Understanding the Eviction Crisis: Preserving the Housing Ecosystem

By Howard Husock

May 2021

Key Points

- Eviction actions are often a first step toward a housing-court-facilitated arbitration over payment of back rent.
- A review of the scholarship and state-level eviction data reveals that the costs of continued extensions of the eviction moratorium at the state and federal level have fallen disproportionately on minority and small-time rental property owners. The data do not support the narrative of an "eviction crisis," as measured by eviction-related legal actions.
- The COVID-19 crisis should not be the occasion for permanent changes in state and city eviction law.
- As the pandemic recedes, steps must be taken to distribute the already-appropriated billions of dollars of rental aid and to properly educate property owners and tenants of their rights while ensuring the end of any eviction moratorium to protect the urban housing ecosystem from further disaster.

The steps taken to ameliorate the effects of the COVID-19 pandemic have included both federal and state rules and spending to stave off what is said to be a looming wave of renter evictions. An eviction moratorium was first promulgated with a narrower set of restrictions after the Coronavirus Aid, Relief, and Economic Security Act was signed into law on March 27, 2020. Subsequently, the Centers for Disease Control and Prevention (CDC) eviction moratorium expanded the scope. It took effect on September 4, 2020, and has since been extended three times. It is scheduled to continue at least through June 30, 2021, following the extension of the moratorium in March.[1] Notably, on May 5, a federal district court judge threw out the national eviction moratorium in a stunning turn, writing that current federal law on public health did not give the CDC broad authority to impose the moratorium. The Justice Department immediately appealed the case, and the Supreme Court may soon be asked to weigh in. It remains to be seen how these rulings will affect the housing ecosystem. Aside from the federal moratorium, some states have instituted their own versions of evictions bans.

At the same time, $46.5 billion in federal funds ($25 billion in December and another $21.6 billion in the most recent stimulus bill) have been appropriated to help tenants pay back rent owed or accumulated during the pandemic, and stimulus checks have been distributed to millions of Americans who have lost income because of lockdowns. The amount distributed via stimulus in rental aid rivals the US Department of Housing and Urban Development's (HUD) annual budget.[2] And despite widespread vaccinations and a country inching closer to normal, a policy hangover from the eviction moratorium has some advocates questioning the usefulness of including eviction in core housing law.

Citing data from Princeton University's Eviction Lab, Diane Yentel of the National Low Income Housing Coalition and Giridhar Mallya said:

> Now, as we enter the pandemic's 13th month, the threat of eviction looms over nearly ten million renters who have fallen behind on rent, affecting people in communities large and small, rural and urban. Hardest hit of all are communities of color.[3]

The pandemic-related concern builds on an emerging view that evictions per se are inherently problematic. This view gained salience with Matthew Desmond's book *Evicted: Poverty and Profit in the American City* (Crown Books, 2016). Desmond documents the effects of evictions in Milwaukee, from those being evicted to those who own buildings from which they must evict tenants. Based on case histories from which one might draw various conclusions about whether evictions can be justified, he concludes that eviction per se is problematic. As Desmond said, "We are learning that eviction is a *cause*, not just a *condition*, of poverty."[4] (Emphasis in original.)

The current pandemic-related eviction concern, in other words, builds on the view that eviction is an endemic and perennial problem, one in which profit-maximizing rental housing owners prey on the poor. Hardship afflicts many tenants facing evictions, but not just because of a flawed housing market. As Desmond notes, reasons for eviction also include poor personal choices, such as the ravages of drug use and the collateral damage of single parenthood that has taken root in many urban neighborhoods around the country.[5] The federal eviction moratorium and current concern about a potential eviction wave, notwithstanding action meant to forestall it, provide an opportunity to examine both the current situation and the broader concern about the ill effects of potential eviction.

This report reviews recent state eviction filings and scholarship about how the federal moratorium affects rental properties. It finds that while policy interventions have mitigated the potential number of evictions during the early stages of the pandemic, they also have had significantly adverse effects. Contrary to popular opinion, the relatively limited set of state-level eviction data reveals that the "crisis" has been both overblown and averaged. At the same time, perilous side effects of eviction bans on rental properties, tenants, and property owners mean they cannot go on forever, and future regulatory interventions to limit evictions generally could harm not only property owners but also tenants. Policymakers' focus should turn entirely to making sure the almost $50 billion in rental aid is distributed timely and efficiently.

Federal Moratorium and Eviction Data

The CDC's public health order declaring a nationwide moratorium on rental housing evictions offered a public health rationale and went as follows.

