



Rural Delivery

Rural Housing Coalition of New York's Quarterly Newsletter

FALL 2024

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Objectionable Tenant behavior? When can I evict?

By: Justin M. Grassi, Esq.

Contrary to many property owners' belief (and perhaps logic) there is no available statutory authority to evict a tenant for objectionable conduct in New York.¹ Instead, most, if not all, lease agreements have provisions prohibiting certain objectionable behaviors and ways in which the landlord is authorized to terminate the lease agreement based on these behaviors. If a lease is officially terminated pursuant to the lease agreement, a holdover proceeding can be commenced pursuant to RPAPL 711(1). Without "rules" that can be violated in the lease agreement, there is very little ability for a landlord to remove tenants for their conduct. Examples of typically regulated behaviors include: no smoking provisions, obligations to maintain sanitary conditions of the premises, not disturbing other tenants' peaceful enjoyment, prohibitions against pets or unauthorized

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Small Rental Developments, Big Impact: How SRDI Can Help Revitalize Rural New York Communities

By: Maru Gonzalez

Since 2023, the Small Rental Development Initiative (SRDI) program has provided crucial funding for developing and preserving affordable rental housing. Unlike other housing programs administered by New York State Homes and Community Renewal (NYSHCR), SRDI focuses on smaller multifamily developments—ranging from 4



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Rural Delivery

Rural Delivery is published by the New York State Rural Housing Coalition, Inc. The Coalition is a non-profit statewide membership organization dedicated to strengthening and revitalizing rural New York by assisting housing and community development providers.

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 **Rural Housing Coalition**
of New York

Executive Director Update

The Rural Housing Coalition held its 45th Anniversary Annual Conference on September 23-25th at the Fort William Henry Conference Center in Lake George that attracted a record attendance. This October we also offered our last Energy Efficiency Training for property managers and maintenance staff funded by a grant by NYSERDA.



The RHC also launched new RPC Board Training funded by grants from Key Bank and Federal Home Loan Bank of New York. The training is in two parts that focus on board responsibilities and New York Non-Profit Act compliance as well as the various federal and state funding sources for housing and community development.

Another member benefit the Coalition launched this Fall is Housing Development Consulting to assist RPC's with the development process for building new affordable housing. The consultants are Lori Harris and Caillin Furnari, who bring a wealth of knowledge and experience in this field from their time at state and local housing and community development agencies.

Coming up our Government Relations Committee will be meeting to develop our Budget/Legislative Priorities for 2025 that will incorporate feedback from the Regional Meetings I hosted around the state in October. The Conference Committee will also be meeting to begin the process for planning next year's event.

Enrollment in the 2025 Leadership Academy is now open. The Leadership Academy provides aspiring or new non-profit housing leaders with a solid foundation on topics ranging from HR and Legal Issues to Financial Basics and Board Relations that will enable them to be successful in their leadership roles. The Academy starts in January and ends in April and meets on Friday's via Zoom.

Michael J. Borges

2024 Annual Conference In Photos





Member In Focus

John Wiltse, President, Rural Housing Opportunities Corp. (an affiliate of PathStone)



INTERVIEW QUESTIONS:

Where are you from originally? How did you end up where you currently live?

I was born in South Carolina but grew up in Penfield, a Rochester suburb. I went to college in Michigan, lived in Massachusetts for 4 years and moved back to Rochester to be near family—and the family cabin on Canandaigua Lake was a big draw!

Tell us about your career path and how you arrived in your current position?

Growing up, my dad worked at Xerox and my mom was a school social worker. Dad pretty much endured his corporate job and mom loved hers, so I had an idea that human services / non-profit type work was a good direction to go. In college, I was very involved in a student organizations focused on food policy, poverty and other issues primarily impacting developing countries. I got hooked up with a national student-led organization coordinating internship programs for college students in developing countries. They started a new Appalachia Internship Program (recognizing we have plenty of third world conditions right here in the US) that took me to Harlan County, Kentucky for a summer, where I did well water testing and grant writing to address water problems caused by strip mining.

After college, I moved to Boston with high hopes of getting a job with a non-profit working in the developing world but found they weren't hiring guys with a BA in English – I would need to get a Masters in International Development or get Peace Corp experience.

