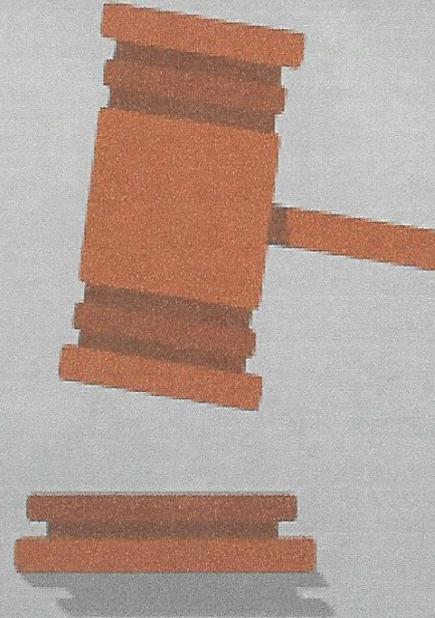
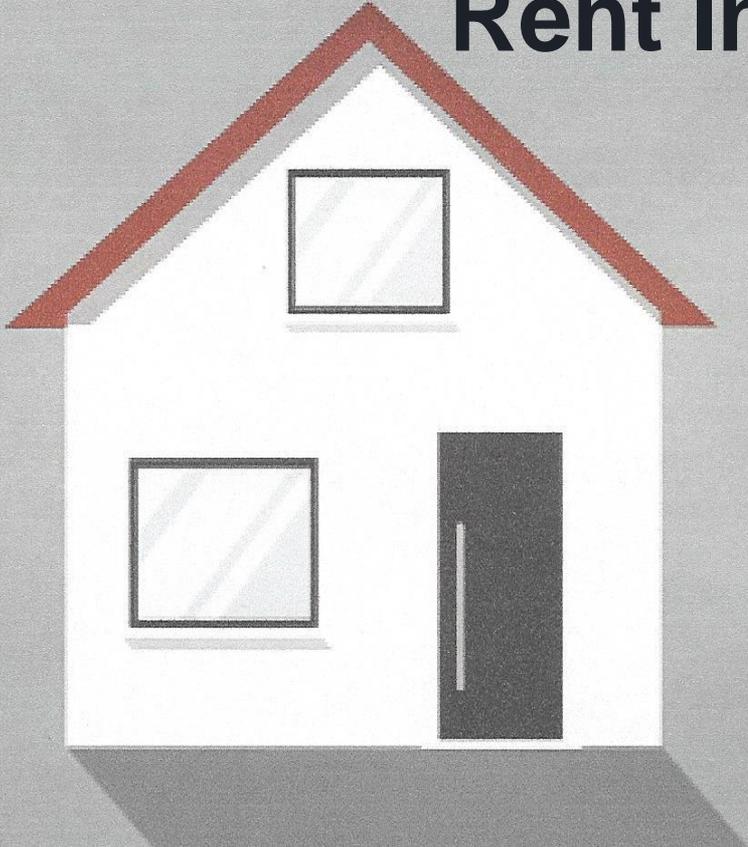


# Security Deposits and Rent Increases



## TENANT RIGHTS TRAINING SERIES

**Sep 24,  
2020  
6:30 pm**

*Event 06*

# **WEBINAR PARTICIPATION GUIDELINES**

**THESE WEBINAR'S ARE RECORDED FOR FUTURE VIEWING BY THOSE WHO MAY NEED THEM, IF YOU REQUIRE YOUR PRIVACY NOW IS A GOOD TIME TO ADJUST YOUR SETTINGS BEFORE WE BEGIN**

**IF YOU HAVE QUESTIONS DURING THE WEBINAR YOU CAN ADD THEM TO THE CHAT TO BE ANSWERED AT THE END.**

**TO ASK A QUESTION WHEN IT IS TIME SELECT THE RAISE HAND ICON**

**PLEASE KEEP MUTED TILL YOU NEED TO SPEAK DUE TO THE WEBINAR BEING RECORDED AND ENSURING EVERYONE CAN HEAR**

**THANK YOU**

# Tenant Rights Training Series

## Security Deposits and Rent Increases

Sponsored by

NH Legal Assistance, Granite State Organizing Project  
& Manchester Housing Alliance



## **As of July 1, 2020, per NH Emergency Order #51**

For every eviction notice issued by the owner of restricted or non-restricted property that is based in whole or in part on nonpayment of rent that became due and payable between **March 17, 2020** and **June 11, 2020**, ***the minimum 7 day notice period required in RSA 540:3 is hereby extended to 30 days.*** Therefore, every such eviction notice shall provide that the tenant must vacate the premises no less than 30 days from the date of service of the eviction notice. For purposes of this Order, the terms "restricted property" and "non-restricted property" shall have the meanings assigned to those terms in RSA 540: 1-a.

