19," a copy of which is attached hereto as Exhibit "B" and available at http://www.pacourts.us/forms/for-the-public and https://www.cdc.gov/coronavirus/2019-ncov/downloads/declaration-form.pdf
    a. Every adult listed on the lease, rental agreement or housing contract shall complete and provide a Declaration to the landlord. Any adult tenant who does not sign a Declaration and provide the same to the landlord shall not receive the protection of the CDC Agency Order.
    b. The Declaration automatically imposes a stay on the landlord's ability to obtain an Order for Possession to evict the tenant, or if one has already been obtained, to cause the removal of the tenant(s) from the property pursuant to Pa.R.C.P.M.D.J. Rule 519. The landlord retains the right to file a Landlord/Tenant Complaint and proceed to a hearing in the normal course.

5. The protection afforded by the Declaration does not apply if the tenant is or has been:
    a. engaging in criminal activity while on the premises; or
    b. threatening the health or safety of other residents; or
    c. damaging or posing an immediate and significant risk of damage to the rental property; or
    d. violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or

e. violating any other contractual obligation, other than the timely payment of rent or similar housing-related payment (including non-payment or late payment of fees, penalties, or interest). This includes the situation where the tenant(s) fails to vacate the property upon the expiration of the lease.

6. If a Declaration is provided to the landlord prior to the filing of the Landlord/ Tenant Complaint, the landlord shall file a copy of the Declaration, with the Landlord/Tenant Complaint and Affidavit of Compliance with the Magisterial District Court.

7. If the Declaration is not provided to the landlord until after a Landlord/Tenant Complaint has been filed, then either the landlord or the tenant shall file a copy of the Declaration with the Magisterial District Court as soon as possible. However, a Declaration may be filed at any stage in the proceedings prior to removal of the Tenant(s) from the property pursuant to Pa.R.C.P.M.D.J. No. 519.

8. A landlord may challenge the truthfulness and/or applicability of a Declaration at any stage in the proceedings prior to removal of the tenant(s) from the property pursuant to Pa.R.C.P.M.D.J. No. 519. The challenge shall be in writing on a "Challenge to Declaration" form (or substantially similar form) as attached hereto as Exhibit "C". The challenge shall serve as a request for a hearing.
   a. If the landlord files a Challenge to Declaration, the Magisterial District Judge shall:
      (1) set a hearing within 15 days, or as soon thereafter as the schedule permits. If the challenge is made at the time of the filing of the Landlord/Tenant Complaint, the hearing on the challenge may be heard at the time of the Pa.R.C.P.M.D.J. No. 504 hearing;
      (2) deliver a copy of the Challenge to Declaration to the tenant(s) and a copy of the hearing notice to all parties by first class mail;
      (3) if a Challenge to Declaration is made after the Pa.R.C.P.M.D.J. No. 504 hearing, the Magisterial District Judge shall retain jurisdiction to hear the challenge; and
   b. A landlord challenging the truthfulness and/or applicability of the Declaration shall have the burden of proof to show that the Declaration is false or that one of the five categories to which the protection afforded by the Declaration does not apply is applicable. The averments contained in the Declaration are presumed to be true.

9. After a hearing held pursuant to Paragraph 8, the Magisterial District Judge shall determine whether the landlord has met his/her burden of proof in challenging the Declaration and whether the protection afforded by the Declaration applies to the action. The Magisterial District Judge's decision

shall be made at the conclusion of the hearing or within three days thereafter. The parties shall be provided with notice of the decision.

a. If, prior to the entry of an Order for Possession, the Magisterial District Judge determines that a Declaration is valid and that the Declaration applies to prevent the tenant from being evicted, then the case may proceed in the normal course, except that the ability of a landlord to obtain an Order for Possession shall be stayed until after January 31, 2021.
b. If, following the entry of an Order for Possession, the Magisterial District Judge determines that a Declaration is valid and that the Declaration applies to prevent the tenant from being evicted, then the landlord's ability to remove the tenant(s) from the property pursuant to Pa.R.C.P.M.D.J. No. 519 shall be stayed until after January 31, 2021.
c. If the Magisterial District Judge determines that a Declaration is not valid or that the Declaration is not applicable, then the action, including the removal of the tenant(s) from the property pursuant to Pa.R.C.P.M.D.J. No. 519, may proceed in the normal course.

