



BERKELEY RENT BOARD

# COVID-19 Fact Sheet

## Resources for Berkeley Tenants & Landlords

*Updated September 13, 2021*

This document will be updated on a regular basis to reflect the most current information available.

*Disclaimer: The Berkeley Rent Board has prepared this fact sheet to help the Berkeley community understand the application of Berkeley's COVID-19 Emergency Response Ordinance (B.M.C. 13.110), the statewide COVID-19 Tenant Relief Act, the statewide COVID-19 Rental Housing Recovery Act, and other provisions of Assembly Bill 3088, Senate Bill 91, and Assembly Bill 832. This information is solely advisory and does not constitute legal advice. If you have questions about your particular situation, you can contact a Rent Board housing counselor, but they will not provide legal advice. The Rent Board has no jurisdiction to decide issues of possession in the event of an unlawful detainer (eviction lawsuit). Those issues will ultimately be decided in court.*

### **COVID-19 STATE OF EMERGENCY**

Due to the COVID-19 pandemic, the City of Berkeley declared a local State of Emergency on March 3, 2020 and the City has been under various [Berkeley Health Officer Orders](#) since March 16, 2020. The entire Bay Area, including the City of Berkeley, was under a regional [Stay Home Order](#) from December 3, 2020 to January 24, 2021. The City of Berkeley was under a local [COVID-19 Risk Reduction Order](#) from January 25 to June 13, 2021 and is currently under an [order](#) to follow state [Beyond the Blueprint guidelines](#).

### **LOCAL RESTRICTIONS ON EVICTIONS**

#### **Berkeley COVID-19 Emergency Response Ordinance (B.M.C. 13.110)**

The Berkeley COVID-19 Emergency Response Ordinance prohibits all evictions other than those pursuant to the Ellis Act and necessary for the health and safety of residents. Actual or suspected COVID-19 illness or exposure cannot serve as the basis for eviction (B.M.C. 13.110.020).

During the local state of emergency, tenants who are unable to pay timely rent for a “covered” reason are protected from eviction. Tenants will still owe this rent to the landlord, but it cannot serve as the basis for an eviction (B.M.C. 13.110.040A, 13.110.050B, 13.76.130A.1.).

Covered reasons include (B.M.C. 13.110.030A):

- Material decrease in household income due to layoffs or reduction of hours
- Material decrease in household income due to caregiving responsibilities, including child care needs arising from school closures
- Material out-of-pocket medical expenses
- Reduction in number of tenants in a group living situation that reduces remaining tenants' ability to pay rent

If a landlord requests proof of a tenant's covered reason for delayed payment (i.e. COVID-19-related financial distress), a tenant must provide documentation within forty-five days of the request or within thirty days after the end of the local state of emergency, whichever is later. Examples of supporting documentation include:

- Termination notices
- Payroll checks or pay stubs
- Bank statements
- Letters, emails, texts from employers or supervisors
- Documentation of caregiving responsibilities, including those related to school closures
- Medical bills

Any medical or financial information provided to the landlord shall be held in confidence and shall not be disclosed to other entities unless such disclosure is permitted or required by the law, or unless the tenant authorizes the disclosure of the information in writing.

**IMPORTANT:** If a tenant follows the requirements of the COVID-19 Tenant Relief Act and COVID-19 Rental Housing Recovery Act, they will be protected from eviction. We do not know if a tenant who follows the requirements of the Berkeley COVID-19 Emergency Response Ordinance, but not the state laws, will be protected from eviction. This issue will be decided in court. If you have questions, please speak to a Rent Board housing counselor or legal services provider to make an informed choice about your situation.

