

# The Intersection of the CARES Act and Landlord-Tenant Law

A Practical Guidance® Article by Andrew Darcy, Mobilization for Justice, Inc.



Andrew Darcy  
Mobilization for Justice, Inc.

In March 2020, the federal government enacted the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136 (CARES Act). Among its varied provisions, the CARES Act created restrictions on residential evictions, including an enhanced notice requirement for certain tenants. 15 U.S.C. § 9058(c)(1) provides: “The lessor of a covered dwelling unit . . . may not require the tenant to vacate the covered dwelling unit before the date that is 30 days after the date on which the lessor provides the tenant with a notice to vacate.” A prior article addressed how this provision likely preempts certain provisions New York’s Real Property Actions and Proceedings Law (RPAPL) when “covered dwellings” are involved. As of May 2023, no New York court has addressed the intersection of the CARES Act and the RPAPL, but other courts have filled the void. This article recaps the CARES Act’s notice provisions and summarizes those cases and their import for landlord-tenant practice around the country.

For more on the CARES Act and the RPAPL, see [Did the CARES Act Preempt New York’s Rent Demand Rules?](#).

## The CARES Act

The CARES Act was signed into law on March 27, 2020. It is a broad law that covers various subjects, including housing. The economic fallout from COVID-19 made millions of renters across the country housing unstable, leaving them at risk of eviction for nonpayment of rent. To

combat this potential wave of displacement, the CARES Act created a limited eviction moratorium that was to last for 120 days and a stringent notice requirement to take effect thereafter. See 15 U.S.C. § 9508.

The CARES Act’s eviction restrictions were not universally applicable. Rather, they applied only to lessors of “covered dwellings.” 15 U.S.C. § 9508(b), (c). That term was defined, in sum and substance, as a residential dwelling unit in a property that either participates in federal rental subsidy program or has a federally subsidized mortgage. 15 U.S.C. § 9508(a)(2).

15 U.S.C. § 9058(b) provides that during the 120-day period beginning on the date that the statute was enacted, “the lessor of a covered dwelling may not . . . make, or cause to be made, any filing with the court of jurisdiction to initiate a legal action to recover possession of the covered dwelling from the tenant for nonpayment of rent or other fees or charges.” There is also a notice requirement. Specifically, after expiration of the 120-day moratorium, lessors of covered dwellings are prohibited from requiring “the tenant to vacate the covered dwelling unit before the date that is 30 days after the date on which the lessor provides the tenant with a notice to vacate.” 15 U.S.C. § 9058(c). Unlike the moratorium provision, the notice requirement has no sunset date.

## Case Law

In 2021, the author argued that this provision is still effective and likely supersedes or preempts less generous provisions of New York’s state law that govern predicate notices in summary nonpayment proceedings. See [Did the CARES Act Preempt New York’s Rent Demand Rules?](#) Since then, several decisions from other jurisdictions have

strengthened that argument and have also provided critical analysis on the intersection between the CARES Act and local landlord-tenant law. What follows is a summary of those decisions.

## Colorado

The Supreme Court of Colorado was the first supreme court in the country to address the CARES Act's notice provisions. In *In Re Arvada Vill. Gardens LP v. Garate*, 2023 CO 24 (Co. May 15, 2023), the court reversed a trial-level court, which had held that the CARES Act's notice provisions had expired, and, thus, only state law applied. There, the landlord provided the tenant, who receives a Section 8 Housing Choice Voucher, a ten10-day notice to pay or surrender possession. Twenty-three days later, the landlord started an eviction proceeding.

The tenant argued that she was not provided with the required 30-day notice. Although the trial court held that the notice provision had expired and that Colorado's ten10-day notice requirement had been satisfied, the Colorado Supreme Court disagreed. It held: "We cannot insert an expiration date where Congress omitted one. . . . Rather, we must presume that Congress meant what it said — although the Moratorium Provision expired, the Notice Provision did not." *In Re Arvada Vill. Gardens LP v. Garate*, 2023 CO 24, ¶ 13. Accordingly, the court dismissed the case.

## Connecticut

A trial court in Connecticut reached a similar conclusion in *Nwagwu v. Dawkins*, No. BPHCV215004438S, 2021 Conn. Super. LEXIS 1026 (Super. Ct. Mar. 2, 2021). There, the landlord provided the tenant, who received a Section 8 Housing Choice Voucher, a five5-day notice to vacate, premised upon allegations of "serious non-payment." The tenant argued that she was entitled to a 30-day notice, and the trial court agreed. It held, "this matter is dismissed as a 30-day notice under the Cares Act was not provided to the tenant, who is a recipient of a Section 8 Choice Voucher." *Nwagwu v. Dawkins*, 2021 Conn. Super. LEXIS 1026, at \*7.

It is worth noting that Connecticut has a special requirement that the landlord file an affidavit to notify courts regarding whether the subject unit is a "covered property." See [CARES Act Affidavit of Compliance](#). As the *Nwagwu* court noted, without such a requirement, "[w]hen reviewing summary process filings, it would be impossible for clerks to recognize which filings impacted premises that were 'covered properties' under the CARES Act and which were not." *Nwagwu v. Dawkins*, 2021 Conn. Super. LEXIS 1026, at \*6. Other jurisdictions have similar requirements, and, in New York, a landlord must always notify the court

of the rules and regulations that govern a particular tenancy. See NY RPAPL § 741; *MSG Pomp Corp. v. Doe*, 185 A.D.2d 798, 800 (N.Y. App. Div. 1st Dep't 1992) (holding that an eviction petition was defective because it "misstated the ownership and rent regulatory status of the premises").