> CDC issued this Order because evictions threaten to increase the spread of COVID-19. During a pandemic, calling a temporary halt to evictions can be an effective public health measure to prevent the spread of disease. A temporary halt of evictions can help people who get sick or who are at risk for severe illness from COVID-19 protect themselves and others by staying in one place to quarantine.[6]

Notably, the order did not prohibit eviction filings for reasons other than rent nonpayment, including

> (1) engaging in criminal activity while on the premises; (2) threatening the health or safety of other residents; (3) damaging or posing an immediate and significant risk of damage to property; (4) violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or (5) violating any other contractual obligation of a tenant's lease, other than the timely payment of rent or similar housing-related payment (including nonpayment or late payment of any fees, penalties, or interest).[7]

These provisions underscore the commonsense understanding that the potential for eviction is a useful means of protecting tenants, property, and property owners' assets, even during a pandemic. Roger Starr, a legendary New York City urban planner, observed as far back as 1977 how eviction protects not just property owners but also other tenants.

> No one relishes the prospect of evicting failed households from housing developments. The process surely does not solve the family's problem. But like many another practical public act which falls short of the ideal program of the philosopher king, it does at least remove the threat to others in the development.[8]

Indeed, potential evictions could also result from program inefficiency. Bob Pinnegar, president and CEO of the National Apartment Association, said, "There's been no education program to the renter community across the country to educate them on how to apply for these dollars. . . . This has the potential to be a train wreck."[9] And recent reports have confirmed just that. The Treasury Department's Emergency Rental Assistance Program has seen a slow rollout, like any major infusion of dollars from a federal program, mired by both political and practical problems in various states.[10]

The eviction action filing rate—quite distinct from actual physical evictions, which are always much lower than initial fillings are—is down 60 percent from 2019 (Table 1).[11] This is the result of both landlord discretion and understanding and, of course, the federal government providing "stimulus checks," enhanced unemployment benefits, and emergency money to states for renter assistance programs to the tune of billions of dollars.

As Andy Newell of Monarch Investment and Management Group says, eviction filing numbers are often completely misunderstood and conflated with physical eviction, which is rare.

> The word "eviction" paints a frightening picture of a family being cast out onto the streets—with nothing. The reality is that a small fraction of evictions result in physical removal of a renter. An eviction is a legal process by which owners enforce their right to possession of the rental property through the courts. Usually, a landlord starts an eviction process when a resident does not pay monthly rent on time. Since the owner does not know if the resident is ever planning to pay, the landlord is compelled to begin the eviction process to protect their rights. In most cases, the resident pays the past-due rent, and the process is stopped. The next most common outcome is that the resident, recognizing that they can no longer afford their current apartment, voluntarily moves out.[12]

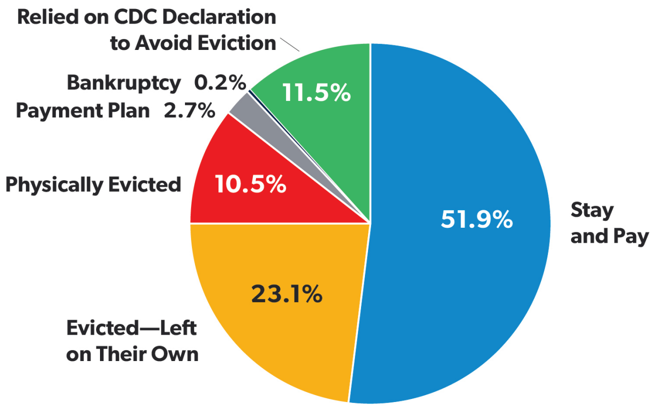
These data reveal much about not only eviction filings during the pandemic but also the outcome of eviction actions generally (Figure 1). They indicate that for nearly 54 percent of instances when eviction paperwork was filed, the resident was able to pay and stay (which includes being put on a payment plan). This starkly contrasts the popular

Table 1. Eviction Action Filing Rate from 12 States

State	2019	2020
Arizona	75,651	45,242
Arkansas	8,562	4,855
Colorado	25,050	15,653
Connecticut	4,581	2,979
Florida	115,988	67,886
Kentucky	34,915	21,181
Michigan	141,292	86,498
Nevada	34,969	20,045
North Dakota	669	379
Ohio	108,267	62,458
Texas	218,405	134,040
Utah	8,329	4,787
Total	896,555	466,001
March–December	742,380	310,675

Source: Eviction filings are by state. They are based on actual eviction statistics for 12 states for 2019 and 2020. Data are from state, county, and municipal courts and the Utah Apartment Association. They were compiled by the Monarch Investment and Management Group and appear in Andy Newell, "Where Have All the Evictions Gone?," *Multi-Housing News*, February 15, 2021, https://www.multihousingnews.com/post/where-have-all-the-evictions-gone/.

