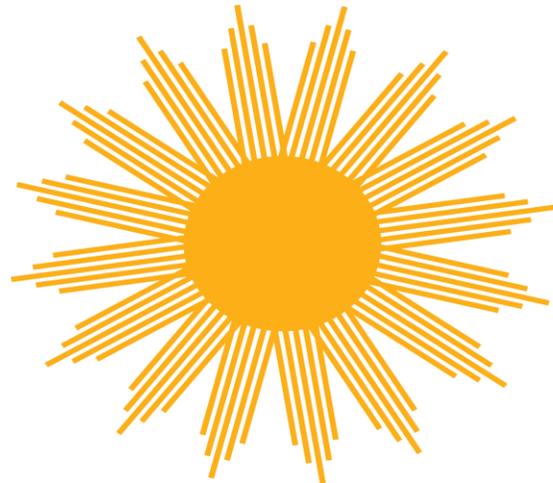


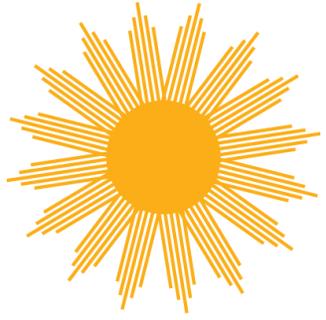
# Housing Court 101



CENTER FOR  
ELDER  
LAW &  
JUSTICE

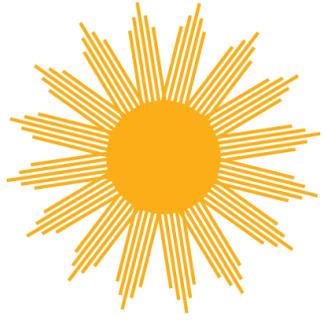
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\*Presented on: July 19, 2022



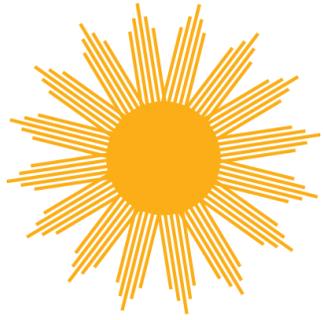
# Agenda

- I. Terms to Know
- II. Eviction Process
- III. Potential Eviction Defenses
- IV. Housing Code Violations



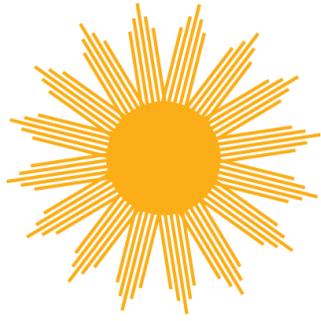
# Disclaimer

- Please note that due to the ever-changing eviction landscape in New York State, the materials included in this presentation are subject to change at any time.
- This presentation is for informational purposes only, and does not constitute legal advice. For advice on your specific situation please contact an attorney.
- The foregoing information is current as of the date of this presentation, July 19, 2022.
- The experiential matters discussed come from handling cases in the city of Buffalo and Western New York. Consult an attorney local to you if you are experiencing an eviction matter.



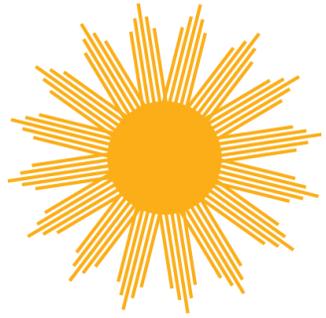
# Terms to Know

- Landlord/Owner—Person or company who owns the property
- Petitioner—Person bringing an eviction proceeding in housing court
- Tenant—Non-owner who resides in a residential unit or building, typically under a lease
- Occupant—Someone who resides in the dwelling unit
- Eviction—Action to remove a person/people from a building or dwelling
- Ejectment—Special procedure in NY to remove immediate family members
- Nonpayment—Eviction sought because tenant did not pay rent
- Holdover—Eviction sought because tenant remained in the property after the lease terminated
- Nuisance—Unique type of eviction where tenant is engaging in bad behavior



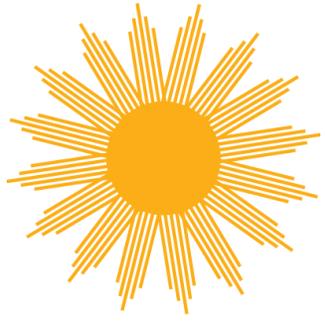
# Eviction Process Generally

- Notice of nonpayment or lease termination—Notice to Vacate
- Nonpayment can be a 14 day notice but lease termination changes depending on how long the tenant has been in the property.
- Eviction action filed with the court.
- Court appearance.
- Warrant of Eviction granted.
- Tenant's removal from the property.
- Landlords cannot perform “self-help” evictions or constructive evictions.