The Berkeley COVID-19 Emergency Response Ordinance establishes a repayment period of one year after the end of the local state of emergency for tenants with a covered reason for delayed payment to pay their back rent. This locally established repayment period was changed by the adoption of the COVID-19 Tenant Relief Act and COVID-19 Rental Housing Recovery Act. For rent that came/comes due March 17, 2020 to September 30, 2021, Berkeley tenants will have until May 31, 2023 or one year from the end of the local state of emergency, whichever is sooner, to repay their rent (Cal. Code of Civ. Proc. §1179.05(a)(2)(C)).

#### **Local Adopted Amendments Effective April 1, 2022**

The Berkeley City Council adopted amendments to the COVID-19 Emergency Response Ordinance that were intended to take effect February 1, 2021. Due to the passage of Assembly Bill 832 on June 28, 2021, the amendments cannot take effect until April 1, 2022 (Cal. Code of Civ. Proc. §1179.05(a)(1)).

### **STATE RESTRICTIONS ON EVICTIONS**

#### **COVID-19 Tenant Relief Act and COVID-19 Rental Housing Recovery Act (Assembly Bill 3088, Senate Bill 91, Assembly Bill 832)**

The COVID-19 Tenant Relief Act of 2020, part of Assembly Bill 3088, was signed into law on September 1, 2020. This bill established important eviction protections statewide for tenants unable to pay all of their rent because they were financially impacted by COVID-19. These protections were extended by the COVID-19 Tenant Relief Act, part of Senate Bill 91, which was signed into law on January 29, 2021, and extended/modified by the COVID-19 Rental Housing Recovery Act, part of Assembly Bill 832, which was signed into law on June 28, 2021.

### **What protections are available under state law?**

Courts cannot find tenants guilty of unlawful detainer (eviction lawsuit) until October 1, 2021 UNLESS (Cal. Code of Civ. Proc. §1179.03.5):

- Tenant was guilty of unlawful detainer before March 1, 2020
- Tenant failed to timely deliver declaration of COVID-19-related financial distress to the landlord (Landlord must provide a blank copy of the declaration with 15-day notice to pay or quit, Cal. Code of Civ. Proc. §1179.03)
- There is an at-fault just cause (Cal. Code of Civ. Proc. §1946.2(b)(1))
- There is a no-fault just cause other than intent to demolish or substantially remodel (Cal. Code of Civ. Proc. §1946.2(b)(2))
- Rental unit needs to be demolished or substantially remodeled to address habitability issues
- Property owner is in contract for sale of property with buyer who intends to occupy the property and has met requirements of Cal. Code of Civ. Proc. §1946.2(e)(8)

Qualified tenants can never be evicted for non-payment of rent that came due March 1, 2020 to August 31, 2020. Qualified tenants can never be evicted for non-payment of rent that came/comes due September 1, 2020 to September 30, 2021 as long as they pay at least 25% of rent owed by September 30, 2021 (Cal. Code of Civ. Proc. §1179.03).

### **Who can qualify for state eviction protections related to non-payment of rent?**

Tenants who suffer COVID-19-related financial distress can qualify. COVID-19-related financial distress includes (Cal. Code of Civ. Proc. §1179.01(b)):

- Loss of income caused by the COVID-19 pandemic
- Increased out-of-pocket expenses directly related to performing essential work during the COVID-19 pandemic
- Increased expenses directly related to the health impact of the COVID-19 pandemic
- Childcare responsibilities or responsibilities to care for an elderly, disabled, or sick family member directly related to the COVID-19 pandemic that limit a tenant's ability to earn income
- Increased costs for childcare or attending to an elderly, disabled, or sick family member directly related to the COVID-19 pandemic
- Other circumstances related to the COVID-19 pandemic that have reduced a tenant's income or increased a tenant's expenses

### **How can tenants qualify for these state protections?**

If a landlord serves a tenant with proper notice demanding payment of rental debt that accrued March 1, 2020 to September 30, 2021 and the tenant has COVID-19-related financial distress, the tenant must, within 15 business days, sign and return a declaration of COVID-19-related financial distress to the landlord. Timely responding to any and all notices demanding payment of COVID-19 rental debt accrued March 1, 2020 to September 30, 2021 with the required declarations will protect a tenant from eviction until at least September 30, 2021. If, by September 30, 2021, the tenant pays at least 25 percent of the total rent that came due September 1, 2020 to September 30, 2021, the tenant can never be evicted for rental debt that accrued during this period (Cal. Code of Civ. Proc. §1179.03).