Figure 1. Outcome of Evictions Filings



Source: Eviction data were compiled by Monarch Investment and Management Group and appear in Andy Newell, "Where Have All the Evictions Gone?," *Multi-Housing News*, February 15, 2021, https://www.multihousingnews.com/post/where-have-all-the-evictions-gone/.

portrayal of evictions, which usually focus on the nature of physical evictions. In approximately 23 percent of the cases, the resident voluntarily left, and about only 11 percent of the time a filing resulted in physical eviction. About only 12 percent of the residents relied on the CDC declaration to avoid eviction.

A Closer Look: Massachusetts and New York City

Because select states and cities operate special housing courts in which eviction cases are heard, they provide additional details about the current situation. In interpreting these data, consider that although a moratorium on evictions has been in effect, this has not precluded rental property owners from filing eviction actions in anticipation of the moratorium's expiration. This potential eviction "tsunami" does not appear to be on the horizon.

In Massachusetts, the leading reason for eviction filings in the first week after the moratorium expired was, perhaps counterintuitively, not nonpayment. Instead, lease violations were the leading cause of eviction filings in the first week. In the first week following expiration of the Massachusetts state eviction moratorium, rent nonpayment (18 cases, 36.7 percent) was the second-leading cause of initiating summary process case filings. Nonpayment filings are surpassed by "for cause" or "lease violations" (21 cases, 42.9 percent).

Data from the second week's report, ending October 31, show nonpayment (34 cases, 35.8 percent) slightly topping the list of eviction reasons. Lease violations (30 cases, 31.6 percent) were a close second. (Other reasons for eviction filings are no-fault, foreclosure, and "other.")[13] The wave of rental nonpayment filings upon expiration of the state eviction moratorium did not initially materialize.

New York has seen some of the strongest state and local protections for tenants against eviction. The last physical eviction pre-pandemic took place on March 13, 2020. Since then, there have been six evictions in November 2020 (three residential, three commercial), 10 evictions in December 2020 (five residential, five commercial), and 10 residential evictions in 2021 (four residential, six commercial).[14]

Before COVID-19, approximately 180,000 "index numbers" (reflecting eviction actions) were purchased in New York City Housing Court. This is often the first step an owner will take in court to collect back rent. This is usually not attempted until a renter is at least three months in arrears. Of this number, approximately 18,000 (10 percent) actually result in a physical eviction. Additionally, in the majority of those cases, by the time the marshal shows up, the tenant has departed voluntarily.[15] Eviction, moreover, does not occur precipitously. This entire process usually takes well over a year. In other words, eviction actions, whether before or during the pandemic, are often a first step toward what amounts to a housing-court-facilitated arbitration over payment of back rent.

Pandemic and Eviction Moratorium on Rental Property Owners

Typically overlooked in the discussion of the plight of tenants facing eviction is the understanding that housing markets are not characterized by medieval, Simon Legree–type "landlords" able to exercise monopoly power and demand a pound of flesh. Housing markets, rather, should be understood as urban ecosystems, in which owner and tenant are interdependent, the former providing a vital good and the latter making possible upkeep and ongoing provision. The idea that the profit motive is antithetical to good housing conditions has been thoroughly debunked by the endemic maintenance problems of public housing, in which rental payments are limited by statute. Further, a significant percentage of rental property owners owns a small number of units. In New York, for instance, these include immigrants using rental units as part of their socioeconomic upward mobility plans. *National Review* documented stories of property owners struggling to get by, much in contrast to the vilification of landlords by #CancelRent advocates and others.