# Notice to Vacate

- In nonpayment matters
  - 5 day notice to pay
  - 14 day notice to pay past due rent or vacate the premises
- In holdover matters
  - 30 day notice if the tenant has lived in the unit for less than 1 year
  - 60 day notice if the tenant has lived in the unit between 1 and 2 years
  - 90 day notice if the tenant has lived in the unit more than 2 years
- Notices must fully run their course before an eviction can be filed
- Notice to Cure:
  - Alerts the tenant that they are in violation of the lease and gives an opportunity to correct the issue
  - Precedes a notice of lease termination for lease violations
  - A tenant can be evicted for violating the lease even if there is still time left in the lease term



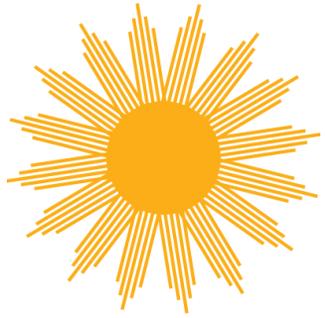
# Eviction Action Filed

- An *Action* is another name for a court case
- Landlord must file an eviction action with the appropriate city or town court, and must list the reason for the eviction (holdover or nonpayment)
- Court will then schedule the matter for a hearing
- After filing, the Landlord must *serve* (present legal papers) to the tenant
- Personal service must be attempted but if that is unsuccessful then nail and mail service may be used
- Serving the papers lets the tenant know that an eviction action is now in the court system
- After receiving a copy of the paperwork, contact a lawyer if you have not already



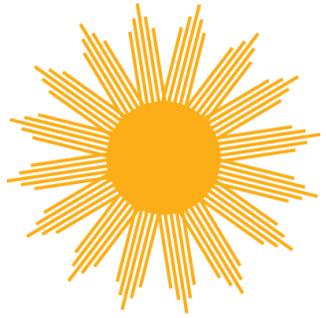
# Court Hearing

- The court will schedule the case for a hearing, usually within a few weeks of filing
  - Go to your court date!
- At court, there is usually an opportunity to negotiate a resolution before the case is called
- Otherwise, the tenant can present whatever defenses to the eviction they may have
- Depending on the circumstances, the court may grant an adjournment of the case
- Types of potential resolutions:
  - Mutual Termination—both parties agree to end the tenancy with a specified move out date—not an eviction
  - Payment plan—Tenant has an opportunity to pay back rent that is owed
- If the judge rules for the tenant, then the eviction may be dismissed, but the landlord can re-file
- If the judge rules for the landlord, then they will issue a Warrant of Eviction



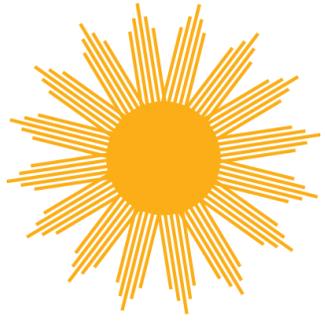
# Warrant of Eviction

- Document that allows the landlord to contact the sheriff/marshal to remove the tenant
- NY requires a minimum of 14 days between issuance of the warrant and removal
- When a legal removal takes place, then the warrant of eviction executes
- Mutual termination settlements often delay when a landlord can execute the warrant
- In non-payment matters payment in full prior to the warrant executing can resolve the case entirely



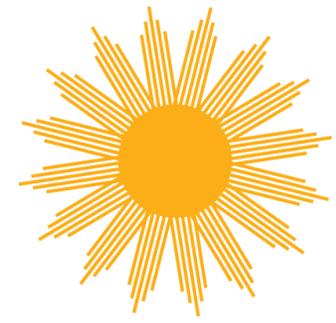
# Self-Help Evictions

- Landlords cannot perform “self-help” evictions
- These became more prominent during the pandemic
- Eviction without going through the court process
- Shutting off utilities or locking a tenant out of the property without going through the court system are examples of self-help evictions
- Landlords are required to maintain a habitable unit even if they are seeking to remove the tenant
- If your landlord is attempting a self help eviction contact an attorney and your local police



