



Landlord Letter

March 2021



Federal Judge in Texas Rules



CDC Eviction Moratorium Unconstitutional

“Although the COVID-19 pandemic persists, so does the Constitution.” Judge J. Campbell Barker.

In September 2020, the Centers for Disease Control (CDC) issued an order that halts evictions for nonpayment of rent if the tenant provides a “CDC Declaration” attesting to five prongs ([Click Here](#) for our website that gives more details and addresses the five prongs). The CDC Order was initially set to expire on December 31, 2020, but it has been extended twice (to January 31, 2021 and currently to March 31, 2021). There is wide speculation that another extension is forthcoming and President Biden also stated he would

like an eviction moratorium through September 2021.

A group of landlords in Texas sued the CDC arguing that the CDC eviction moratorium overstepped federal bounds. Eviction laws have always been handled by the individual states. That all changed when the CDC Order imposed a federal ban on evictions last year. There have been a few lawsuits against the CDC challenging different aspects of the CDC Order, one case in Texas is making headlines.

On February 25, 2021, Judge Barker of the Federal District Court in the Eastern District of Texas issued a ruling that the entire

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[Read Our 5 STAR Google Reviews](#)

Jeremy has been great to work with. He always educates me on what's currently going on with my situation and comes up with the best ways to handle it. . .

~R. A. —Google Review



DOs & DON'Ts of... Changing the Locks

- ✓ Communicate with your tenants to see if they have voluntarily vacated.
- ✓ Store any personal property that was left behind.
- ✓ Take pictures of any items left at the property and add it into your file.
- ✗ Change the locks unless either (1) you have an Order of Restitution signed by the Judge or (2) the tenant has abandoned the property.
- ✗ Throw personal items away — follow Utah Law. For any questions, contact us for a free Landlord Consultation!
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CDC Order is unconstitutional. In describing the unprecedented move to issue a nationwide eviction moratorium, the court pointed out that the federal government had never taken such action during past challenges. The court stated: “It did not do so during the deadly Spanish Flu pandemic. Nor did it invoke such a power during the exigencies of the Great Depression. The federal government has not claimed such a power at any point during our Nation’s history until last year.”

The court ruled the entire CDC Eviction Moratorium was unconstitutional as an overreach of the federal government’s power. The CDC has already appealed this ruling, so for now this ruling is unlikely to have an impact in Utah. But the judge’s ruling is interesting and may be a sign of things to come.

Even if the CDC Order is enforceable in Utah, it does not impact other types of evictions

(criminal acts, lease violations, damage to the property, etc.), and if your tenants are not complying with the requirements of the CDC Order (by making partial payments, applying for government rent assistance, etc.), you may be able to proceed with an eviction.



Dear Attorney,



My tenant gave me paperwork for an emotional support animal, but the therapist is not a medical doctor, has only been treating the tenant for a few days, and cannot verify that there is a permanent need for a support animal. Can I deny the request for an ESA?



Under the Fair Housing Act, there is no requirement concerning the length of time a health care professional has been treating a tenant to diagnose a disability. A disability could, depending on the circumstances, be diagnosed in a few minutes under certain situations. But once the health care provider establishes (1) a disability exists and (2) that there is a disability related need for the emotional support animal, the tenant probably qualifies for a reasonable accommodation.

Also, the disability need not be permanent as long as it is a current disability. The primary standards for evaluating a reasonable accommodation request is (1) whether the tenant currently is disabled (temporary or permanent shouldn't matter), and (2) whether the animal is necessary to assist them with their disability. If the tenant has provided the landlord with information that establishes these two factors, the emotional support animal will probably need to be approved.

Know Your Notice

•Three Day Notice for Criminal Acts•

Purpose: To evict tenants who have committed crimes on the property.

Like other eviction notices, it must be served in person, posted or sent via certified mail. It cannot be given verbally, texted or emailed.

Based on the seriousness of the actions, the tenant may not have an opportunity to cure the problems. They must vacate the property in 3 days or they will be guilty of unlawful detainer.

Use this notice if your tenants have committed criminal acts on the property that cause risk of health, sanitation, or damage to your property, other tenants or neighbors.

This can become a he said she said battle, so document any criminal acts. Witnesses and/or police reports are critical in proving the grounds for eviction.

Courtroom Chronicles

In one of our cases, the tenant assaulted the landlord, knocking out a tooth, but then tried to blame the altercation on the landlord. As they say, there are two sides to every story. The tenant's affidavit submitted to the court was so crazy that it didn't require much rebuttal. Here it is, word for word (including the lies):

"The Landlord rapidly launched himself from the front of my truck to a spot inches in front of me, and as I looked up he took a half step back, jabbed the knife edges of his palms underneath my armpits forcing my arms into the air. He then viciously slammed me in the chest with the palms of both his hands, knocking me to the ground, with some kind of crazy martial arts move. As I was getting up he started coming at me again and my right hand struck him one time on the left side of his jaw in a defensive manner. The landlord then ran around the front of the truck where he then slouched down along the passenger side to sneak up behind me and attack me again. I verbally warned him that all further action would be construed as a violent threat against my safety and to back up away from me."

The judge didn't buy it and granted our eviction.



Parting Thoughts

- We're working to build our readership, tell your friends to subscribe to this FREE newsletter. Send us an email info@utahevicitionlaw.com.
- Have an eviction question? Email it to us for a future newsletter!
- Help us build our online presence! You can "Like" our Facebook page (www.facebook.com/utahevicitionlaw).
- You can also give us a Five Star Google Review (search "Jeremy Shorts Utah Reviews" click on our link).



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