> Lincoln Eccles manages a 14-unit, family-owned building in the Crown Heights neighborhood of Brooklyn in New York City. Eccles, an immigrant from Jamaica who moved to the U.S. with his family when he was a young child, said he essentially needs 100 percent occupancy just to get by. Even before the pandemic, he had two non-payers. Because of the pandemic, two of his previously consistent-paying tenants have fallen behind on their rent. He said he managed to move out one of the non-payers by forgiving the tenant's nearly $100,000 debt in a so-called "cash for keys" agreement. But he's still operating in the red.[16]

Eviction moratoriums have hurt mom-and-pop rental property owners, with the gap still growing as the moratorium has been continually extended. According the National Apartment Owners Association CEO Robert Pinnegar, the gap between rent and rental income has reached $10 billion and is growing by about $5 billion every month. "Those are real dollars to real property owners who count on that money to survive and to fund their retirements."[17]

The University of Pennsylvania Housing Initiative has focused specifically on the impact of the pandemic, and pandemic-related policy changes, on rental property owners in Los Angeles and Philadelphia. Its findings underscore smaller landlords' unique problems.

It found that, in Los Angeles, 38.7 percent of small owners reported that 40 percent or more of their portfolio was behind, whereas those numbers were only 12.6 percent and 13.1 percent, respectively, for large and midsize owners. These survey results lend credence to the idea that small rental property owners have been disproportionately affected by the pandemic.[18]

In Philadelphia, the Housing Initiative found that more than 60 percent of surveyed landlords reported they were "somewhat" or "very much" affected by the COVID-19 pandemic. Since the pandemic began, the share of owners experiencing issues with tenant nonpayment has doubled from 25.9 percent to 51.5 percent.[19]

Once again, the disparate impact on small-time landlords was clear in this urban ecosystem. "Among survey respondents, larger landlords (owners of 30-plus units) were twice as likely as smaller landlords (owners of one to five units) were to have a formal, written eviction policy—70.4 percent compared to 35.7 percent."[20] In addition, landlords reported in interviews that a small minority of tenants seemed to be exploiting the moratorium by not paying rent, even if they were employed or not experiencing COVID-19-related hardship.[21]

Moreover, a greater share of small landlords reported they were "very much" affected, at 50.6 percent compared to 40.9 percent of owners of 30-plus units. Small landlords in Philadelphia were less likely to know about the city's eviction diversion program but also less likely to be unwilling to waive the right to evict. This suggests that small-time landlords have a more personal relationship with their tenants. In their role as members of an urban "ecosystem," small property owners, when undertaking repairs and maintenance, often turn to small local tradesmen, who are indirectly suffering from the reduction in rent payments.[22]

Finally, the disparate racial impact on property owners has been stark. An Urban Institute report surveyed landlords and tenants in August 2020 and found that the COVID-19 crisis and the statewide eviction moratorium were disproportionately affecting black and Hispanic rental property owners who were struggling to pay their mortgage. Yet, 48 percent of Hispanic and 42 percent of black rental property owners offered their tenants rent payment plans, compared to 36 percent of white rental property owners.[23] The generosity of small-time and minority landlords in face of a never-ending moratorium is impressive.

Conclusion

The above findings, especially as they relate to the reduced number of pending eviction actions, run counter to the idea that a major eviction crisis is looming or that such a potential crisis continues to justify ongoing eviction moratoriums. Recent rulings on the legality of the CDC-imposed eviction moratorium is an important start in ensuring the health of housing ecosystems around the country. The economic harm smaller property owners are experiencing underscores the perils of such an approach. Undoubtedly, eviction or its threat can be a personal crisis for those experiencing it—one that affects where they may live both at present and in the future (thanks to impact on credit rating, for instance).

In the moment, priority must be given to efficiently distributing appropriated aid. The amount already appropriated through two major "stimulus" spending bills is significant, comparable in magnitude to the HUD budget for ongoing major housing assistance efforts such as housing choice vouchers. Eviction moratoriums, if they are extended, must not deter evictions for causes other than rent nonpayment. This means housing courts must remain open and operating and proceedings must continue to distinguish among eviction action causes.

Concerns about disparate effects on minority tenants must not overlook the fact that significant numbers of small rental properties are also minority-owned and that such owners may be at high risk of business failure. Further, any future appropriation of rental assistance must be evidenced-based, linked to the extent of actual eviction actions and physical evictions rather than speculative concern or ideology. Finally, the COVID-19 crisis should not be the occasion for permanent changes in state and city eviction law, based on the misconception that eviction, or its threat, should not be a tool available in the housing marketplace—both to ensure income for property investors and, just as important, to protect their other tenants.

About the Author

Howard Husock is an adjunct scholar at the American Enterprise Institute, where he focuses on local government, civil society, and urban housing policy. He is concurrently an executive senior fellow with the Philanthropy Roundtable. He is the author of *Trillion-Dollar Housing Mistake: The Failure of American Housing Policy* (Ivan R. Dee, 2003) and a forthcoming book, *The Poor Side of Town—and Why We Need One* (Encounter Books, September 2021).

