



BERKELEY RENT BOARD

Fact Sheet and Frequently Asked Questions About COVID-19 Resources for Berkeley Tenants & Landlords

Updated 6/15/2020

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

Background: State of Emergency at Local, State and National Levels

Due to the COVID-19 crisis, the Berkeley City Manager declared a local State of Emergency on March 3, 2020, which the City Council ratified on March 10, 2020. Since March 16, 2020, the City of Berkeley has been under a [Shelter in Place Order](#) issued by the Berkeley Health Officer.

Response: Berkeley Urgency Ordinance, Alameda County Moratorium on Evictions and Governor's Executive Order

In response to the local State of Emergency, on March 17, 2020, the Berkeley City Council passed the Emergency Response Ordinance (Berkeley Municipal Code 13.110). Effective immediately, the Ordinance places a moratorium on certain evictions, and shall remain in effect as long as Berkeley's State of Emergency is still active. It was [amended](#) on May 26, 2020. In response to the California State of Emergency, Governor Gavin Newsom issued multiple [Executive Orders](#) to minimize evictions throughout the state.

The Alameda County Board of Supervisors passed a [Temporary Moratorium on Evictions Due to and During the COVID-19 Emergency](#).

What are the Main Provisions of the City's Emergency Response Ordinance and the Governor's Executive Order?

The City's Emergency Response Ordinance applies to both commercial *and* residential units in Berkeley.

Tenants must notify landlords in writing as soon as possible but no later than seven days after rent is due if they will not be able to pay all or part of their monthly rent due to the impacts of COVID-19.

Tenants can use the form letter on the [Rent Board website](#), but an email is also acceptable. These impacts may include:

- Decrease in household or other rental unit occupant's income due to tenant's sickness with a suspected or confirmed case of COVID-19
- Decrease in household or other rental unit occupant's income due to layoffs or reduction of hours
- Decrease in household or other rental unit occupant's income due to caregiving responsibilities including a household or family member who was sick with a suspected or confirmed case of COVID-19 or childcare needs arising from school closures
- Substantial material out-of-pocket medical expenses
- Reduction in the number of tenants residing in a group living arrangement due to COVID-19, which reduces the ability of the remaining tenants to pay the rent

Tenants should keep documentation to show how they have been financially impacted by COVID-19 or any local, state, or federal government response to COVID-19.

Examples of documentation include:

- Termination notices
- Payroll checks
- Pay stubs
- Bank statements
- Medical bills
- Signed letters or statements from an employer or supervisor explaining the tenant's changed financial circumstances

- A statement signed by you about your qualifying loss, including facts demonstrating the loss and your inability to gather other documentation

The tenant should collect and maintain any supporting documentation to verify their claim.

The tenant should collect as much documentation as possible to ensure that supporting information is available at the time when it has to be provided. Upon the request of a Landlord, a Tenant shall provide such documentation to the Landlord within 45 days after the request or within 30 days after the local State of Emergency is ended, whichever is later.

If a tenant is unable to provide verifiable documentation at the appropriate time, it may eliminate the Moratorium's protections against being evicted.

The Urgency Ordinance states that 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.

Tenants should also notify the landlord of any changes in their financial status if it will affect the amount of rent they are able to pay in the future.

A tenant must make their initial claim as soon as possible but no later than seven days after the rent is due. Tenants must give their best estimate of what rent they can pay but if circumstances change (reduced hours, layoffs, medical bills, etc) the amount of rent a tenant is able to pay may change. If this is the case, the tenant should communicate those changes in the rent to be paid, and the reasons why, to the owner as soon as possible before future rent is due.

The Moratorium prohibits landlords from pursuing an eviction for any reason except the Ellis Act unless necessary for the health and safety of residents.

The health and safety exception cannot be the Resident's COVID-19 illness or exposure to COVID-19, whether actual or suspected. Ellis Evictions, a type of no-fault eviction, are still allowed under this Ordinance. It shall be a complete defense to any action for unlawful detainer that the notice upon which the action is based was served or expired, or that the complaint was filed or served during the local State of Emergency.

Both during and after the local state of emergency, landlords may not charge or collect a late fee for rent that is delayed due to the reasons outlined above.

Landlords are entitled to collect back rent 12 months after the expiration of the State of Emergency.

Tenants have up to 12 months after the expiration of the local State of Emergency to repay rent that was delayed by a Covered Reason for Delayed Payment unless the landlord and tenant come to a mutual repayment agreement. A tenant is not required to provide documentation to the Landlord in advance to qualify for the repayment of rent over the 12 months. If the back rent is not repaid, overdue rent becomes a consumer debt.

Under the terms of the Moratorium, landlords are prohibited from evicting tenants financially affected by the COVID-19 crisis for failure to pay back rent during the local State of Emergency if the tenant has notified the landlord of their inability to pay rent within seven days of rent being due. Tenants must also provide supporting documentation, as described above.

The Emergency Response Ordinance states that a qualifying tenant who fails to pay rent that came delinquent during the local state of emergency for one of the covered reasons cannot be evicted for nonpayment of that rent, even at a later time, so long as they can provide the appropriate supporting documentation. The landlord would retain the right to go to court to collect the unpaid rent but not by filing an unlawful detainer (eviction) lawsuit. Once the public health emergency is over, the next month's rent is due, and nonpayment would be considered grounds for an eviction.

Tenants have an affirmative defense to an eviction if the landlord violates terms of the Emergency Response Ordinance.