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2024 Annual Conference In Photos



Objectionable

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guests, no illegal activity, etc. These rules and regulations must be comprehensively and intelligibly drafted as they are the only line of defense for a landlord when the tenant's behavior is disruptive to others or damaging to the premises.

So, what does a landlord do when a tenant violates a lease provision? Let's breakdown the process:

First: Gather relevant information. As landlord you should document any and all evidence of a violation occurring. This may include photos, videos, documentation of complaints by other tenants or staff members, police reports, and/or audio recordings. Keep in mind, one obstacle to demonstrating a violation occurred is many times the objectionable behavior is reported by other tenants, which would constitute hearsay. While other tenants can be subpoenaed during the eviction proceeding, their testimony is often less credible than management or the availability of hard evidence. Demonstration of proof is imperative as many tenants will simply deny the conduct occurred. The more information compiled, the more compelling the notice will be in the context of the summary proceeding.

Second: Notify the tenant of their violation with a written notice that complies with your lease terms. The terms of the lease should define how long of a cure period is to be offered and the manner of delivery (first-class mail, certified mail, personal service, etc.). There are no New York State statutes for the length of the cure period or for how the notices must be delivered. The most common length of the cure period is 10-Days however, it is important to note that if the Premises is controlled by any regulatory agency there may be specific guidelines that must be adhered to.

The notice must include details of the alleged violation(s), such as dates and times of the violation(s) if possible, as well as stating which provision of the lease the behavior violates. As an example- it is a much stronger violation notice if you can say "It has been brought to our attention that on Friday September 20,

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2024 Annual Conference In Photos



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2024, at approximately 11:30 p.m. you were listening to music at a volume that disturbed your neighbors as is prohibited by Section ___ of your lease, entitled “___” which prohibits loud and offense noises that disturb the peaceful enjoyment of your neighbors” this will be much stronger than “We received reports that you play loud music which is a violation of your lease”. The more details provided, the less likely a tenant can prevail with a claim your notice was deficient in providing a reasonable opportunity to cure the behavior.

Third: If the objectionable tenant behavior continues, the landlord may issue a Notice of Termination. The length of time given to the tenant to vacate will vary depending on the terms of the lease. Again, there are no statutory requirements for how this should be delivered to your tenant. It should be noted that caselaw has established that each incident in violation of the lease that supports lease termination must be specified on the termination notice. This means that every previous notice of violation/notice to cure should be listed on the termination notice as well as all subsequent behavior and applicable lease provisions. It is also noted that the provision in a lease that authorizes lease termination must be artfully crafted to provide the exact process giving rise to a landlord’s authority to terminate.

Fourth: If the tenant does not vacate in the allotted time, the next step is to prepare and file with the Court of jurisdiction a Petition and Notice of Petition for a summary proceeding to evict. Such authority is governed by RPAPL 711 (1), which states:

“A proceeding seeking to recover possession of real property by reason of the termination of the term fixed in the lease pursuant to a provision contained therein giving the landlord the right to terminate the time fixed for occupancy under such agreement if he deem the tenant objectionable, shall not be maintainable unless the landlord shall by competent evidence establish to the satisfaction of the court that the tenant is objectionable.”

To better appreciate what courts have deemed objectionable we must turn to caselaw. The courts have repeatedly opined that in order to warrant an eviction the tenant, or the tenants’ guests, behaviors have “qualitative as well as quantitative aspects” generally meaning that sometimes one instance of “objectionable” behavior is not sufficient to establish cause for an eviction and a landlord must demonstrate a continuing pattern of behavior. The burden of proving the tenant’s behavior falls on the landlord. Thus, it is very important to document every incident with evidence supporting the landlord’s contentions.

The lack of statutory authority that clearly defines objectionable behavior results in holdover proceedings due to lease violations being some of the most difficult to prove and prevail. The matters are very fact specific and require considerable attorney preparation in advance of a hearing. Involving counsel early in the process can increase the probability of adequate and proper notices and termination as well as evidentiary support in court.

