

EMERGENCY

City of Cincinnati

EEF/B

AWB

An Ordinance No. \_\_\_\_\_

-2021

**PROHIBITING** the initiation or ongoing prosecution of actions for forcible detainer and entry (“eviction”) brought under Ohio Revised Code Chapter 1923, “Forcible Entry and Detainer,” for so long as the State of Emergency declared by the Governor of the State of Ohio on March 9, 2020 exists, where the sole basis for filing such eviction action is the nonpayment of rent.

WHEREAS, COVID-19 is a respiratory disease that can result in serious illness or death and can be easily spread from person to person; and

WHEREAS, the Centers for Disease Control and Prevention (“CDC”) reported over 30,596,830 cases of COVID-19 in the United States during the ongoing pandemic, resulting in over 554,420 deaths; and

WHEREAS, on March 9, 2020, the Ohio Department of Health announced confirmed cases of COVID-19 in the State of Ohio that created a dangerous condition that may affect the health, safety, and welfare of the citizens of Ohio; and

WHEREAS, on that same date, Governor Mike DeWine declared a State of Emergency in Ohio to protect the well-being of the citizens of Ohio from the dangerous effects of COVID-19, and to assist in protecting the lives, safety, and health of the citizens of Ohio; and

WHEREAS, COVID-19 endangers the lives of the citizens of Cincinnati, creating emergency conditions impacting life and public safety and disrupting commerce; and

WHEREAS, the United States Congress in March 2020 enacted a 120-day moratorium on eviction filings based on nonpayment of rent, which moratorium expired in July 2020; and

WHEREAS, on September 4, 2020, the CDC issued a nationwide moratorium on residential evictions for individuals below a specified income level where the basis of the eviction was nonpayment of rent, which moratorium has recently been extended until June 30, 2021; and

WHEREAS, on March 29, 2021, the United States Court of Appeals for the Sixth Circuit Court issued a decision in *Tiger Lily, LLC v. U.S. Dept. of Housing and Urban Development*, et al., No. 21-5256 declining to stay the order on appeal of the United States District Court for the Western District of Tennessee, which held that the CDC moratorium was unenforceable in the Western District of Tennessee; and

WHEREAS, the Hamilton County Municipal Court, which is the forum for eviction filings for properties located in the city of Cincinnati and which is located in the jurisdiction of the United States District Court for the Southern District of Ohio, has unilaterally determined that the CDC moratorium no longer applies in the Southern District of Ohio; and

WHEREAS, the Governor of the State of Ohio has declared that the State of Emergency will persist until the state reports 50 or fewer COVID-19 cases per 100,000 people; and

WHEREAS, as of March 31, 2021, there are approximately 168 cases per 100,000 people in the state of Ohio, and approximately 145.3 cases per 100,000 people in Hamilton County; and

WHEREAS, there have been record unemployment filings across the state and widespread loss of employment attributable to the COVID-19 pandemic; and

WHEREAS, there are currently millions of dollars in rental and utility assistance funds available to qualifying residential tenants and landlords who have experienced financial hardship due to COVID-19, and such low-barrier funds may be used to pay for multiple months of unpaid monthly rent and utility bills to ensure housing stability; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That the following shall apply to any eviction action involving residential rental property located in the city of Cincinnati and filed under Ohio Revised Code Chapter 1923, "Forcible Entry and Detainer," for nonpayment of rent during the COVID-19 State of Emergency:

- a. Tenant's right to pay to stay in residential rental property prior to filing of an eviction action for non-payment of rent (Complaint for Forcible Entry and Detainer):
  - i. At any time prior to the filing of an action under Ohio Revised Code Chapter 1923 for nonpayment of rent by a landlord, a tenant shall have the right to pay the landlord all past due rent with reasonable late fees, which are governed by Cincinnati Municipal Code Sections 871-9(a)(10) and 871-9(a)(11), to prevent the filing of such action for the restitution of the lands or tenements. If the tenant tenders all accrued rent and reasonable late fees, the landlord shall accept the tendered payment and allow the tenant to maintain the tenancy.
  - ii. If the tenant tenders all past due rent with reasonable late fees to the landlord prior to the filing of an action under Ohio Revised Code Chapter 1923 and the landlord refuses the tender, the tenant's tender of all past due rent with reasonable late fees shall be an affirmative defense to any action filed by the landlord against the tenant for nonpayment of rent.
- b. Tenant's right to pay to stay in residential rental property prior to an eviction judgment from non-payment of rent (Entry of Restitution):
  - i. After the filing of an action under Ohio Revised Code Chapter 1923 for nonpayment of rent but prior to a judgment, the tenant shall have the right to pay the landlord all past due rent; reasonable late fees, which are governed by Cincinnati Municipal Code Sections 871-9(a)(10) and 871-9(a)(11); reasonable

attorney's fees, not to exceed \$125.00; and court costs, so that the tenant may maintain the tenancy. If the tenant tenders all past due rent amounts, including late fees and court costs, the landlord shall accept the payment. Upon receipt of the payment, the landlord shall dismiss the action against the tenant.

- ii. If the tenant tenders all past due rent with reasonable late fees, reasonable attorney's fees not to exceed \$125.00, and court costs to the landlord prior to a judgment and the landlord refuses the tender, the tenant's tender of all past due rent, reasonable late fees, reasonable attorney's fees, and court costs shall be an affirmative defense to the eviction action filed by the landlord against the tenant for nonpayment of rent.
- c. For purposes of sections (a) and (b) of this ordinance, "tender" shall be made to the landlord in any lawful form agreed upon by the landlord, any form provided for by state law, or any form approved of by a court with jurisdiction over the eviction action. Where a tenant provides payment to a landlord in the form of a cashier's check, money order, certified check, or cash in an amount which covers all past due rent, reasonable late fees, and, where applicable, court costs, and reasonable attorney's fees, such payment shall also constitute "tender" for purposes of this section.

Section 2. That this Ordinance shall remain in effect until such time as the Governor for the State of Ohio declares the State of Emergency issued on March 9, 2020 no longer exists.

Section 3. That this Ordinance is hereby authorized under the City of Cincinnati's home rule powers as set forth in Article I of the Charter of the City of Cincinnati.

Section 4. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need to take action that protects the health and safety of the citizens of the City of Cincinnati by preventing evictions of tenants from residential property based on non-payment of

rent in cases in which tenants have demonstrated compliance with rental payment obligations and have further paid for any additional eviction-related court costs incurred by a landlord.

Passed: \_\_\_\_\_, 2021

\_\_\_\_\_  
John Cranley, Mayor

Attest: \_\_\_\_\_  
Clerk