

## Evictions and the COVID-19 Pandemic

By Cashauna M. Hill

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Since mid-March 2020 it seems every day that we have been faced with more crises than we ever thought possible. Those of us who work in the housing justice space were immediately concerned about what the pandemic, and the necessary stay-at-home orders, would mean for the nearly 45 million renting families living in the United States. This article discusses the lack of clarity around evictions because of the state-by-state approach of landlord-tenant law across the United States, with a particular emphasis on the crisis in Louisiana, and explores potential solutions and ways that lawyers can become involved in keeping renters housed.

### Moratoriums—Limited in Scope

The author leads a nonprofit fair housing advocacy group based in New Orleans. In the early days of the pandemic and the resulting quarantine, this group partnered with housing attorneys at the local legal aid office to ask eviction court judges and elected officials to close eviction courts and halt foreclosure sales. Even before Congress passed the CARES Act, which included a moratorium on evictions and foreclosures, evictions were suspended in New Orleans when the judges chose to stop hearing evictions. Louisiana's governor subsequently issued a statewide eviction moratorium.

With these local, state, and national measures in place, tenants were somewhat protected for a short time. The CARES Act moratorium, however, did not protect all renters. It extended only to renters who lived at properties that participated in federal subsidy programs, had federally backed mortgages, or received federal funding. See Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136 § 4024 (2020). Further, many judges interpreted the CARES Act as applying only to evictions for nonpayment of rent, and it was unclear whether tenants or month-to-month leases whose leases were not renewed were protected. Though the CARES Act moratorium ended in July, the Centers for Disease Control subsequently issued a moratorium, still temporary, that extended through December 31, 2020. Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 85 Fed. Reg. 55, 292 (Sept. 4, 2020).

Although evictions were stopped, Louisiana's leaders could have chosen to anticipate the needs of renters across the state. Instead, they chose to leave tenants in a difficult-to-navigate system that offered little support before the pandemic and was certainly not set up to provide support in the face of a public health emergency. Just as the legal profession has had to adjust its practices and adapt to some new realities, policymakers in some communities proposed rules, ordinances, and other laws that might keep tenants housed. In the absence of federal legislation to stop all evictions, states and local governments created protections and systems to protect tenants from being forced into homelessness. It is important to note, however, that any new policies passed because of the pandemic are layered on top of the existing landlord-tenant law in any particular state. Thus, any policies passed as a result of the pandemic are only as good as the system they join.

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## Variations in Landlord-Tenant Laws

Landlord-tenant laws vary from state to state. In a 2017 article, Cleveland State University Professor Megan Hatch identified the three types of landlord-tenant laws found in states today. See Megan E. Hatch, *Statutory Protection for Renters: Classification of State Landlord-Tenant Policy Approaches*, *Housing Policy Debate*, 27:1, 98-119 (2017), <https://bit.ly/3i9eslf>. According to Dr. Hatch, protectionist states adopt legislation that strongly protects tenant rights, pro-business states adopt legislation that strongly favors landlords, and contradictory states have policies that benefit both landlords and tenants. See *id.* at 99.

According to Dr. Hatch's research, protectionist states make up the smallest group. See *id.* at 110. Twenty states take contradictory approaches, and the remaining 17 states take pro-business approaches. The pro-business states are mostly concentrated across the Midwest and in the South, and Louisiana falls squarely within this camp. See *id.* at 110-11.

For renters in Louisiana, the pro-business approach means the state lacks even a prohibition on landlords evicting tenants in retaliation for a complaint or asking for repairs. Because Louisiana law converts written leases to month-to-month tenancies at the end of a lease term (unless the parties execute a new written lease), the majority of renters in Louisiana have month-to-month tenancies. Louisiana's landlord-tenant laws do not require just cause for evictions or for nonrenewals of month-to-month tenancies. No-cause nonrenewals are commonplace and perfectly legal in Louisiana. Therefore, any tenant who complains is vulnerable to no-cause nonrenewal with as little as 10 days' notice at the end of the month, per Louisiana law.

Although federal fair housing laws prohibit landlords from retaliating against tenants who exercise their fair housing rights (42 U.S.C. § 3617), tenants who raise issues strictly related to the physical conditions of their housing—rather than from some form of discrimination—must look to state law. In Louisiana, however, the statutory code offers no practical way for a renter to hold the renter's landlord accountable. Some Louisiana courts have recognized that a retaliatory eviction might provide a defense as an “abuse of right,” but the tenant bears the burden of proving that a no-cause nonrenewal is retaliatory. See *Capone v. Kenny*, 646 So. 2d 510, 512 (La. App. Ct. 4th Cir. 1994). This is next to impossible to prove unless the landlord happens to put a retaliatory reason for a no-cause nonrenewal in writing. Indeed, as of 1994, the *Capone* court was unable to find any cases in which a landlord was preventing from terminating a lease based upon the abuse of right doctrine. *Id.* That trend appears to continue to this day, as *Capone* is one of only a handful of reported cases that even mention the doctrine in relation to retaliatory evictions.