REFERENCES

1. Real Property Law § 231(1) and Real Property and Procedures Law § 711(5) provide a very limited exception to this where the premises “are used or occupied as a bawdy-house, or house or place of assignation for lewd persons, or for purposes of prostitution, or for any illegal trade or manufacture, or other illegal business.” The threshold to demonstrate an illegal business can be high and the landlord must prove, by a preponderance of the credible evidence, that the property was used to facilitate such illegal business, that the tenant knew or should have known of the business, and had somehow acquiesced in the illegal activity. Such activity has to be more than just once or twice as well, it must be habitually engaged in. Due to the limitations of these sections, in practice they are extremely rarely utilized.
2. Lease termination provisions must be considered a “conditional limitation” as opposed to a “condition subsequent” in order to be permitted under RPAPL 711(1). The difference is extraordinary nuanced and may be the subject of a future newsletter. Suffice it to say, if the language is drafted appropriately the process to regain possession is substantially longer and more costly.

Small Rental Developments

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to 20 units—and provides awards of \$500,000 to \$2 million for new construction or rehabilitation projects. By targeting households earning up to 80% of the area median income (AMI), SRDI addresses the pressing housing needs of rural communities in New York.

Currently, LaFargeville, a small agricultural hamlet in the Town of Orleans (Jefferson County), is undergoing a significant transformation, thanks in part to SRDI funding. Clayton Improvement Association is restoring a nearly 200-year-old, 9,500-square-foot building. The LaFargeville Building Rehabilitation project, which began with a “for sale” sign going up just before the start of the COVID pandemic, aims to preserve a building at serious risk of collapse located at the town’s focal point, across from the local school and near the community’s only caution light. The structure—which currently houses the town’s post office and a hair salon- is being restored to serve as a mixed-use space, with five commercial units on the ground floor and four residential units on the upper floor. Although tearing down the building and constructing a new one would have made for a less complicated project, Kristi Dippel, Executive Director, emphasized the structure’s historical significance, saying, “This building speaks to me. This is such an old building with a rich history, and it is a small community, but so much has happened there. It speaks to me.” The project has faced numerous challenges, from structural damage to hazardous materials, including discovering an undocumented underground fuel tank. Despite these difficulties, Clayton has successfully secured multiple funding sources, bringing it closer to meeting the \$3.3 million development cost. The \$870,441 SRDI award they received earlier this year specifically supports the completion of the residential units that will serve middle-income essential workers. With a summer of 2025 target completion date, LaFargeville residents are thrilled. “The building had been in disrepair for decades, and the community is thrilled to see it coming back to life,” said Dippel

In Arkville (Delaware County), the Mark Project is preparing to rehabilitate a building that dates back to the 1800s. Purchased and first rehabbed in 1988, 10 Church Street, a senior housing development, is now in dire need of extensive renovation. While maintenance reserves have helped in the past, aging structures like this one require more substantial intervention. Enter SRDI funding. The funding source’s inclusion is not just new developments, but also the preservation of current housing units will enable the rehabilitation of 8 tenant-occupied studio apartments for moderate-income seniors who receive rental assistance. With an Estimated construction start of Spring 2025, Mark has secured several funding sources, including a \$724,369 SRDI award, to finance the \$905k project. “Everyone is thrilled,” said Peg Ellsworth, Executive Director of Mark Project. “It will certainly make a difference in the view shed.”

The LaFargeville Building Rehabilitation and the preservation of 10 Church Street demonstrate the program’s critical role in supporting low- and moderate-income renters in rural areas at risk of displacement. “We all know that there’s a housing issue, and it doesn’t pertain just to cities,” said Dippel. “It pertains to these small communities, and we can’t always be developing large-scale rentals in these communities. We need these small developments. It’s just four units, but that’s going to have a significant impact on this community.”



In 2024, SRDI received an allocation of over \$7 Million in a final State Budget after it was initially excluded from the Governor’s proposed Executive Budget. Earlier this year, the Rural Housing Coalition testified before the State Legislature at a joint budget hearing reiterating the critical role that SRDI serves in creating smaller-scale housing developments that are appropriate in size for small hamlets, villages, and towns that particularly lack water and sewer services and cannot compete for Low-Income Housing Tax Credit investments. Thankfully, the Legislature restored the funding, but more funding is needed. Senate Bill S1685A, introduced by Senator Michelle Hinchey in early 2023, aims to codify the Small Rental Development Initiative into permanent state law and provide detailed parameters addressing eligibility requirements and implementation.

