**UNITED STATES DISTRICT COURT**

**FOR THE NORTHERN DISTRICT OF ILLINOIS**

# **EASTERN DIVISION**

**TENANT, )**

**)**

**Plaintiff, ) Civil Action No.**

**)**

**v. ) JURY DEMANDED**

**)**

**LANDLORD, )**

**)**

**Defendant. )**

**COMPLAINT[[1]](#footnote-1)**

Plaintiff, (“tenant”), brings this action for redress of Defendant’s (“landlord”) violation of the Fair Debt Protections Collection Act (FDCPA), 15 U.S.C. § 1692, et. seq., the Illinois Consumer Fraud Act, 815 ILCS 505/2, and the Uniform Deceptive Trade Practices Act, 815 ILCS 510/2. “Landlord” has violated each statute by fraudulently misrepresenting to “tenant” that he/she/it may legally initiate eviction proceedings/issue a notice to vacate in violation of the tenant protections set forth in the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act, H.R. 748, 116th Cong. § 4024 (2020). (“CARES Act § 4024”).

**JURISDICTION**

1. The Court has jurisdiction to hear the FDCPA claim pursuant to 15 U.S.C. §§ 1692(e) and 1692(f) and the court’s federal-question jurisdiction, 28 U.S.C. § 1331. The Court has jurisdiction over the remaining state-law claims pursuant to 28 U.S.C. § 1367, as these claims are so closely related to the FDCPA claims that they arise out of the same case or controversy.

**PARTIES**

1. Plaintiff, “tenant,” is a [fill in with details: age, where they live, etc.]
2. Defendant, “landlord,” is a [fill in]
3. [fill in info for any additional plaintiffs/defendants/relevant parties]

**STATEMENT OF FACTS**

1. Plaintiff is a person of low-income and resides as a tenant at an apartment located at . . . . (the “Apartment”). *Affidavit*.
2. Defendant owns and/or manages the building where Tenant’s Apartment is located (the “Property”).
3. Plaintiff is a participant in the United States Department of Housing and Urban Development’s (“HUD’s”) Housing Choice Voucher Program, administered in Chicago by the Chicago Housing Authority (“CHA”) / suburban Cook County by the Housing Authority of Cook County (“HACC”). *[Substitute any other “covered property” under the CARES Act, such as the HUD Project Based program, LIHTC, etc.] Affidavit.*
4. Under the Voucher Program, CHA and Defendant entered into a contract in which they agreed upon the total monthly rent for the Apartment. CHA determines Plaintiff’s monthly portion of the total rent amount, based on her income. Pursuant to its contract with Defendant, CHA pays Defendant the remaining amount of rent in a monthly housing assistance payment.
5. Plaintiff’s monthly rent portion, based on her income prior to the advent of the COVID-19 pandemic, is $300. Tenant last paid rent on March 1, 2020, and had no outstanding balance at the time. *[This motion could also be successful in cases where the tenant did* ***not*** *have a $0 balance when the financial hardship struck, but landlord hadn’t given her any notice. Another common fact scenario may be that the tenant was previously behind on rent, had agreed to a repayment plan, but became unable to make the repayments due to financial hardship caused by COVID-19.] Affidavit.*
6. Beginning in March 2017, Plaintiff worked as a part-time security guard for XYZ. *Affidavit.*
7. On March 27, 2020, the federal CARES Act was enacted, providing aid and relief to those affected by the COVID-19 pandemic.
8. The CARES Act provides particular relief to any tenant who occupies a “covered dwelling” in or resides on a “covered property” as defined in the Act. CARES Act § 4024(a)(1).
9. A “covered property” is any property that:

* Receives federal funding through Low Income Housing Tax Credits; the Housing Choice Voucher, Project Based Voucher, or Rural Housing Voucher programs; Public Housing programs; Project Based Section 8 contracts; HOME; Housing Opportunities for Persons with AIDS; Veterans Affairs Supportive Housing; or Continuum of Care Program funds, OR,
* Has a mortgage insured by, provided by, or guaranteed by the FHA, HUD, the Department of Veterans Affairs, and/or the Department of Agriculture, OR,
* Has a mortgage owned by Fannie Mae or Freddie Mac.

CARES Act § 4024(a)(2). *[I’m leaving the entire definition of covered property here, but each drafter may want to select the part of the definition that applies to the case at hand rather than use the entire definition.]*

1. Under the CARES Act, a lessor of a covered dwelling “may not make or cause to be made, any filing with the court of jurisdiction to initiate a legal action to recover possession of the covered dwelling from the tenant for nonpayment of rent or other fees or charges” through July 25, 2020. CARES Act § 4024(b)(1).
2. The CARES Act also prohibits a lessor of a covered dwelling from issuing a notice to vacate through July 25, 2020. CARES Act § 4024(c)(2).
3. Plaintiff’s Apartment is a covered dwelling within the meaning of the CARES Act because Defendant receives subsidy payments from CHA under the federal Housing Choice Voucher Program.
4. Beginning in [month/date], Plaintiff could not afford to pay her rent because the COVID-19 pandemic caused her employer XYZ to lay her off and suspend her wages. *Affidavit*.
5. On [date], Defendant handed Tenant a 30-Day Notice to Vacate the Apartment. A true and correct copy of the Notice to Vacate is attached as Exhibit B; *Affidavit*.
6. On [date], Defendant filed an eviction complaint.

