

December 2021 Housing Partnership Workgroup

Presentation on COVID Tenant Protections Audience Q&A

(edited to reflect updated protections adopted by Legislature in December 2021 Special Session)

Who to contact if you receive a notice of nonpayment eviction:

Three resources:

- Oregon Law Center (OLC)
Contact if court papers were filed, thus generating an FED notice given or mailed to client and a case number.
Call 888-585-9638 or email evictiondefense@oregonlawcenter.org
- MPD Community Law Program
Contact if only a nonpayment eviction notice has been received, but no court papers filed.
Call 211 or for more information, visit <https://www.mpdlaw.com/community-law/>
- The Commons Law Center
Contact if only a nonpayment eviction notice has been received, but no court papers filed.
Text or call 503-850-0811 or send questions to <https://bit.ly/commonsevictions>

Safe Harbor protections:

From OLC: Know your rights under the new safe harbor law.

The new safe harbor law passed in December 2021 replaces the old 60/90 day safe harbor. **The new law says that while your application is pending, you cannot be evicted for nonpayment as long as the application is pending or through September 30, 2022, whichever is sooner.** But you must show notice before July 30, 2022.

Anyone who has already applied for assistance and shown documentation of their application to their landlord at or before any first court appearance is now protected from nonpayment eviction until their application is processed.

Q: Regarding the safe harbor period, can the landlord require the tenant to pay a late fee?

A: Yes, the landlord can still require late fees for nonpayment of rent but can't require the fee to "cure" the nonpayment. They can require the back rent and nothing else as part of an eviction for nonpayment. But if the eviction filing is based on "failure to comply with rent agreement," they can require late fees to "cure" the violation of rental agreement.

Q: For tenants who get safe harbor protection for having applied for rent assistance money, and then get denied or get less than anticipated- can they be charged late fees from during the safe harbor period once it expires?

A: No clear answer for this, but if someone received partial rent assistance and was able to pay the difference, there could still be late fees accruing during this time. However, these fees can't be the reason for eviction of nonpayment of rent.

Q: When does the safe harbor period start? Does it begin on the rent due date or the date the pause is requested from the landlord?

A: Tenants have a few options. They can submit their proof of application for assistance right after receiving a 10 day nonpayment notice, if they have already applied. If they haven't applied yet, the 10 day notice gives them 10 days to apply and provide the landlord with proof that their application is in process. Either way, the landlord has to pause the eviction while the application is pending. That means they don't have to show up to a first appearance in court or anything like that as long as they have already submitted this proof to the landlord within that 10 day time period.

In addition, after a landlord has filed the eviction in court, a tenant can show up at the first appearance at court and bring proof of applying for rent assistance to court. Then, the court requires the pause on eviction while the application is pending.

Oregon Law Center program basics:

Q: How do you reach OLC for a new client intake?

A: To reach the OLC Eviction Defense Project (if you have received a court summons about an eviction case) call (888) 585-9638 or email evictiondefense@oregonlawcenter.org. You will be asked to leave a message. Be prepared to leave your name, your phone number, your date of birth, and the case number from your court papers.

For other OLC legal services in Multnomah County: (800) 672-4919 (Toll-Free). Note: OLC is providing telephone-only appointments for new client intakes. Please contact Legal Aid Services of Oregon's Portland Regional Office if you have a family law matter, such as custody, divorce or protective orders.

Q: Are OLC services free?

A: Yes, OLC is focused on helping low income Oregonians, so clients have to qualify based on income eligibility (call or email OLC for details- see above)

Q: Is this for Portland only?

A: No, OLC services are statewide. To find other Oregon Legal Aid offices and contact information: <https://oregonlawhelp.org//resource/oregon-legal-aid-offices>

Q: Does OLC have an office to visit?

A: No, most OLC offices are still working remotely, including Portland office. The eviction defense project specifically tends to work remotely. But if people need to meet in person for accessibility reasons, please inquire directly with an OLC representative.

Q: Can any tenant seek OLC services or do they have to be referred by an agency?

A: No referral needed, people can call on their own. Qualifying clients will, at minimum, have a conversation with an attorney or paralegal.

Evictions and court process:

Q: What is estimated amount of time it takes right now in Multnomah County between when someone receives a nonpayment eviction notice, court date, and a sheriff lockout?