*This Paragraph shall not apply to eviction notices issued before March 17, 2020.*

# CARES ACT COMPLIANCE

Applies to all properties with a federally backed mortgage. The landlord must complete an Affidavit of Compliance with CARES Act and have provided 30 days' notice prior to filing an eviction action on all covered properties.

Enacted March 27, 2020, landlords are required to submit a [CARES Act Affidavit](#) approved by the Circuit Court prior to requesting a Landlord Tenant Writ if a basis for the eviction is non-payment of rent.

## "Covered Properties" Pursuant to Section 4024 of the CARES Act

A property which participates in, receives subsidies or benefit from, or has any tenant participating in or receiving subsidies or benefits from, any of the following programs:

### **Housing and Urban Development (HUD)**

- Public Housing (42 U.S.C. § 1437d)
- Section 8 Housing Choice Voucher Program or Project-Based Housing (42 U.S.C. § 1437f)
- Section 202 Housing for the Elderly (12 U.S.C. § 1701q)
- Section 811 Housing for Persons with Disabilities (42 U.S.C. § 8013)
- Section 236 Multifamily Housing (12 U.S.C. § 1715z-1)
- Below Market Interest Rate (BMIR) Housing (12 U.S.C. § 17151(d))
- HOME (42 U.S.C. § 12741 et seq.)
- Housing Opportunities for Persons with AIDS (HOPWA) (42 U.S.C. § 12901, et seq.)
- Continuum of Care or Other McKinney-Vento Act Homelessness Programs (42 U.S.C. § 11360, et seq.)

### **Department of Agriculture**

- Section 515 Rural Rental Housing (42 U.S.C. § 1485)
- Sections 514 and 516 Farm Labor Housing (42 U.S.C. §§ 1484, 1486)
- Section 533 Housing Preservation Grants (42 U.S.C. § 1490m)
- Section 538 Multifamily Rental housing (42 U.S.C. § 1490p-2)

### **Department of Treasury**

- Low-Income Housing Tax Credit (LIHTC) (26 U.S.C. § 42)

### **Rural Housing Voucher Program**

- Section 542 of the Housing Act of 1949 (42 USC § 1490r)

The CARES Act moratorium also applies to all properties with a federally backed mortgage or federally backed multi-family mortgage, meaning all mortgages owned, issued, or guaranteed by: Department of Housing and Urban Development (HUD)

- Department of Veteran Affairs
- Department of Agriculture
- Fannie Mae or Freddie Mac

# Temporary Halt in Residential Evictions

The CDC issued an Order under Section 361 of the Public Health Service Act to temporarily halt residential evictions to prevent the further spread of COVID-19, effective as of September 4, 2020 through December 31, 2020. The order applies to any tenant, lessee, or resident of a residential property in any state and prevents you from being evicted or removed from where you are living during that period. Under the CDC's order you must provide a signed declaration to your landlord, owner or other person with said rights of the residential property where you live; including each adult listed on the lease or agreement. This declaration is sworn testimony, you can be prosecuted, go to jail or pay a fine if you lie, mislead, or omit important information. 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 (ie: danger, nuisance, destructive).

**(not including foreclosures on home mortgages)**

# **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**

- I have used best efforts to obtain all available government assistance for rent or housing;
- 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<sup>2</sup> 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;

# Cont . . .

- 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.
- 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 housing payment on time as required by my tenancy, lease agreement, or similar contract may still be charged or collected.
- I further understand that at the end of this temporary halt on evictions on December 31, 2020, 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.

# Steps in CDC Eviction Moratorium

- Assess if you qualify for this protection
- Complete the declaration, send to your landlord, and keep a copy in a safe place
- Pay everything you can now, and document any payment agreements you have with your landlord
- Apply to your local CAP agency for CARES Act or other assistance in paying your rent now. Much of this help ends at the end of the year
- If your landlord tries to evict you for something besides non-payment, call NHLA for assistance

# CAPNH.ORG HOUSING RELIEF PROGRAM

**The New Hampshire Housing Relief Program is designed to keep people from losing their housing and to secure or maintain permanent housing. The program has two components: one-time assistance grants; and a short-term rental assistance program.**

Governor Chris Sununu has authorized the allocation and expenditure of \$35 million from the CARES Act Coronavirus Relief Fund (“flex funds”) to support families or individuals in need of housing assistance as a result of COVID-19. The Governor’s Office of Emergency Relief and Recovery (GOFERR) will provide the funds to the Department of Health and Human Services (DHHS) which will then make an initial disbursement of funds to New Hampshire’s 5 Community Action Program (CAP) agencies, with additional funding provided based on use and need.