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Instead I wound up working for the Boy Scouts for a couple years doing volunteer recruitment and training, fundraising, event planning, etc..

Moving back to Rochester, I applied to every non-profit job I could find and had informational interviews with directors of some of the larger organizations and the Community Foundation. I ultimately got a job with Rural Opportunities (now PathStone) from a help wanted ad in the newspaper (yes, that is how it used to work before Al Gore invented the Internet!)

I can only assume the applicant pool was pretty thin as I really had no relevant experience, however the rural KY experience, my grant writing and writing skills in general seemed to be enough to get me on board to help run a new farmworker housing technical assistance program. As part of the interview, they gave me a file folder of newspaper clipping about a proposed affordable family rental project in Ontario County which had drawn major community opposition, and they had me sit down on the spot and write a Letter to the Editor that would get the community on board! I really wish I could see what the heck I wrote as I had literally no clue! 33 years later, I'm still at PathStone having changed roles and responsibilities 6-8 times and it's been a terrific organization to grow with over the years.

What types of projects or programs does your RPC administer?

Rural Housing Opportunities Corp. is the RPC and CHDO affiliate of PathStone, serving Genesee, Ontario, Orleans, Seneca, Wayne and Yates Counties in the Finger Lakes Region. We provide owner-occupied home rehabilitation, housing counseling services, mobile and manufactured home replacement, farmworker housing and other community development programs and services. RHOC serves as part of the ownership structure of a number of PathStone multifamily rental communities. Most of our RPC-focused staff are in Rochester but we also have housing offices in Batavia and Canandaigua. We primarily work in Monroe & surrounding counties, administering AHC, HOME, RESTORE, FHLB Affordable Housing Program and private foundation grants and serving as a subrecipient for County CDBG Housing grant programs.

What are some of the challenges and opportunities facing your organization today?

Attracting and retaining staff is a huge challenge. Labor market pressures and wage competition are intense and the nature of the work is demanding. Younger workers tend to change jobs every 1-3 years, which is a big challenge when it takes 6-9 months just to get a new staffer up to speed. It's also very challenging to maintain adequate staffing levels given the limits placed on admin and construction management fees by our funders.

Our current staff are definitely one of our greatest strengths. They are an exceptional team of talented, dedicated folks and we are very fortunate to have them on board.

We see opportunities to partner with additional County Planning Departments and other units of local government to expand housing services and we think our new Self Help Home Rehab program is a model with expansion potential in future years.

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What are some of the challenges and opportunities facing the community you serve?

We serve a broad geographic area, but the lack of for-sale homes and home price escalation are huge challenges across the region. Lack of adequate resources to help seniors age in place and difficulty attracting and retaining contractors to work on our projects are also big challenges.

One of the major opportunities for the region is the concentration of colleges and universities which turn out thousands of graduates every year, providing a tremendous talent pool for employers. In the wake of the downsizing of Kodak and Xerox, the University of Rochester system has also become the largest employer in the region, with expansion on-going.

Why did you join the Rural Housing Coalition?

I'm a strong proponent of peer-to-peer engagement and the Rural Housing provides numerous opportunities to share best practices, ask questions and collaborate with other organizations doing similar work. I also think it's crucial for affordable housing advocates to work together to amplify the needs of our communities with our elected representatives in Albany and in Washington, DC and that work needs conveners like the Rural Housing Coalition.

What would you like the Coalition to continue to do or begin to initiate to better assist you and/or your organization in the future.

As a member of the Rural Housing Coalition board of directors, I have an opportunity to voice my opinions about future direction on an on-going basis. One of the initiatives I've pushed for lately is greater collaboration with other housing networks for more impactful advocacy. I think other networks like those working in education, health care, etc... to do a better job coming together around a common public policy agenda but the housing world seems fractured into different networks that each look out for a specific segment of the industry (supportive housing, multifamily, urban, etc..)

I think the visibility and awareness-raising work that the RHC has done over the last couple years is a big step in the right direction and is something I look forward to supporting in the future. The member benefits that are being offered and that could be expanding are also a major asset for our organization and for many other members.

The Rural Housing Coalition greatly appreciates the support of the following Conference sponsors:

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