

City of Cincinnati

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An Ordinance No. _____

- 2021

MODIFYING the provisions of Chapter 871, “Landlord-Tenant Relationships,” of Title VIII, “Business Regulations,” of the Cincinnati Municipal Code, by **AMENDING** Section 871-9, “Obligations of Landlords and Tenants,” to recognize the right of tenants living in residential rental properties to assert payment of past due rent as a defense in any forcible entry and detainer (eviction) action filed on the basis of nonpayment of rent.

WHEREAS, over a year and a half after the Governor of the State of Ohio declared a public health emergency due to the global pandemic caused by the novel coronavirus (“COVID-19”), the pandemic persists and the rate of transmission of COVID-19 continues to increase despite the widespread availability of vaccines demonstrated to reduce transmission; and

WHEREAS, as of August 16, 2021, there are approximately 192 cases of COVID-19 being reported per day in Hamilton County, marking a 137% increase from two weeks ago; and

WHEREAS, the full scope of the long-term economic impact of the COVID-19 pandemic on the state, region, City, and tenants of residential rental properties is not yet ascertainable, but evidence to date demonstrates that there have been record unemployment filings across the state and widespread loss of employment attributable to the COVID-19 pandemic; and

WHEREAS, despite an August 13, 2021 ruling from the federal court in the District of Columbia denying a request to block the enactment of the current eviction moratorium issued by the Center for Disease Control, which moratorium is in effect up to and including October 3, 2021, the Hamilton County Municipal Court has determined to allow eviction actions to proceed; 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, which low-barrier funds may be used to pay for multiple months of unpaid monthly rent and utility bills to ensure housing stability; and

WHEREAS, Ohio courts have long recognized that residential tenants subject to eviction actions may assert late payment of rental payments owed as an affirmative defense in eviction matters, including in the decisions in *Bester v. Owens*, 1999 Ohio App. LEXIS 1439 (2d Dist. 1999); *Northlake Hills Co-op v. Barrett*, 1986 WL 14238 (2d Dist. 1999); and *CMHA v. Green*, 41 Ohio App. 3d 365 (1st Dist. 1987), and courts may decline to terminate lease agreements in such cases; now, therefore,

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

Section 1. That Section 871-9, "Obligations of Landlords and Tenants," of Chapter 871, "Landlord-Tenant Relationships," of Title VIII, "Business Regulations," of the Cincinnati Municipal Code is hereby amended to read as follows:

Sec. 871-9. – Obligations of Landlords and Tenants.

(a) In every rental agreement there shall be imposed upon the landlord the following obligations to the tenant:

(1) The landlord shall conform to the "Obligations of Landlords" as set out in Section 5321.04 of the Ohio Revised Code.

(2) The landlord shall maintain the rental unit in substantial compliance with the provisions applicable to landlords in the Cincinnati - Ohio Basic Building Code, the Cincinnati Fire Prevention Code, and the regulations of the board of health;

(3) So long as the tenant continues to meet their obligation under paragraph 871-9(b)(2), no landlord shall raise the agreed rent for the rental unit above the rent charged for comparable rental units, or otherwise increase the obligations of the tenant in any way, or terminate the tenancy, or bring an action for forcible entry and detainer, in retaliation for the tenant's availing themselves of any right or remedy under this chapter or because:

(A) The tenant has complained in good faith to the landlord or their agent or employees of conditions in or affecting the tenant's rental unit which the tenant believes may constitute a violation of the Cincinnati - Ohio Basic Building Code, the Fire Prevention Code, the regulations of the board of health or any other law.

(B) The tenant has complained in good faith to a body charged with the enforcement of the Cincinnati - Ohio Basic Building Code, the Fire Prevention Code, or the regulations of the board of health, or any other law of a condition in or affecting the rental unit which the tenant believes may constitute a violation of such codes, regulations or other laws; or

(C) In response to a complaint of the tenant, the body charged with enforcement of the Cincinnati - Ohio Basic Building Code, the Fire Prevention Code, the regulations of the board of health or any other law has served a notice or complaint of a violation on the landlord, agents, or employees of the landlord.