# RESTRICTED

## 540:1-a Definitions. –

II. "Restricted property" means all real property rented for residential purposes, except those properties listed in paragraph 1.

<https://www.gencourt.state.nh.us/rsa/html/lv/540/540-mrg.htm>

# NON-RESTRICTED

## 540:1-a Definitions. –

I. "Nonrestricted property" means all real property rented for nonresidential purposes and the following real property rented for residential purposes:

(a) Single-family houses, if the owner of such a house does not own more than 3 single-family houses at any one time.

(b) Rental units in an owner-occupied building containing a total of 4 dwelling units or fewer.

(c) [Repealed.]

(d) Single-family houses acquired by banks or other mortgagees through foreclosure.

# SECURITY DEPOSITS WHO IS *NOT* PROTECTED

- Tenants under the age of 60 who live in an owner-occupied building with less than 6 total units
- Tenants under the age of 60 who rent a single family home from a landlord who owns no other rental property
- Tenants in business, vacation, or recreational rentals

**Even if your tenancy is not covered under the law, your landlord is still obligated to return your deposit after you move out, minus unpaid rent and/or repair costs. If your security deposit is not returned, you still may sue your landlord, although you may not be entitled to the special penalties provided by New Hampshire's security deposit law.**

# SECURITY DEPOSITS

**540-A:5-II.** "Security deposit" means all funds in excess of the monthly rent which are transferred from the tenant to the landlord for any purpose.

**540-A:6-I.(a)** A landlord shall not demand or receive any security deposit in an amount or value in excess of one month's rent or \$100, whichever is greater.

New Hampshire's security deposit laws define a security deposit as any money that a tenant gives to his or her landlord other than the monthly rental payment. Even if your landlord calls the money a deposit for cleaning, pets, or keys, or the last month's rent, the law considers it to be a security deposit. Anything paid other than the rent is a "security deposit". Any security deposit you pay remains your property.

The landlord is required to give you a signed receipt that should inform the tenant at which bank the deposit is kept in; the landlord must not mix the landlord's personal funds with your security deposit, but may mix the security deposits of all tenants in a single account. You have five days to give your landlord a list of defects and damages that were in the apartment when you moved in to not be held liable at move-out.

# **SECURITY DEPOSITS**

## **RSA 540-A:5 - A8**

**540-A:5 Definitions**

**540-A:7 Return of Security Deposit**

**540-A:8 Remedies**

**540-A:6-IV. (a)** A landlord who holds a security deposit for a period of one year or longer shall pay to the tenant interest on the deposit

# SECURITY DEPOSITS - MOVING IN

**540-A:5-6 Procedure** A thorough record of defects and damages in the rental unit should be given to the landlord within 5-days to protect the tenant from being charged for damages done by previous tenants upon move-out. You should include the condition of the walls, floors, carpets, windows (screens, molding, sills and curtains), appliances and fixtures in your inspection. Note any cracks, holes, worn places, stains, dirt, and so forth. This inventory should be signed and dated by both you and your landlord. Make a copy of this inventory before you return it to your landlord within the 5-day time period to keep with the copy of your lease.

# SECURITY DEPOSIT - MOVING OUT

**RSA 540-A:7** When the tenant moves out of a rental unit, the landlord has thirty *30 days* in which to either return the entire security deposit plus interest if appropriate, or send a written statement of any deductions made from the deposit for repairs, cleaning, etc., the cost of each repair (supported by copies of appropriate receipts, estimates, contracts, etc.) along with the remaining amount of the deposit. The tenant needs to notify the landlord of his or her new address within 30 days of moving out. The notice must be in writing, but need not be formal.

## **THE LANDLORD MAY DEDUCT FROM THE SECURITY DEPOSIT:**

Rent that is still owed

The cost of repairing damage other than normal wear and tear

The tenant's share of increased real estate taxes if the lease or other written agreement permits it

# SECURITY DEPOSITS

## RSA 540-A:8 REMEDIES

### 540-A:8-

I. (a) Any landlord who does not comply with RSA 540-A:6, I, II or III shall be deemed to have violated RSA 358-A:2.

I. (b) Any landlord who does not comply with RSA 540-A:6, IV or RSA 540-A:7 shall be liable to the tenant in damages in an amount equal to twice the sum of the amount of the security deposit plus any interest due under this subdivision, less any payments made and any charges owing for damages, unpaid rent, or share of real estate taxes as specified in RSA 540-A:7.