If the tenant fails to timely return the declaration, but has suffered COVID-19-related financial distress and returns the declaration within five business days of being served the unlawful detainer complaint (eviction lawsuit), the court must dismiss the complaint if it finds that the tenant's failure to timely return the declaration was a result of mistake, inadvertence, surprise, or excusable neglect (Cal. Code of Civ. Proc. §1179.03(h)).

High-income tenants may be required to provide documentation of their COVID-19-related financial distress if a landlord has proof in their possession that a tenant is high-income, such as from the rental application. “High-income tenants” are those that earn more than [130% of the county median household income](#). In Alameda County, this is \$154,960 for a family of four. See below for more information.

**What obligations and rights do landlords have under state law: the COVID-19 Tenant Relief Act/COVID-19 Rental Housing Recovery Act?**

Landlords of tenants who did not pay all of their rent from March 1 to August 31, 2020, must have, by September 30, 2020, provided a [notice](#) that informed tenants of their rights under the COVID-19 Tenant Relief Act/COVID-19 Rental Housing Recovery Act (Cal. Code of Civ. Proc. §1179.04(a)).

Landlords of tenants who had not paid all of their rent from March 1 to January 31, 2021, must have, by February 28, 2021, provided a [notice](#) that informs tenants of their rights under the COVID-19 Tenant Relief Act/COVID-19 Rental Housing Recovery Act (Cal. Code of Civ. Proc. §1179.04(b)).

Landlords of tenants who had not paid all of their rent from March 1 to July 1, 2021, must have, by July 31, 2021, provided a [notice](#) that informs tenants of their rights under the COVID-19 Tenant Relief Act/COVID-19 Rental Housing Recovery Act (Cal. Code of Civ. Proc. §1179.04(c)).

In order to serve a 15-day notice to pay or quit, a landlord has to be in compliance with the above notice requirements (Cal. Code of Civ. Proc. §1179.04(d))

A [15-day notice to pay or quit](#) must provide a notification that explains the tenant's rights and obligations and an unsigned [declaration of COVID-19-related financial distress](#) in the same language in which the rental agreement was negotiated (Cal. Code of Civ. Proc. §1179.03).

Landlords of tenants with rental debt that came due October 1, 2021 to March 31, 2022, must, in a 3-day notice to pay or quit, provide notice about the state's COVID-19 rental relief plan (Cal. Code of Civ. Proc. §1179.10).

From October 1, 2021 to March 31, 2022, a court will not issue a summons on an unlawful detainer (eviction lawsuit) related to non-payment of rent against tenants who accumulated rental debt due to COVID-19 hardship unless the landlord can show they applied for government rental assistance to cover the rental debt and were denied (Cal. Code of Civ. Proc. §1179.11). If a tenant has a pending rental assistance application, the unlawful detainer (eviction lawsuit) proceedings can be paused and the case will be dismissed if the tenant receives assistance that resolves the basis for the eviction lawsuit (Cal. Code of Civ. Proc. §1179.11).

Don't forget that in Berkeley, [eviction notices must also meet five criteria](#):

1. The landlord must specify one or more of the good causes for eviction.
2. The landlord must allege compliance with the registration and rent ceiling requirements of the Berkeley Rent Ordinance.
3. The landlord must allege substantial compliance with the implied warranty of habitability (no serious repair problems) for all covered units on the property.
4. The landlord must provide a Notice of Tenant Protection Ordinance with any eviction notice.
5. The landlord must file with the Rent Stabilization Board a copy of the notice to quit or notice of termination, and of the summons and complaint, within ten days of the date they are given to the tenant(s).