- (4) Within six months after the occurrence of any event referred to in this paragraph 871-9(a)(3), an action for forcible entry and detainer shall be presumed to be in retaliation for that event and the landlord shall not be entitled to recover possession unless landlord proves by a preponderance of the evidence that:
 - (A) The tenant is committing waste, creating a nuisance, using the rental unit for an illegal purpose or for other than living or dwelling purposes, or substantially impairing the quiet enjoyment of the property by the other occupants of the property; or
 - (B) The landlord desires possession of the rental unit for immediate use as landlord's own abode; or
 - (C) The rental unit must be vacated in order to make necessary repairs; or
 - (D) The landlord plans permanently and immediately to remove the rental unit from the rental market.
- (5) The obligations of a tenant under any agreement or under this chapter shall not be modified by this section, but failure of the tenant to perform any obligations other than those specified in paragraphs 871-9(b)(2) and 871-9(a)(4) shall not be grounds for eviction.
- (6) Prior to entry into the rental agreement and thereafter upon request by the tenant, the landlord shall provide to the tenant:
 - (A) A copy of all rules and regulations concerning the use, occupancy and maintenance of the rental unit, appurtenances thereto, and the property of which the rental unit is a part, and
 - (B) A copy of the "Notice to tenants" set out in paragraph 871-11(a) and shall obtain from the tenant a written acknowledgement by the tenant of receipt of the rules and regulations and the "Notice to tenants" set out in paragraph 871-11(a).
 - (C) A complete copy of the written rental agreement, if any.
- (7) When a tenant provides a security deposit the landlord shall provide the tenant with a signed receipt for the security deposit and all rental payments, except for payments made by personal check of the tenant, at the time the security deposit or rental payments are made.
- (8) Upon a tenant's request, all landlords who own and control more than twenty-five rental units and require a security deposit shall offer to accept at least one

of the options described in paragraph 871-9(a)(8)(A-C) in lieu of the required security deposit:

(A) Rental security insurance that satisfies the following criteria:

- (i) The insurance provider is an approved carrier licensed by, and in good standing with, the Ohio Department of Insurance;
- (ii) The coverage is effective upon payment of the first premium and remains effective for the entire lease term; and
- (iii) The coverage provided per claim is no less than the amount the landlord requires for security deposits.

(B) Payment of the security deposit over a series of no less than six equal monthly installment payments, which installments shall be due on the same day as the monthly rent payment and which may be paid together with the monthly rent payment in a single transaction, absent separate agreement by the landlord and tenant.

(C) Payment of a reduced security deposit, which amount shall be no more than fifty percent of the monthly rental rate charged for the subject unit.

(D) Prior to entering into a rental agreement, a landlord shall provide the tenant written notice of the available security deposit alternatives consistent with paragraph 871-11, "Notice to Tenants."

(E) If rental security insurance meeting the criteria in this paragraph 871-9(a)(8) is not available within the corporate limits of city of Cincinnati, a landlord shall satisfy his or her obligations under this paragraph 871-9(a)(8) by offering, at his or her option, one of the rental security deposit alternatives described in paragraph 871-9(a)(8)(B-C).

(F) The provisions of this paragraph shall not apply to a deposit placed with a landlord to secure the availability of a rental unit more than sixty days prior to the commencement of the rental period.

(9) A tenant who elects to provide rental insurance in lieu of a required security deposit shall not be required to provide additional security or insurance coverage per claim in an amount greater than the amount required for security deposits.

(10) If the rental agreement includes a provision that authorizes the landlord to assess the tenant a fee for late payment of the monthly rent, the total amount of that late payment fee for any month may not exceed fifty dollars (\$50.00) or five percent (5%) of the monthly contract rent, whichever amount is greater.