## Florida

In *Newcastle Lake LLC v. Carmichael*, Case No. 2020-005609-CC-20 (Fla. 11th Jud. Cir. Miami-Dade Cty. Oct. 21, 2020), the court dismissed a nonpayment case because the tenant had received only a three3-day notice. *Newcastle* is an interesting decision that explores the breadth of the CARES Act as it pertains to landlords receiving federal subsidies. The court explained with great clarity: "[T]he CARES ACT applies to 'covered dwellings', not covered tenants. . . . [and] a 'covered dwelling' [is] a dwelling that is occupied by a tenant and is on a covered property. The Plaintiff, New Castle Lake LLC, as a participant in Section 8 Housing Choice Voucher program (42 U.S.C. 1437f), is a covered property." *Id.* Thus, the court dismissed the proceeding without any assessment of whether the tenant being sued had received any federal rent assistance and based solely on the fact that the landlord has some tenants with a Section 8 voucher.

## Nebraska

In *MIMG LXXIV Colonial, LLC v. Ellis*, CI 22-9354 (Neb. Dist. Ct. Douglas Cty. May 17, 2023), an intermediate appellate court reversed a trial court that concluded that the CARES Act no longer applied. The appellate court concluded, "Although this moratorium has ended, the CARES Act still provides that before a landlord may evict a tenant for certain covered properties, the landlord must provide 30 days' notice to the tenant prior to eviction." Because the landlord only provided the tenant with seven days to pay, the court dismissed the eviction case.

## Washington

The first appellate authority in the country came from Washington, in the following case: *Sherwood Auburn LLC v. Pinzon*, 521 P.3d 212, 218 (2022). There, an intermediate appellate court reversed a trial court's decision that a landlord had complied with state and federal law when the landlord issued two notices to the tenant: a 14-day one and a 30-day one. The appellate court rejected several creative arguments raised by the landlord.

First, the court rejected the notion that a 30-day notice is unnecessary if the landlord waits 30 days to evict the tenant. The court held that the "plain language of the statute . . . belies such an interpretation" and that if "the

CARES Act provision simply prevented the eviction of tenants for 30 days following notice, without providing tenants the ability to cure the breach or vacate the premises during that period, the notice provision would be rendered meaningless.” *Sherwood Auburn LLC v. Pinzon*, 521 P.3d at 217–218.

Second, the court rejected the argument that two notices were sufficient. “[T]he conflicting notices provided by Sherwood Auburn were misleading and equivocal and failed to adequately, precisely, and correctly inform the tenants of the rights to which they were entitled.”

Third, the court rejected the notion that state law trumped federal law. While the court noted that “pursuant to the Supremacy Clause, state law is preempted by federal law” it declined to hold that there was a conflict. 521 P.3d at 219. It noted that the state law “contemplates that federal notice requirements may supplant the 14-day notice to pay or vacate required by state law.” 521 P.3d at 219. Thus, the court concluded, because “state law explicitly provides for additional notice requirements imposed on landlords by federal mandate, Sherwood Auburn is incorrect that a conflict is created by the imposition of a 30-day notice requirement.” 521 P.3d at 218–19.

## Conclusion

Case law from around the country confirms that the CARES Act’s notice requirements are still valid and will result in the dismissal of eviction proceedings if a landlord fails to comply with them. Indeed, courts are implicitly holding that the CARES Act preempts state landlord-tenant law, unless federal law can somehow be reconciled with it, as in Washington. Additionally, courts, such as those in Connecticut, show that it is critical for landlords to notify the court if their property is covered by the CARES Act. Finally, the Florida case, *Newcastle*, is an important reminder that the notice requirements apply to covered properties, not covered tenants. Thus, a literal reading of the CARES Act requires landlords who receive federal assistance to comply with the CARES Act requirements, even if a specific tenant does not receive federal rental assistance. Counsel to landlords would be wise to comply with these requirements before commencing cases against tenants, and counsel to tenants should scrutinize the predicate notices to ensure they are sufficient.

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### Andrew Darcy, Supervising Attorney, Mobilization for Justice, Inc.

Andrew Darcy is a Supervising Attorney in MFJ’s housing unit. Before becoming a supervisor, Mr. Darcy was a Staff Attorney at MFJ, representing tenants involved in disputes with their landlords in the Bronx and Manhattan. He has advocated for tenants from pre-litigation stages through appeals, in cases involving, among others, illegal lockouts, allegations of nonpayment and breach of lease, as well as rent overcharges. Mr. Darcy has had numerous decisions stemming from his successful representation of tenants published in the *New York Law Journal* and in the *New York Official Reports*. Before joining MFJ, Mr. Darcy was an associate at Cleary, Gottlieb, Steen & Hamilton LLP, where he litigated cases involving complex commercial, antitrust, and securities matters, as well as government investigations. In 2012-2013, Mr. Darcy clerked for the Honorable Katharine S. Hayden, District Judge for the District of New Jersey. Mr. Darcy is a 2010 graduate of Seton Hall University School of Law.

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