

Tenants Get at Least a Week's Breathing Room Under Continuing Eviction Moratorium

By Jason W. Johnson

While the District of Columbia federal court's order yesterday vacated the moratorium, HHS (the CDC is part of the family of agencies under the HHS, which was actually named as the Defendant) quickly filed an emergency motion to stay the order. You may see headlines that the order has been stayed pending appeal. That is not correct.

There is a minute order entered on the docket, whereby Judge Friedrich has granted a "temporary administrative stay" of the order, to give the Plaintiffs time to respond to HHS's emergency motion for a stay. Judge Friedrich stresses in the minute order that "the granting of this temporary administrative stay should not be construed in any way as a ruling on the merits of the defendants' motion. The Court notes, however, that, as the Court has explained, the law in this Circuit is clear: where a court concludes that an agency has exceeded its statutory authority, as this Court has done here, vacatur of the rule is the proper remedy in this Circuit. Based on this clear authority, courts in this Circuit do not restrict vacatur only to those plaintiffs before the Court. Indeed, the government has been unable to point to a single case in which a court in this Circuit has done so."

In other words, if the order stands, then vacating the CDC order nationwide is the correct remedy.

The Plaintiffs have until May 12 to file a response opposing HHS's emergency motion for a stay pending appeal. HHS has four days from any response to reply. Judge Friedrich is likely to rule on the emergency motion quickly, once these deadlines have passed.

Tenants across the country get at least a week's breathing room under the continuing eviction moratorium.

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