10. A party aggrieved by a Magisterial District Judge's determination on the truthfulness and/or applicability of a Declaration may, within ten days of the Magisterial District Judge's determination, file an appeal in the Lancaster County Prothonotary's Office in a Miscellaneous action. A *de novo* hearing will be scheduled based upon rules and procedures prescribed by the Lancaster County Court of Common Pleas.

11. A landlord may request an Order for Possession within 180 days of the date the stay is stricken, dismissed, lifted, or otherwise terminated, as provided by Pa.R.C.P.M.D.J. No. 515(B).[4]

12. If a Declaration has been deemed to be invalid, the tenant may refile the Declaration, along with proof demonstrating a change in circumstances such that the criteria set forth in the Declaration have been satisfied. Refiling of the Declaration imposes the stay as provided in Paragraph 4(b). A landlord wishing to challenge the amended Declaration shall follow the procedures set forth herein.

13. Delayed filing of a Declaration or repeated filing of invalid/inapplicable Declarations may result in the assessment of additional costs on the tenant(s).

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[4]Pa.R.C.P.M.D.J. No. 515(B) was amended on December 4, 2020 to provide a landlord with 180 days (formerly 120 days) to request an order for possession. *See* 50 Pa.B. 7129 (effective January 1, 2021).

14. Any Landlord/Tenant action filed in the Magisterial District Courts that was stayed pursuant to this Court's Administrative Orders of September 11, 2020 entitled, "In Re: Landlord/Tenant Actions" and filed at No. A.D. 43-2020, and October 30, 2020 entitled, "In Re: Temporary Procedures Regarding Certain Residential Landlord Tenant Actions" and filed at No. A.D. 52-2020, shall proceed in accordance with this Administrative Order.

BY THE COURT:

DAVID L. ASHWORTH
PRESIDENT JUDGE

ATTEST: Mark Karmin - Deputy.

Copies to:
Lancaster County Board of Judges
Lancaster County Magisterial District Judges
Lancaster County District Court Administrator
Lancaster County Adult Probation & Parole Services
Lancaster County Children and Youth Social Service Agency
Lancaster County Clerk of Courts
Lancaster County Clerk of the Orphans' Court
Lancaster County District Attorney
Lancaster County Domestic Relations
Lancaster County Juvenile Probation
Lancaster County Law Library
Lancaster County Office of Official Court Reporter
Lancaster County Prison
Lancaster County Prothonotary
Lancaster County Public Defender
Lancaster County Register of Wills
Lancaster County Sheriff
Lancaster County Board of Commissioners
Lancaster County Solicitor
Lancaster County Municipal Police Departments
Pennsylvania State Police

EXHIBIT “A”

AFFIDAVIT OF COMPLIANCE WITH CARES ACT AND CDC AGENCY ORDER ENTITLED, "TEMPORARY HALT IN RESIDENTIAL EVICTIONS TO PREVENT THE FURTHER SPREAD OF COVID-19"

In order to support my assertion that this filing complies with the federal CARES Act, HUD Rules and Regulations, and the CDC Agency Order, I affirm that:

1. I _____ (have not) _____ (have) received from the tenant(s) a signed Declaration promulgated by the CDC or a similar declaration under penalty of perjury prior to the filing of this Landlord/Tenant Complaint. For more information on the CDC's Agency Order entitled, "Temporary Halt in Residential Evictions to Prevent the Further Spread of Covid-19," go to federalregister.gov/d/2020-19654 or govinfo.gov.
If applicable, a copy of the signed Declaration from the tenant(s) has been attached to my Landlord/Tenant Complaint.

2. _____ I have confirmed that there is no unsatisfied mortgage on the property that was purchased or securitized by the Federal Home Loan Mortgage Corporation ("Freddie Mac") or the Federal National Mortgage Association ("Fannie Mae") by checking the property via the mortgage lookup tool for Freddie Mac (www.FreddieMac.com/mymortgage) and Fannie Mae (www.KnowYourOptions.com/loan).

For Landlords with Federally Backed Multifamily Loans

3. _____ If the property is the subject of a federally backed multifamily mortgage loan that was in forbearance status under the CARES Act that has now expired, I have provided the required notice to vacate to the tenant. *See* CARES Act, § 4023d.

I, _____, verify that the facts set forth in this Affidavit are true and correct to the best of my knowledge, information, and belief. This statement is made subject to the penalties of 18 Pa.C.S.A. § 4904 related to unsworn falsification to authorities.