Notes

1. Congressional Research Services, "Federal Eviction Moratoriums in Response to the COVID-19 Pandemic," March 30, 2021, https://crsreports.congress.gov/product/pdf/IN/IN11516.
2. Jason DeParle, "Federal Aid to Renters Moves Slowly, Leaving Many at Risk," *New York Times*, April 25, 2021, https://www.nytimes.com/2021/04/25/us/politics/rental-assistance-pandemic.html.
3. Giridhar Mallya and Diane Yentel, "What It Will Take to Address the COVID-19 Eviction Crisis," Robert Wood Johnson Foundation, April 13, 2021, https://www.rwjf.org/en/blog/2021/04/what-it-will-take-to-address-the-covid-19-eviction-crisis.html.
4. Elizabeth Gudrais, "Disrupted Lives," *Harvard Magazine*, January–February 2014, https://www.harvardmagazine.com/2014/01/disrupted-lives.
5. Howard Husock, "Compassion and Naivete," *City Journal*, May 31, 2016, https://www.city-journal.org/html/compassion-and-naivete-14460.html.
6. Centers for Disease Control and Prevention, "HHS/CDC Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19," https://www.cdc.gov/coronavirus/2019-ncov/downloads/eviction-moratoria-order-faqs.pdf.
7. Centers for Disease Control and Prevention, "HHS/CDC Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19."
8. Roger Starr, *America's Housing Challenge: What It Is and How to Meet It* (New York: Hill and Wang, 1977), 102–03.
9. Ryan Mills, "Small-Time Landlords Struggle to Keep the Lights on as 'Devastating' Eviction Moratorium Continues," *National Review*, April 5, 2021, https://www.nationalreview.com/news/small-time-landlords-struggle-to-keep-the-lights-on-as-devastating-eviction-moratorium-continues/.

10. Jason DeParle, "Federal Aid to Renters Moves Slowly, Leaving Many at Risk," *New York Times*, April 25, 2021, https://www.nytimes.com/2021/04/25/us/politics/rental-assistance-pandemic.html.
11. Andy Newell, "Where Have All the Evictions Gone?," *Multi-Housing News*, February 15, 2021, https://www.multihousingnews.com/post/where-have-all-the-evictions-gone/.
12. Newell, "Where Have All the Evictions Gone?"
13. Eric Weld, "Weekly Housing Court Eviction Data Published by MassLandlords," *Mass Landlords*, April 26, 2021, https://masslandlords.net/weekly-housing-court-eviction-data-published-by-masslandlords/.
14. Data generously compiled by the Rent Stabilization Association of New York.
15. Data generously compiled by the Rent Stabilization Association of New York.
16. Mills, "Small-Time Landlords Struggle to Keep the Lights on as 'Devastating' Eviction Moratorium Continues."
17. Mills, "Small-Time Landlords Struggle to Keep the Lights on as 'Devastating' Eviction Moratorium Continues."
18. Sydney Goldstein and Vincent Reina, "Ongoing Challenges for Rental Business Owners in the City of Los Angeles During the COVID-19 Pandemic," University of Pennsylvania, Housing Initiative, March 2021, https://www.housinginitiative.org/uploads/1/3/2/9/132946414/hip_la_owner_brief_final.pdf.
19. Sydney Goldstein et al., "Residential Rental Property Owner Perspectives and Practices in Philadelphia: Evaluating Challenges During the COVID-19 Pandemic," University of Pennsylvania, Housing Initiative, December 2020, https://www.housinginitiative.org/uploads/1/3/2/9/132946414/hip_rf_brief_final.pdf.
20. Goldstein et al., "Residential Rental Property Owner Perspectives and Practices in Philadelphia."
21. Goldstein et al., "Residential Rental Property Owner Perspectives and Practices in Philadelphia."
22. Goldstein et al., "Residential Rental Property Owner Perspectives and Practices in Philadelphia."
23. Laurie Goodman and Jung Hyun Choi, "Black and Hispanic Landlords Are Facing Great Financial Struggles Because of the COVID-19 Pandemic. They Also Support Their Tenants at Higher Rates.," Urban Institute, September 4, 2020, https://www.urban.org/urban-wire/black-and-hispanic-landlords-are-facing-great-financial-struggles-because-covid-19-pandemic-they-also-support-their-tenants-higher-rates.