**VIOLATIONS OF FDCPA [ONLY FOR DEFENDANTS COLLECTING RENT ON BEHALF OF ANOTHER PERSON]**

1. The Federal Debt Collection Practice Act (Act) prohibits debt collectors from making false, misleading, or deceptive representations to debtors in connection with a debt. 15 U.S.C. § 1692(e).
2. Moreover, subsection (5) of § 1692(e) expressly prohibits “the threat to take any action that cannot legally be taken or that is not intended to be taken.”
3. “Landlord” is a debt collector under the Act, because that term includes “any person … who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.” 15 U.S.C. § 1692(a). Under the Act, “debt” refers to “any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the … property … or services which are the subject of the transaction are primarily for personal, family, or household purposes.” *Id.*
4. Both “Landlord’s” service of a Notice to Vacate to “Tenant” and his/her/its subsequent filing of an eviction complaint against “Tenant,” an occupant of covered property under the CARES Act, were in violation of the CARES Act moratorium set forth in § 4024(b) and (c) and thus were actions that “cannot legally be taken” under the FDCPA. 15 U.S.C. § 1692(e)(5).
5. The FDCPA also prohibits debt collectors from using unfair or unconscionable means to collect or attempt to collect any debt. 15 U.S.C. § 1692(f).
6. Subsection 6(C) of 15 U.S.C. § 1692(f) specifically prohibits “taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if the property is exempt by law from such dispossession or disablement.”
7. “Landlord’s” service of a notice to vacate to “Tenant”, as a nonjudicial action preceding “Landlord’s” judicial action for eviction against “Tenant,” was an action to effect the dispossession of property which “Tenant” possessed and which was exempt by the CARES Act from such dispossession.
8. “Landlord” therefore violated the FDCPA, 15 U.S.C. § 1692(f)6(C), by serving the notice to vacate.
9. [Lockout cases also violate § 1692(f) as nonjudicial actions which work to dispossess property exempt by law from dispossession. Additional material could go here for those cases?]

**VIOLATION OF ILLINOIS CONSUMER FRAUD STATUTE**

1. The Illinois Consumer Fraud and Deceptive Practices Act, 815 ILCS 505/2, prohibits “unfair or deceptive acts or practices” in relationship with any trade or commerce.
2. Such unfair or deceptive acts or practices include the “misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact.” *Id.*
3. “Landlord” is engaged in “trade or commerce,” because he/she/it is regularly engaged in the “sale or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value wherever situated.” 815 ILCS 505/1.
4. It was a material fact on [date] concerning [property] that such property was exempt by the CARES moratorium from both notices to vacate and eviction actions.
5. “Landlord” concealed and suppressed this material fact by issuing the notice to vacate and initiating eviction proceedings, both actions which represented to “Tenant” that no such moratorium existed, when it in fact did.
6. “Landlord” intended that “Tenant” rely on this representation by acquiescing to the notice to vacate and subsequent eviction proceeding.
7. “Landlord” therefore violated 815 ILCS 505/2 by issuing the notice to vacate and initiating eviction proceedings, and because “Tenant” was actually damaged by “Landlord’s” misrepresentations, “Tenant” is authorized to recover damages against “Landlord.” 815 ILCS 505/10a.

**VIOLATIONS OF UNIFORM DECEPTIVE TRADE PRACTICES ACT**

1. The Uniform Deceptive Trade Practices Act, 815 ILCS 510/2, prohibits deceptive trade practices.
2. Specifically, 815 ILCS 510/2(a)(5) prohibits representing that “goods or services have … characteristics … that they do not have.”
3. Moreover, 815 ILCS 510/2(a)(12) prohibits “any other conduct which similarly creates a likelihood of confusion or misunderstanding.”
4. “Landlord” provides goods or services.
5. “Landlord” represented to “Tenant” that “Tenant’s” lease would comply with all state and federal statutory and regulatory requirements.
6. In fact, “Landlord” did not comply with state and federal statutory and regulatory requirements, specifically the provisions under CARES which prohibit both notices to vacate and eviction proceedings. [If HCV – cite to 24 CFR § 982.308(c). If PBS8 – cite to HUD Model Lease Paragraph 23(b).]
7. “Landlord’s” conduct created a likelihood of confusion or misunderstanding on the part of “Tenant” that he/she could be evicted at a time when he legally could not be.

WHEREFORE, Plaintiff respectfully requests that judgment be entered in her favor and against the defendant for:

(a) actual damages;

(b) statutory damages pursuant to 15 U.S.C. §1692k and 815 ILCS 505/10a;

(c) injunctive relief requiring that “landlord” cease all unlawful eviction efforts;

(d) declaratory judgment, pursuant to 735 ILCS 5/2-701, to the effect that both the notice to vacate and eviction action were unlawful;

(e) attorney’s fees and costs pursuant to 15 U.S.C. 1692k; and

(f) such other and further relief as may be just and proper.

1. This complaint was drafted by a Legal Aid Chicago team that included staff, interns, and fellows. [↑](#footnote-ref-1)