II. Notwithstanding RSA 540-A:6, 540-A:7, and 540-A:8, I, a landlord shall not be liable nor forfeit any rights if his failure to comply with said sections and paragraph is due to the failure of the tenant to notify the landlord of his new address upon termination of the tenancy. Any deposits plus interest due on the deposit that remain unclaimed after 6 months from the termination of the tenancy shall become the property of the landlord, free and clear of any claim of the tenant, absent fraud.

# WEAR AND TEAR

**Note:** As you might expect, the meaning of the term "normal wear and tear" can be the subject of dispute. Crayon marks, holes in the wall, broken windows, battered doors and so forth probably will be called "damages." Worn carpets, worn floors, damage caused by pipes accidentally breaking or by leaking roofs probably will be called "wear and tear." The hardest damages to categorize are those caused by a tenant's alleged failure to adequately maintain the apartment.

The inventory of pre-existing damages that was made at MOVE-IN can protect you from charges that aren't yours to pay upon MOVE-OUT.

# RENT INCREASES

Most tenants in New Hampshire do not have written leases. For these tenants, the landlord can request a rent increase at any time. There is also no law limiting the amount of the increase that the landlord can request. The best way to protect yourself from rent increases is to have a written lease which fixes the amount of the rent for a specific period of time (usually one year).

However, some leases have “*escalator clauses*” that allow landlords to raise the rent before the end of the lease for specific reasons such as an increase in property taxes or utility costs. Try to avoid signing a lease with an escalator clause when you move in. Once you sign you are bound by the lease. (Make sure that you are only being charged for your share of the increase.)

# WRITTEN NOTICE OF INCREASE

If you do not have a lease, your landlord must give you 30 days' notice of the proposed rent increase in writing. The reason for the 30-day requirement is to give the tenant time to decide whether to pay the rent increase or move. By proposing a rent increase, the landlord is offering a new rental agreement which the tenant has the right to accept or decline; that gives you 30 days to accept or make other arrangements.

The requirement of a 30-day notice can also apply to other substantial changes in your rental agreement. For example, your landlord may want to stop paying for utilities that were originally included or may want to stop letting you use the basement for storage -- those are actually rent increases, since you will now be receiving less, for the same amount of rent.

# Do I Owe the Difference if I Move Out?

If the landlord properly issues a notice of rent increase with thirty days notice, and the tenant declines to stay there, they do not have to pay the higher rent when they move out. If they do stay after the point when the rent increase is implemented, they are liable for the increased rent during that time.

# REFUSAL TO PAY INCREASE

If you refuse to pay a rent increase, the landlord can then legally begin an eviction action at that time.

**540:2-IV.** A tenant's refusal to agree to a change in the existing rental agreement calling for an increase in the amount of rent shall constitute good cause for eviction under paragraph II(e) of this section, provided that the landlord provided the tenant with written notice of the amount and effective date of the rent increase at least 30 days prior to the effective date of the increase.

# EVICTIION NOTICE

If the reason for the eviction is solely that you refused to pay a rent increase, you should receive a 30-day notice for “other good cause: refusal to agree to a rent increase.” If your landlord makes the mistake of trying to evict with a notice of less than 30 days, you can ask the court to dismiss the eviction. If your landlord gives you a valid 30-day rent increase notice which you do not pay, you will not have the right to cure by paying the increased amount after the landlord issues the 30-day notice to quit.

There is no NH statute limiting how much a landlord can raise the rent. If your landlord tries to raise your rent by an unreasonable amount, there is a legal argument that such an increase is not enforceable by a court. It is very difficult to convince a court that this increase is so large that it is unconscionable (unreasonable). Talk to a lawyer before trying this.

# Eviction Process Timeline

Step 1 The Written Eviction Notice

Step 2 The Landlord & Tenant Writ

Step 3 The Appearance Form

Step 4 The Notice of Hearing

Step 5 Raising Defenses at the Hearing

Step 6 The Writ of Possession

Step 7 Asking for a Discretionary Stay

Step 8 Filing Notice of Intent to Appeal

**Your landlord must begin the lawful eviction process by serving you with a written notice that tells you to leave. A verbal order to leave from your landlord doesn't count. The notice must be in writing. Your landlord can have anyone serve the eviction notice and it can be handed to you or left on or near your door. Most tenants are entitled to a hearing where they get a chance to defend themselves before a judge.**