A: Multnomah County has some differences. Generally, if a tenant goes to court and loses at trial or does not show up at the first appearance (thus losing by default), the sheriff lockout can't happen for a minimum of 4 days from when the notice of restitution is filed. Between the eviction and court, that depends greatly on the situation. For Multnomah County, you get 30

days from receiving notice to the first appearance. Then, 1-2 weeks before a trial date, if you ask for a trial. Generally, between an eviction notice expiring and showing up to court, it could be a month and a week to a month and a half.

Q: What can be done if a tenant and the landlord already went to court for non payment and damages to the unit, and the landlord did not ask for a judgement for property damage and just wanted the tenant to move out. Can the landlord then sue the tenant for damages to the unit?

A: If the person has moved out and the landlord wants to claim damages through small claims court, they can, but should be using funds from the security deposit first. They should write a letter to the tenant saying, "These are the damages and this is how we are using the deposit to cover this..." After this, they can also go to small claims court and sue for damages. On the other hand, if the tenant is still on the property and they already went through court for nonpayment, the landlord can still issue an eviction notice for violation of the rental agreement, requiring the tenant to fix the issue (paying the damages) in the 14 day period on the notice.

Q: About how often are eviction proceedings held?

A: Unfortunately, these are happening every day across the state of Oregon. OLC sees somewhere between 40-60 evictions being filed every day. But that's only the tip of the iceberg since many people receive the initial eviction notice and decide to leave their housing to avoid eviction court, not realizing that they have eviction protections available to them. The University of Washington estimates that only about 20% of evictions filed through the courts reflect the total number of people being pushed out of their housing based on landlord attempts to evict.

Q: Do you have a sense of how the current number of eviction filings in Oregon compares to pre-pandemic eviction filings?

A: OLC started looking at this when the pandemic had already begun, thought we would see an explosion of evictions in July when moratorium ended. The level of increase has not been quite that high but it is definitely more than pre-pandemic. Now, the vast majority of filings are more than pre-pandemic.

Oregon Emergency Rental Assistance Program (OERAP):

Q: Can a client who is receiving SSDI or SSI monthly or working full time qualify for assistance through OERAP?

A: Yes, people with SSI and SSDI can apply for assistance and the income limit is 80% AMI ([see this page](#) for more information).

Q: If a tenant receives a monthly income and is able to pay rent and applies to OERAP for past due or current due rent would this disqualify the individual?

A: No, you can be paying your current rent and still apply for past due rent as long as you qualify based on the income guidelines.

Q: What happens when someone has gone to court already and tenant needs assistance but there is a delayed payment in OERAP app portal. Can anything work for them to avoid eviction?

A: The tenant can apply for other forms of rent assistance- apply via a community partner, church, county provider, etc. Rent assistance is broadly defined so it can come from another source in the meantime. We may have to get creative while there are significant delays with OERAP and they have paused in accepting new applications.

Q: If someone is already receiving rental assistance through Public Housing Authority, but can't pay for their portion of the rent, does this count as 'receiving rental assistance' in order to pause the filing of an eviction? Or does this have to be an additional rental assistance application?

A: Participants in rental assistance through Public Housing Authorities have been able to apply for OERAP. It's highly recommended that they apply for rent assistance through OERAP to receive protection from eviction if they owe past due rent.

Q: OERAP isn't a guarantee- if the tenant has waited for months and gets denied for assistance, what should they do?

A: If the client waited and was denied assistance, they can enter a payment plan with the landlord or face eviction, unfortunately. If the rent assistance application is denied, closed, or paid for less than is owed in the nonpayment notice, the landlord can move forward with the eviction.

Additional SB 278 protections for COVID-impacted tenants applying for new housing:

Q: When you say that landlords can't consider consider eviction judgments from 4/1/20-3/1/22 when screening new prospective tenants, does this include any evictions for any reason during this time period?

A: Yes! This includes any evictions during the the time periods specified above. This provision has no sunset date.

Q: Based on the provision in SB 278 that says landlords can't consider unpaid rent from 4/1/20- 6/30/21 (which sunsets in January 2028) when considering new prospective tenants— can a landlord still deny an applicant based on late notices between April 2020 and June 2021 if the rent has been paid but was paid late?

A: That would not be possible under this provision in SB 278 around not considering unpaid rent, although it may require challenging in court.