

As Eviction Moratorium is Struck Down, More Questions Loom For Landlords

BOSTON — After a second try to overturn a judge's ruling to end the evictions moratorium that was in place for nearly two years (when added to the federal moratorium) during the pandemic, 2022 begins with a new Mayor and at least for the time being, a temporary ease for those owning and managing properties in the city of Boston.

“We knew this moratorium was unconstitutional; you have to go through the state. I was not really shocked [by the judge’s decision] ... a classic appeal on the part of the city - but it’s pretty clear it’s a legislative situation,” stressed Greg Vasil, CEO and President of the Greater Boston Real Estate Board. “I think if you look at the time leading up to when [Acting Mayor] Kim Janey put the moratorium into effect, she was getting pushed back. Other communities have done this, we will too - this will buy time. ... practically, it bought the city time,” added Vasil.

On November 30th, Eastern Housing Court Judge Irene Bagdoian struck down Boston’s evictions moratorium, which had been in place since Acting Mayor Kim Janey ordered it on August 27th, saying the city’s public health commission exceeded its power granted by law. On December 2nd, the city of Boston, now under Mayor Michelle Wu, appealed the judge’s decision. Knowing that the appeals court’s decision could be months away, Wu requested a stay of execution, which would let the rule forbidding evictions continue until the case was heard.

However on December 23rd, Judge Bagdoian again denied the city’s request to allow its pandemic-related ban on evictions continue, as she reiterated her dismay, stating the city basically has some nerve trying to get around state housing law. “The whole thing [the judge’s decision] is not surprising; we knew when it was passed that it was legally dubious. Sheila Dillon [Boston Chief of Housing] even said she expected legal challenges, “but we have to try,” opined Doug Quattrochi, Executive Director of MassLandlords.net, a professional organization of 2,000 Massachusetts landlords.

The history of eviction moratoriums in the US following the outbreak of COVID covers 20 months of attempts by local, state, and federal governments to help tenants pay rent when they couldn’t due to lost wages from jobs that disappeared for millions of Americans. There was the CDC ban. There was a state ban. Then, a series of policies were put in place by the state that replaced the moratorium but still allowed evictions to proceed if landlords followed certain rules.

Then, when the US Supreme Court struck down the CDC ban, the city of Boston implemented its own. “It was political from the beginning; the goal is to try to discourage people [landlords]. Constables are licensed by the city, so even if the city couldn’t stop them from levying evictions, they could stop them by not renewing their licenses,” says Quattrochi.

Mitchell Matorin of Matorin Law Office, LLC who represents one of the plaintiffs suing to overturn the city’s eviction moratorium, sees things very clearly. “The case rested on three arguments: 1) BPHC has no authority within its statutes; 2) Whatever powers it does have under the Massachusetts constitution,

it has them only when consistent with state law, and this isn't; and, 3) Under the Massachusetts constitution, a municipality cannot regulate any private civil law, which is what exists between any landlord and tenant. In our view, implementing the eviction moratorium was a political decision - [Acting Mayor] Janey did it after being criticized for not helping and in the heat of a campaign. The reality is that politics is politics."

The moratorium on evictions does not actually forbid a landlord from filing suit in housing court for non-payment of rent and it doesn't forbid judges from ruling that a tenant is guilty of non-payment of rent, or from approving the removal of a tenant if they don't bring their rent current. What it does is forbid constables from arriving at the front door of an apartment and serve papers to the tenant.

The housing court ruled that the BPHC didn't have the authority to set that rule; laws are the responsibility of the legislature, in this case the state legislature, which enacted its own set of protections in January 2021. That's (partly) where the case heard in front of Judge Bagdoian originated from; a local constable sued in housing court saying his livelihood was lost due to the city's ban (a violation of the 14th Amendment to the US Constitution).

Meanwhile, a Mattapan landlord was trying to have one of her tenants removed from her property. The tenant was in arrears on her rent and the landlord sued. They two reached an agreement on a repayment plan but the tenant reneged and the landlord then asked for the housing court to allow for the removal of the tenant. (In Massachusetts, landlords do not physically remove tenants; they employ a sheriff or constable who comes and processes the levy of execution.)

Then the CDC moratorium was implemented. Once the Supreme Court struck down the moratorium, the landlord could have begun the process but the city of Boston implemented its own moratorium, and the landlord was left with a mortgage to pay and a tenant unwilling to meet its obligation. According to Matorin, the landlord's lawyer, that's when they sued. Then it's March 2021 - two years after the judgment was entered. Two years of additional rent had accrued. The landlord was then entitled to take possession, once the CDC moratorium was overturned, but then Boston's city moratorium took over.

The financial hardship endured by landlords due to the pandemic has been well-documented. While large institutional investors have been able to weather the storm (so far), it's landlords like Matorin's client that have been suffering all along. Jason Manekas, Bernkopf Goodman LP. Manekas is a partner at Bernkopf Goodman.

"I think the effects of the moratorium are landlord dependent; you have large landlords who are used to having tenants who don't pay - those landlords can afford a 5% occupancy rate. When the moratorium ended, if they were outside of Boston, in Worcester for example, it was, "Who do we need to evict and why?" interprets Manekas. With delinquencies, Manekas confers, most of the landlords have been pressed to educate their tenants on eviction rights, and help them through rent concessions and deferrals.

But for the smaller landlords, you have mortgage payments due and now two or three tenants who aren't paying based on being 'bad actors,' affirms Manekas. Naturally, the smaller landlords are impacted; they have to meet their own monthly payments. It's these landlords who haven't been paid in almost two

years . In her decision on the moratorium, Judge Bagdoian agreed and said the moratorium wasn't legal, for basically the same reasons as the Supreme Court had ruled in the CDC lawsuit: no authority. Regardless of what happens with the stay, nothing much will change until the appeals court rules, and if that decision is appealed, then the State Supreme Court will decide.

"Practically, on appeal, there are still problems; you can't do anything. Even if you can, even if you serve, then you have to turn around and give it to the court, and they say: The mayor has told us to stand down. The city has already put constables and sheriffs on notice - you can not serve evictions under its orders; they are in control - you can't get an official to serve papers, and the city won't allow you to sue," concedes Manekas.

Manekas has his own thoughts on why the city tried to implement the moratorium; he believes Boston wants a shortcut to fix its decades-long housing crisis.

"Housing is too expensive, and the city is trying to solve that problem with this solution. The city doesn't want a flood of evictions." What comes through clearly when speaking with real estate experts is a feeling of frustration that the evictions situation has only been exacerbated during the past year instead of getting closer to a resolution; this after the state has helped more than 55,000 individual households pay their rent - and more than \$400 million has been bequeathed to tenants past-due on rent.

"If you take a look back at April 2020 when the state's moratorium was first put in place, there was just a little money for rent help but since then there are vaccines, there's no longer a state of emergency, and there's a boatload of money. The state still has \$2+ billion in funds ... before you do anything use the money they have," concludes Vasil.

"Back in March 2020, the state said hold on, let's figure this out. There were lots of unanswered questions. Time went on and the state legislature and municipal leaders had plenty of time to create a process to protect the rights (of both tenant and landlord) without shifting the entire burden onto the landlords. A year and a half into this, there had darn-well be better approaches to this' ' wailed Matorin.