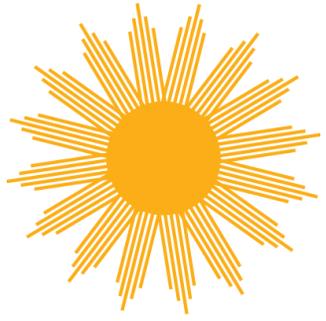
# Warranty of Habitability

- Landlords are required to maintain a habitable unit
  - Utilities (heat in winter)
  - Hot water
  - Smoke/CO detectors
- Failure to do so can give rise to an action against the landlord or a defense to an eviction
- Tenants can withhold rent until the landlord makes necessary repairs
  - That rent must be held in a separate account, do not spend it!
- Landlords are not liable for a breach of the warranty of habitability if the tenant caused the damage to the property



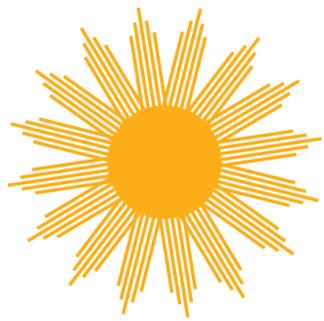
# Nuisance Proceedings

- Circumvent the eviction moratorium and hardship declaration.
- Can be for conduct which damages the property, causes a safety hazard, or substantially infringes on the use and enjoyment of other tenants.
- Tenant's action constitute a breach of the lease agreement.
- Landlord should still provide a Notice to Cure the defect.
- Landlord may attach evidence of the nuisance to their petition or present the evidence in court, but must be more than mere accusations of questionable behavior.
- Court will determine if there really is nuisance behavior.
- Evidence presented in eviction context need not be sufficient for a criminal matter. There is a lower burden of proof.



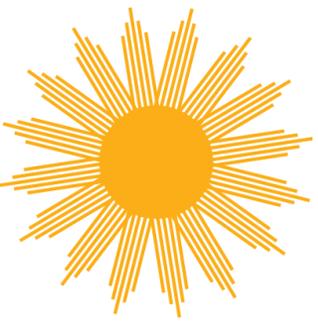
# Possible Eviction Defenses

- Improper notice
- Payment in full (nonpayment only)
- Improper service
- Nuisance activity was cured
- Tenant has vacated the property



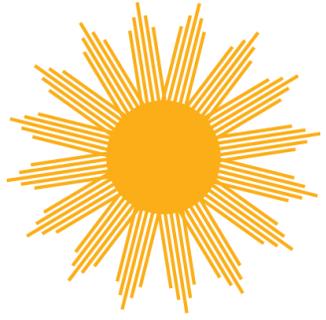
# ERAP and Evictions

- Can a landlord still evict a tenant who receives ERAP?
  - If a tenant is approved for ERAP, they can not be evicted for non-payment or a holdover during the period covered by the accepted ERAP payment.
  - If the landlord declines to participate in ERAP, they can not evict for rent arrears that ERAP would have covered.
  - Landlords can not collect late fees associated with the ERAP payment.
  - Landlords can not increase a tenant's monthly rent for one year after receipt.
    - The rent must remain the amount that it was at the time of application.
    - Rent can not be raised for one year from the date of receipt of ERAP funds.
  - Landlords may still commence an eviction proceeding should they decide not to renew the lease or for any violation **going forward** (ex: nuisance petitions, non-payment of future rent, other lease violations, etc.) subject to any other applicable eviction moratoriums.
  - Be prepared to provide your ERAP account number and date of birth at court.
  - Keep letters from ERAP (provisional approval) because they can be used in court.
  - Landlords may still evict in instances where rent was not being paid prior to the pandemic.



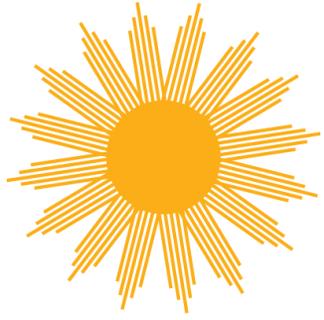
# New York State Eviction Moratoriums

- Originally put in place due to the COVID-19 Pandemic
- Prevented landlords from evicting tenants who were experiencing a COVID related hardship
- Ended January 15, 2022
- Currently, the ERAP stay on an eviction is the only “moratorium” in effect
- Courts are becoming more willing to review ERAP cases to see if the stay should continue



# Housing Code Violations

- If a property has enough code violations, then the City of Buffalo or Erie County will bring an action seeking to demolish the property
- By appearing in housing court property owners can usually secure time needed to make necessary repairs
- Owners must diligently work on bringing the property up to code
- Extremely unsafe conditions may result in an Order to Vacate
- Before beginning any serious work, contact the property inspector's office



# Resources

- CELJ Senior Legal Advice Helpline
  - 1-844-481-0973
- CELJ Main Office
  - 716-853-3087