**A landlord must get the judge's permission before the tenant has to leave.**

# 540:13-a Defense to Retaliation

Except in cases in which the tenant owes the landlord the equivalent of one week's rent or more, it shall be a defense to any possessory action, as to residential property, that such possessory action was in retaliation for the tenant:

- I. Reporting a violation or reporting in good faith what the tenant reasonably believes to be a violation of RSA 540-A or an unreasonable and substantial violation of a regulation or housing code to the landlord or any board, agency or authority having powers of inspection, regulation or enforcement as to the reasonable fitness of said residential property for health or safety;
- II. Initiating an action in good faith pursuant to RSA 540-A or availing himself of the procedures of RSA 540:13-d; or
- III. Meeting or gathering with other tenants for any lawful purpose.

# 540:13-b Evidence of Intent to Retaliate

Unless the court finds that the act of the tenant in making a report or complaint or in initiating an action or in organizing relative to alleged violations by a landlord was primarily intended to prevent any eviction, a rebuttable presumption that such possessory action was in retaliation of the tenant's action shall be created when any possessory action, ***increase in rent*** or any substantial alteration in the terms of the tenancy is instituted by a landlord within 6 months after:

I. Landlord received notice of any such alleged violation provided that:

(a) The tenant mailed, gave in hand to, or left at the abode of the landlord notice of the report or complaint of the alleged violation; or

(b) The landlord received notice of the complaint or report from the board, agency or authority; or

II. The landlord completed repairs or otherwise successfully remedied such violation; or

III. The landlord received notice that the tenant had initiated an action pursuant to RSA 540-A; or

IV. The discovery by the landlord of activity protected by RSA 540:13-a, III.

# ***Tenant Training and Organizing***

Please have all attending Print, Sign and Date for Record of Attendance,

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

Address \_\_\_\_\_

Complaint \_\_\_\_\_

# Section 540:14 Judgment

II. Whenever the tenant successfully raises the defense of retaliation pursuant to RSA 540:13-a, damages of not more than 3 months' rent may be awarded to the tenant.

III. If the plaintiff makes a successful claim for unpaid rent as well as possession, or the defendant makes a successful counterclaim, the court shall issue a money judgment at the same time that it makes its ruling regarding possession of the premises.

# SELF-REPRESENTATION (PRO-SE)

Self-representation carries certain responsibilities and risks that pro se parties should be aware of before they file a case. Individuals who are considering representing themselves are encouraged to carefully review the risks associated with self-representation and to educate themselves regarding potential consequences. ***Even if you would like to represent yourself, it may help to talk to an attorney who can explain some of the risks applicable to your particular case.***

**[PRO-SE GUIDE 2017](#)**

# NEW HAMPSHIRE DISTRICT COURT

## **New Orders on Court Operations, In-Court Hearings and Out-of-Court Hearings in Response to Coronavirus Disease 2019(COVID-19)**

The United States District Court for the District of New Hampshire has entered new Standing Orders regarding court operations [\(20-5\)](#) and as well as procedures governing any in-court hearings [\(20-6\)](#) and out-of court videoconference and telephonic hearings [\(20-7\)](#) scheduled before April 13, 2020. Additionally, the court has issued an order authorizing audio and video conference hearings in criminal cases as permitted by the CARES Act [\(20-12\)](#).

For more information on court operations, please visit the court's [COVID-19 webpage](#).

<http://www.nhd.uscourts.gov/>

**IF YOU WOULD PREFER TO HAVE AN ATTORNEY REPRESENT YOU BUT YOU ARE UNABLE TO RETAIN ONE, YOU SHOULD CONSIDER CONTACTING THE FOLLOWING SERVICES FOR FREE OR LOW-COST LEGAL ASSISTANCE:**

**NH Modest Means Legal Program** (603) 715-3290

**Legal Advice and Referral Center** (800) 639-5290 • (603) 224-3333

**New Hampshire Legal Assistance** (603) 224-4107

**Pro Bono Referral Program** (603) 224-6942

**Disabilities Rights Center Inc.** (603) 228-0432 • (800) 834-1721

# **ADDITIONAL RESOURCES FOR HOUSING ASSISTANCE**

The Front Door Agency , *Nashua* **603-886-2866**

The Way Home, *Manchester* **603-627-3491**

New Hampshire Catholic Charities **603-624-4717**

Rental support for immigrants regardless of status **603-682-1921**

To locate your Community Action Agency **211** or **866-444-4211**

To locate your local Town/City Welfare office **211** or **866-444-4211**

Information on avoiding mortgage foreclosure call **866-444-4211**