Tenants may be able to recover damages and attorney's fees if a landlord acts in knowing violation or in reckless disregard of the Ordinance.

Other Questions Related to COVID-19

Is there Financial Assistance Available to Tenants to Assist with Rent and Utilities Payments?

Yes. The Berkeley City Council approved more than \$1 million for housing retention grants for residential tenants that are hardest hit by the COVID-19 pandemic. Additional information and application guidance can be found at <http://www.cityofberkeley.info/covid19-housing-retention/>. As of June 4, 2020, new applicants should contact the Eviction Defense Center at (510) 452-4541.

I am a tenant on a fixed-term lease and I need to break my lease due to COVID-19. Can the landlord penalize me?

The Berkeley City Council amended [Berkeley Municipal Code 13.78](#) on April 28, 2020 to prohibit non-refundable application fees associated with existing tenancies and lease termination fees. This amendment also prohibits roommate replacement fees. These amendments are effective May 30, 2020. This Ordinance does not change [California Civil Code § 1951.2](#), which continues to apply to lease-breaking situations during the state of emergency. Lease breaking is a matter of contract law, and the Rent Board can only provide limited guidance. California Civil Code 1951.2 states that tenants may be held responsible for unpaid rent left on their lease, and that the landlord must make a good-faith effort to mitigate their damages by seeking to re-rent the unit. If the landlord is unable to fill the vacant unit, the most likely scenario is for the landlord to retain the tenant security deposit in lieu of unpaid rent. The landlord may also seek to recover unpaid rent by filing a lawsuit.

I moved out of my rental unit, but my landlord has not refunded my security deposit. What should I do?

Within three weeks after the tenant (or tenants) have completely vacated the unit, the landlord must (1) furnish the tenant with a written statement itemizing the amount of and purpose for which any part of the security was claimed and used; and (2) return any remaining portion of the security to the tenant. If more than \$125 is deducted from the deposit for cleaning and repairs together, the landlord must attach to the itemized statement copies of documents showing the charges and costs incurred to clean and repair the unit ([California Civil Code § 1950.5](#)). If you do not receive your security deposit within 21 days of vacating the unit, we recommend sending a demand letter to the landlord, requesting the return of your security deposit. You can find a sample demand letter [here](#).

I'm a landlord, and I want to show my rental unit to prospective tenants. Can I do this under the current Shelter in Place order?

The current Shelter in Place order says that the following is permitted: "service providers that enable real estate transactions (including rentals, leases, and home sales), including, but not limited to, real estate agents, escrow agents, notaries, and title companies, provided that appointments and other residential real estate viewings must only occur virtually or, if a virtual viewing is not feasible, by appointment with no more than two visitors at a time residing within the same household or living unit and one individual showing the unit (except that in person visits are not allowed when the occupant is present in the residence)." Our office is not responsible for the administration or enforcement of the Shelter in Place Order. You should be able to get clarification about specific questions related to the order by calling the city's 3-1-1 line from a 510 area code, or by calling 510-981-CITY from your phone.

I am a landlord, and my tenants recently notified me that they cannot pay their full rent. If I forgive the rent or offer them reduced rent on a temporary basis, will I be able to charge the full rent at a later time?

Yes. Landlords and tenants can create written agreements for waived or reduced rent during the crisis, and landlords will still be entitled to receive the full rent as identified in the agreement. [Rent Board Emergency Regulation 1017.5](#) extends these rules to include all tenancies that began on or before March 3, 2020.

The written agreement must include a statement that the rent reduction is temporary and is not related to market conditions, habitability, or a reduction in housing services. Written agreements entered into during the local State of Emergency may extend beyond the expiration of the local State of Emergency where the landlord and tenant expressly agree to the duration in writing.

I'm in a group living arrangement, and one of my roommates needs to move out as a result of COVID-19. What is my responsibility to pay the rent now and in the future?

If any of the tenants moves out for a covered reason outlined in the Urgency Ordinance, the remaining roommates should notify the landlord in writing as soon as possible that they will not be able to cover the full rent. The remaining tenants will have up to 12 months after the expiration of the local State of Emergency to repay any back rent.

Does the Urgency Ordinance prohibit all types of residential evictions?

The Urgency Ordinance applies to all residential evictions except for 1) Ellis Act evictions and 2) evictions necessary for the health and safety of tenants, neighbors, or the landlord. It does not apply to units ordered by the City to be vacated for the preservation of public health, including where the City deems necessary to control the spread of COVID-19.

Can a tenant voluntarily agree to waive their rights?

The protections provided by the Urgency Ordinance shall be available to all tenants, regardless of any agreement in which a tenant waives their rights under this Ordinance.

Where can I get more information about the city and state response to COVID-19 and rental housing?

We regularly update our [COVID-19 webpage](#) with new information, rules and regulations as they are enacted.

What types of services can the Rent Board provide?

During the City's Shelter in Place Order, Rent Board Housing Counselors are responding to inquiries via email (rent@cityofberkeley.info) and responding to voicemail messages left at (510) 981-RENT. Counselors *do not* provide legal advice.

Where can I receive legal assistance?

Tenants may contact the [Eviction Defense Center](#) at (510) 452-4541, [East Bay Community Law Center](#) at (510) 548-4040, or [Bay Area Legal Aid](#) at (866) 346-3405.

Landlords may contact the [Berkeley Property Owners Association](#) at bpoa@bpoa.org or (510) 525-3666 or the [Alameda County Bar Association](#) at (510) 302-2222.

Please check the organizations' websites to confirm operating hours during the local State of Emergency.