(11) The landlord shall not:

(A) Charge interest on a late fee;

(B) Impose a late fee more than one time on a tenant's single late payment of rent; or

(C) Impose a late fee on a tenant for the late payment or nonpayment of any portion of the rent for which a rent subsidy provider, rather than the tenant, is responsible for paying.

(b) In every rental agreement there shall be imposed upon the tenant the following obligations to the landlord:

(1) The tenant shall conform to the "Responsibilities of occupants" as set out in the Cincinnati - Ohio Basic Building Code and to the "Obligations of Tenant" as set out in Section 5321-05 of the Ohio Revised Code.

(2) The tenant shall tender the agreed rent at the agreed time and place, and in the agreed manner except:

(A) When the tenant has made any payment to a utility supplier for utility services to the rental unit which, by the rental agreement, is the obligation of the landlord, the tenant may deduct the amount of such payments from the rent.

(B) When the landlord has failed to comply with an order of state or local building, health, or fire officials within the time period specified in the initial order to the landlord, the tenant may make or cause to be made necessary repairs and deduct the reasonable cost thereof, including the cost of all necessary permits, from the rent due and owing in the next two consecutive 30 day rental periods. No tenant shall deduct more than two months' rent for the cost of repairs in any six-month period. No tenant shall undertake repairs without first obtaining the necessary permits from the Department of Buildings and Inspections. All repairs shall be made in compliance with the provisions of the Cincinnati - Ohio Basic Building Code.

(C) Whenever the building or a portion of the building of which the rental unit is a part is ordered vacated by governmental authority, the tenant shall vacate the rental unit and the duty of the tenant to pay rent shall be completely abated.

- (3) The tenant shall obey all rules and regulations established by the landlord concerning the use, occupation, and maintenance of the rental unit, appurtenances thereto, and the property of which the unit is a part, if:
- (A) The tenant has acknowledged receipt in writing of a copy of the rules and regulations prior to entry into the rental agreement, or has consented in writing to rules and regulations promulgated after commencement of the rental agreement, and
 - (B) The rules and regulations are reasonably related to the convenience, safety or welfare of the tenants of the property, or to the preservation of the property, or to the fair distribution of services and facilities held out for the tenants generally, and
 - (C) The rules and regulations are sufficiently explicit in their prohibition, direction, or limitation of the tenant's conduct to inform tenant of what must or must not be done to comply.
- (c) In any eviction action (Complaint for Forcible Entry and Detainer) brought by a landlord under Ohio Revised Code Chapter 1923 for nonpayment of rent involving a residential rental property, the tenant's tender of all past due rent; reasonable late fees, which late fees are governed by Sections 871-9(a)(10) and 871-9(a)(11); court costs; and reasonable attorney fees, not to exceed \$125.00, whether tender is made before or after the filing of the eviction action, so long as tender is made no later than at the municipal court eviction hearing, shall constitute an affirmative defense.
- (1) For purposes of this section, "tender" shall mean payment of or the provision of a voucher from an accredited social service, nonprofit, governmental, or quasi-governmental agency that guarantees the payment of any and all past due rent, reasonable late fees, court costs, and, where applicable, reasonable attorney's fees. Such 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, court costs, and, where applicable, reasonable attorney's fees, such payment shall also constitute "tender" for purposes of this section.
- (d) Except as specifically provided in Section 871-9 or any other section of this chapter, all obligations of landlords and tenants under this chapter shall be interpreted as independent obligations and the duty of a tenant or landlord to meet the obligations under this chapter shall not be conditioned upon the performance of obligations by the other party to the rental agreement.

Section 2. That existing Section 871-9, "Obligations of Landlords and Tenants" of Chapter 871, "Landlord-Tenant Relationships" of the Cincinnati Municipal Code is hereby repealed.

Section 3. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: _____, 2021

John Cranley, Mayor

Attest: _____

Clerk

New language underscored. Deleted language indicated by strikethrough.