High-income Tenants: If a landlord has proof in their possession that a tenant is high-income, such as from the rental application, and they send the tenant the [Notice for High-Income Tenant](#), they can require the tenant to, in response to a 15-day notice to pay or quit, provide documentation along with the tenant's declaration to show that the tenant has suffered COVID-19-related financial distress (Cal. Code of Civ. Proc. §1179.02.5). "High-income tenants" are those that earn more than [130% of the county median household income](#). In Alameda County, this is \$154,960 for a family of four.

For rent due March 1 to August 31, 2020, if a tenant returns the [declaration of COVID-19-related financial distress](#), signed under penalty of perjury, within 15 business days each time they receive a 15-day notice to pay rent or quit, the unpaid rent accrued during this time can never be used as the basis for eviction.

For rent due September 1, 2020 to September 30, 2021, if a tenant returns the [declaration of COVID-19-related financial distress](#), signed under penalty of perjury, within 15 business days each time they receive a 15-day notice to pay rent or quit, and, by September 30, 2021, pays at least 25% of the rent that was due during this time, the remaining unpaid rent accrued can never be used as the basis for eviction.

A landlord can sue their tenant to recover unpaid rent in court at the end of the repayment period, which in Berkeley, will be May 31, 2023 or one year from the end of the local state of emergency, whichever is sooner (Cal. Code of Civ. Proc. §1179.05(a)(2)(C)). See below for more information on "Collecting Back Rent."

### **HOW DOES BERKELEY'S COVID-19 EMERGENCY RESPONSE ORDINANCE INTERACT WITH THE STATE'S COVID-19 TENANT RELIEF AND COVID-19 RENTAL HOUSING RECOVERY ACTS?**

The repayment period, as described above, in the Berkeley COVID-19 Emergency Response Ordinance has been changed as a result of the COVID-19 Tenant Relief Act and the COVID-19 Rental Housing Recovery Act. The repayment period must commence on May 1, 2022, and cannot extend beyond May 31, 2023 (Cal. Code of Civ. Proc. §1179.05(a)(2)). If the local state of emergency ends before May 31, 2022, the repayment period will end one year from the end of the local emergency.

Any extension or amendment of Berkeley's COVID-19 Emergency Response ordinance that was in effect August 19, 2020, other than provisions related to the "just causes for eviction", cannot take effect prior to July 1, 2021 (Cal. Code of Civ. Proc. §1179.05(b)). Thus, the amendments to Berkeley's ordinance that were intended to take effect February 1, 2021, cannot take effect until April 1, 2022 (Cal. Code of Civ. Proc. §1179.05(a)(1)).

Berkeley's COVID-19 Emergency Response Ordinance and the COVID-19 Tenant Relief and COVID-19 Rental Housing Recovery Acts establish different procedural and minimum rent payment requirements to qualify for eviction protection related to non-payment of rent. It is unclear how a court will resolve questions of implied preemption related to issues that include notice requirements, declarations, and minimum rent payments. For qualified tenants that are able, meeting the state law requirements will guarantee that they cannot be evicted for non-payment of rent. Tenants may risk eviction if they meet the requirements of the local ordinance, but not state law. As noted below, there is funding available for lower-income tenants to make the minimum 25% rent payment.

## **COLLECTING BACK RENT**

Landlords can sue their tenants for rent that accrued March 1, 2020 to September 30, 2021 in small claims court, regardless of the amount owed. The earliest landlords can begin these lawsuits is November 1, 2021 (Cal. Code of Civ. Proc. §116.223).

Landlords may also be eligible for rental relief that amounts to 100 percent of the rental debt, including for tenants who have already moved out. See “State Rental Assistance Program” below for more information.