Practitioners working with tenants often must counsel clients that any habitability complaints may lead to the landlord taking retaliatory action. Given the relative lack of laws that govern landlord-tenant relations in Louisiana, it is not surprising that the landlord-tenant laws are rarely updated. Within the last five years, very few changes have occurred. In 2015, the Louisiana state legislature agreed to protect domestic violence survivors from facing eviction and other negative housing consequences because of an abuse incident. La. Stat. Ann. § 9:3261.1. A 2019 update established clear penalties for landlords who unlawfully withhold a tenant's security deposit. *Id.* § 9:3252. Both victories came about after years of sustained advocacy by community-based organizations and renters across the state.

## Impact on Tenants

So how does this play out for tenants in New Orleans? The Jane Place Neighborhood Sustainability Initiative (JPNSI) recently released a report of the findings from the first six months of JPNSI's eviction

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court monitoring program. Those findings illustrate the tie between fair housing—the ability of individuals to choose the housing that works best for them, without interference from discriminatory actions and policies—and landlord-tenant laws. According to JPNSI, “[d]ata from the first six months of the [eviction court monitoring] project shows that renters who are evicted by court order in Orleans Parish are:

- Predominantly Black, with Black women disproportionately impacted by evictions;
- Primarily evicted for owing one month’s rent or less; and
- Mostly appearing without an attorney.”

Jane Place Neighborhood Sustainability Initiative, *Unequal Burden, Unequal Risk: Households Headed by Black Women Experience Highest Rates of Eviction Data from Six Months of JPNSI’s Eviction Court Monitoring Project*, <https://bit.ly/30e3WDI> (last visited Oct. 27, 2020).

The effect on Black women in New Orleans is striking: In a city that is 59 percent Black, more than 80 percent of the eviction proceedings observed by court monitors with a tenant present were filed against Black renters, “with 56.8% of eviction proceedings being against Black women.” *Id.* at 6.

New Orleans is a community that struggled with affordability and housing instability well before the COVID-19 pandemic. More than half of New Orleanians are renters, rather than homeowners. *Id.* As is true across America, the percentage of African-American homeowners in New Orleans is much lower than the percentage of white Americans who own homes. Nearly 60 percent of African-Americans in New Orleans are renters, *but* about 45 percent of white New Orleanians rent rather than own homes. U.S. Census Bureau, *2018 American Community Survey*, 1-Year Estimates.

Generally speaking, renters in New Orleans and across Louisiana earn less than their homeowner counterparts. The large number of south Louisianans who work in the tourism and hospitality industries—in jobs that are traditionally not well-paid—has led to large numbers of New Orleanians who spend more for housing than the US Department of Housing and Urban Development (HUD) recommends. In 2018, more than one in three renters were spending more than half of their monthly income on housing costs. The Data Center, *Who Lives In New Orleans and Metro Parishes Now?* (Oct. 9, 2020), <https://bit.ly/30l0C9k>.

The toll that the COVID-19 pandemic has taken on the economy, and specifically on the hospitality and tourism industries, is well-documented. According to data analyzed by the Center for Planning Excellence and Urban Footprint, up to 130,000 Louisiana families who lost income because of the pandemic are at risk of eviction without a substantial rental assistance program in place. Joe DiStefano & Joshua Goldstein, *Is the U.S. Headed Toward an Eviction Crisis?*, [Medium.com](https://bit.ly/2GhEOEH) (June 23, 2020), <https://bit.ly/2GhEOEH>.

Despite the dire situation that renters are forced to navigate, there are several options available that would turn the tide. Specifically, a large-scale rental assistance program at the federal level is necessary to ensure that renters can cover their housing costs and that landlords are compensated for payments that tenants have been unable to make. Although certain states and localities have implemented such programs, this scattershot approach means that renters are subject to homelessness if they are unlucky enough to live in a community that has not made rental assistance resources available.

In addition, although every dollar helps, state and local rental assistance programs are not even close to meeting the need; the federal government is the only entity with enough resources to meet this unprecedented challenge. In Louisiana alone, up to nearly \$500 million is needed to keep families housed.

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*Id.* In July 2020, Louisiana's governor announced a statewide rental assistance program funded with \$24 million intended to help 10,000 families in need. The program was overwhelmed with more than 40,000 calls in less than 72 hours and was shut down as a result. Chad Calder, Louisiana Coronavirus Rental Assistance Program Suspended after Being Slammed with 40,000 Applications, [nola.com](https://nola.com), <https://bit.ly/38BXVFB>. Similarly, a program administered by the City of New Orleans with approximately \$1 million in funding was terminated after the funding was exhausted in a few days. As of mid-October 2020, Congress had failed to agree on a federal rental assistance program.

## Conclusion

In addition to continuing to ring the alarm about the need for rental assistance, lawyers can positively affect the fight to ensure that everyone can stay housed during the pandemic. Those who represent housing providers should consider asking them to lend their voices to the calls for rent assistance.

Additionally, practitioners can help in the following ways:

- Consider volunteering with a legal aid organization or handling eviction defense cases on a pro bono basis. There may be protections available at the local level, and tenants will need skilled attorneys to help them navigate the declaration process necessary under the Center for Disease Control's recently announced eviction moratorium.
- Donate money to organizations representing tenants in court.
- Support right-to-counsel laws. Data shows that tenants represented by lawyers are much less likely to be evicted than unrepresented tenants. Having an attorney increases the likelihood that a tenant will keep her home or that a resolution can be reached without an eviction judgment appearing on her record. *See* DeDecker and JPNSI at 9-12.
- Support legislation that ends the practice of considering eviction history when deciding eligibility for housing.