_____ _____

Date Signature of Landlord or Authorized Agent

EXHIBIT “B”

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF

DECLARATION FOR THE CENTERS FOR DISEASE CONTROL AND PREVENTION'S TEMPORARY HALT IN EVICTIONS TO PREVENT FURTHER SPREAD OF COVID-19

Mag. Dist. No:
MDJ Name:
Address:
Telephone:

_____

v.

_____

Docket No: _____

Case Filed: _____

I certify under penalty of perjury, pursuant to 28 U.S.C. 1746, that the foregoing are true and correct:

- I have used best efforts to obtain all available government assistance for rent or housing;[1]
- I either expect to earn no more than $99,000 in annual income for Calendar Year 2020 (or no more than $198,000 if filing a joint tax return), was not required to report any income in 2019 to the U.S. Internal Revenue Service, or received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act;
- I am unable to pay my full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, lay-offs, or extraordinary[2] out-of-pocket medical expenses;
- I am using best efforts to make timely partial payments that are as close to the full payment as the individual's circumstances may permit, taking into account other nondiscretionary expenses;
- If evicted I would likely become homeless, need to move into a homeless shelter, or need to move into a new residence shared by other people who live in close quarters because I have no other available housing options.[3]
- I understand that I must still pay rent or make a housing payment, and comply with other obligations that I may have under my tenancy, lease agreement, or similar contract. I further understand that fees, penalties, or interest for not paying rent or making a house payment on time as required by my tenancy, lease agreement, or similar contract may still be charged or collected.

[1] "Available government assistance" means any governmental rental or housing payment benefits available to the individual or any household member.
[2] An "extraordinary" medical expense is any unreimbursed medical expense likely to exceed 7.5% of one's adjusted gross income for the year.
[3] "Available housing" means any available, unoccupied residential property, or other space for occupancy in any seasonal or temporary housing, that would not violate Federal, State, or local occupancy standards and that would not result in an overall increase of housing cost to you.

- I further understand that at the end of this temporary halt on evictions on January 31, 2021, my housing provider may require payment in full for all payments not made prior to and during the temporary halt and failure to pay may make me subject to eviction pursuant to State and local laws.

I understand that any false or misleading statements or omissions may result in criminal and civil actions for fines, penalties, damages, or imprisonment.

_____ _____

Signature of Declarant Date

DECLARATION UNDER PENALTY OF PERJURY FOR THE CENTERS FOR DISEASE CONTROL AND PREVENTION'S TEMPORARY HALT IN EVICTIONS TO PREVENT FURTHER SPREAD OF COVID-19

Supplemental Instructions

This declaration is for tenants, lessees, or residents of residential properties who are covered by the CDC's order temporarily halting residential evictions (not including foreclosures on home mortgages) to prevent the further spread of COVID-19. Under the CDC's order you must provide a copy of this declaration to your landlord, owner of the residential property where you live, or other person who has a right to have you evicted or removed from where you live. Each adult listed on the lease, rental agreement, or housing contract should complete this declaration. Unless the CDC order is extended, changed, or ended, the order prevents you from being evicted or removed from where you are living through January 31, 2021. You are still required to pay rent and follow all the other terms of your lease and rules of the place where you live. You may also still be evicted for reasons other than not paying rent or making a housing payment. This declaration is sworn testimony, meaning that you can be prosecuted, go to jail, or pay a fine if you lie, mislead, or omit important information.

EXHIBIT “C”

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF LANCASTER

Mag. Dist. No.: _____

MDJ Name: _____

Address: _____
_____
_____

Telephone: _____

_____,
Plaintiff

vs.

_____,
Defendant

CHALLENGE TO DECLARATION

I am the Landlord, or authorized agent of the Landlord, in the above-referenced case.

I received the Tenant's CDC Declaration on _____. A true and correct copy of the CDC Declaration is attached.

I hereby object to the Tenant's CDC Declaration for the following reasons (check all that apply):

_____ Tenant's CDC Declaration is not true.

_____ Tenant's CDC Declaration is not applicable in this case for the following reasons:

1.

2.

3.

I, _____, verify that the facts set forth in this Challenge to Declaration are true and correct to the best of my knowledge, information, and belief. This statement is made subject to the penalties of 18 Pa. C.S.A. § 4904 related to unsworn falsification to authorities.

_____ _____
Date Signature of Landlord or Authorized Agent