## **ADDITIONAL STATE TENANT PROTECTIONS (Senate Bill 91, Assembly Bill 832)**

**No Late Fees or Other Charges:** If a tenant has provided a declaration of COVID-19-related financial distress, a landlord is prohibited from charging late fees, adding or increasing fees for services provided previously without charge (Cal. Code of Civ. Proc. §1942.9).

**Prohibit Housing Denials Based on COVID-19 Rental Debt:** Housing providers, tenant screening companies, or other entities that evaluate tenants on behalf of housing providers are prohibited from using alleged COVID-19 rental debt as a negative factor in evaluating a housing application or as the basis for refusing to rent a unit to an otherwise qualified prospective tenant (Cal. Code of Civ. Proc. §1785.20.4)

**No Assignment or Sale of COVID-19 Rental Debt:** Unpaid COVID-19 rental debt cannot be sold or assigned before September 30, 2021. If the debt is of a person in a household whose income is at or below 80 percent of area median income, the debt can never be sold or assigned (Cal. Code of Civ. Proc. §§1788.65, 1788.66).

**Prevent Misapplication of Rental Payments:** Prohibits a landlord, without a tenant’s consent, from using a monthly rent payment to satisfy anything other than prospective rent or from using the security deposit to satisfy COVID-19 rental debt while the tenancy is in effect (Cal. Code of Civ. Proc. §1179.04.5)

**Stops All Civil Actions on COVID-19 Rental Debt:** Landlords cannot file new debt collection cases in small claims or civil court prior to November 1, 2021 (Cal. Code of Civ. Proc. §871.10(e)).

**Allows a Court to Offset Damages:** If an eligible landlord fails to obtain available state rental assistance that their tenant was eligible for (see below), a court in a case for recovery of rental debt may reduce any damages award by that amount (Cal. Code of Civ. Proc. §871.10(b)).

## **FINANCIAL RESOURCES FOR LANDLORDS AND TENANTS IMPACTED BY COVID-19 RELATED NONPAYMENT OF RENT**

### **Berkeley Housing Retention Grants**

Berkeley residents at risk of losing their housing due to COVID-19 may be eligible for a housing retention grant. Funds may be used to supplement rent for temporary or permanent housing, utility bills, or other housing-related expenses. Applicants will be required to submit documentation of their low-income status, rental agreement or lease, and other relevant information. Additional information and application guidance can be found at [www.cityofberkeley.info/covid19-housing-retention](http://www.cityofberkeley.info/covid19-housing-retention). New applicants should contact the Eviction Defense Center at (510) 452-4541.

### **Mortgage Relief (Assembly Bill 3088)**

Assembly Bill 3088 provides mortgage relief to homeowners and landlords with four or fewer properties who have had difficulty making mortgage payments because of COVID-19. Property owners can find additional information from the [Business, Consumer Services and Housing Agency](#) and should contact their mortgage servicer directly for more information.

### **State Rental Assistance Program (Cal. Health and Safety Code §§50897-50897.6)**

Assembly Bill 832 expands upon Senate Bill 91's use of federal rental relief to provide permanent debt relief to eligible tenants who have accumulated rental debt on or after April 1, 2020 (Cal. Health and Safety Code §§50897.1(d-e)). Landlords can apply and be paid directly or tenants can apply and must provide the full amount of rental arrears to the landlord within 15 business days of receipt of the funds (Cal. Health and Safety Code §50897.1(e)). Tenants who have moved out are still eligible for assistance for rental arrears (Cal. Health and Safety Code §50897.1(h)).

Rental relief funds will be distributed based on priority populations (fifty percent area median income or less, communities disproportionately impacted by COVID-19, eighty percent area median income or less) and uses (rental arrears, prospective rent payments, utilities, other housing expenses) (Cal. Health and Safety Code §§50897.1(b-c)).

The funding allocated to this program is limited, so it is important to apply as soon as possible. Both landlords and tenants can apply. Applications are available on [Alameda County's Housing Secure](#) website.