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Hon. Glenn A. Grant
Administrative Director of the Courts
Comments on Proposed Amendments to Rule 6:1-2 Cognizability; Rule 6:3-4
Summary Actions for Possession of Premises; and Rule 6:4-3 Interrogatories;
Admissions; Production
Hughes Justice Complex; P.O. Box 037
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Dear Judge Grant:

We write on behalf of a coalition of advocates for the rights of tenants. As you know, the coalition includes individuals and organizations that have spent thousands of hours over many decades representing and advocating on behalf of low-income residential tenants. We are grateful for the Court's continuing review of issues that affect litigants and its recognition of the disparate impact that court rules may have on disadvantaged populations.

We urge the Court to reject the proposed amendments to R. 6:1-2, R. 6:3-4 and R. 6:4-3.

Background

R. 6:4-2 (4) provides that matters involving what is commonly known as “ejectment” are properly laid in the Special Civil Part and will be decided in a summary manner:

Summary actions for the possession of real property pursuant to N.J.S.A. 2A:35-1 et seq., where the defendant has no colorable claim of title or possession, or pursuant to N.J.S.A. 2A:39-1 et seq.;

While N.J.S.A. 2A:35-1 et seq. is broad legislation that covers all matters in which the defendant has no colorable claim of title or possession, N.J.S.A. 2A:39-1 et seq. has specific provisions that apply to tenants who have been illegally locked out of rental premises or have otherwise been illegally deprived of possession by their landlord. The statute recognizes that tenants who are illegally locked out of their rental premises require access to immediate and complete relief. Any person who illegally locks out a tenant is guilty of unlawful entry and detainer. The statute provides that actions to regain possession will be heard in a summary manner and provides for money damages, including treble damages in some circumstances, which may be enforced in a summary manner in order to secure complete compliance.

In any action under this chapter, a plaintiff recovering judgment shall be entitled to possession of the real property and shall recover all damages proximately caused by the unlawful entry and detainer including court costs and reasonable attorney's fees. When a return to possession would be an inappropriate remedy, treble damages shall be awarded in lieu thereof. The judgment may be enforced against either party in a summary manner by any process necessary to secure complete compliance therewith, including the payment of the costs. N.J.S.A. 2A:39-8.

The court rules currently provide for a summary proceeding, that includes money damages, reflecting the legislative intent to provide complete, enforceable relief to tenants who have been illegally locked out of their residence.

The current proposal

The current proposal would prohibit monetary damages in the summary action for possession and would require the illegally locked-out tenant or occupant to file a separate action for monetary damages. Pro se tenants may be unlikely to follow up with a damages lawsuit due to barriers faced by all pro se litigants. The proposal is contrary to the legislation that envisions that possession and monetary damages will be awarded in the same proceeding. Furthermore, the proposal rewards landlords who use illegal self-help to remove a tenant. With no risk of monetary damages, and little risk of the filing of a subsequent lawsuit for damages, such unscrupulous landlords have little incentive to abide by the law. The proposal shifts the burden of proceeding with a separate action to the tenant who has been illegally locked out. Furthermore, the proposal removes the award of monetary damages from the summary proceeding, leaving the tenant who has been locked out and may have lost belongings or been forced to pay for additional accommodations, with only the prospect of someday, perhaps, obtaining a money judgment which may result in payment to the tenant for their losses.

The proposal removes the prospect of treble damages being awarded during the summary proceeding for a tenant who has been locked out and cannot be returned to the premises. However, such a tenant needs the relief of treble damages in order to secure a new residence and replace lost possessions.

Furthermore, the proposal results in a loss of judicial economy since, in cases where a subsequent action is filed, there will be two separate cases, both with DC docket numbers, in which two courts will be asked to decide the same facts. Will the summary proceeding for possession be res judicata as to the issues decided in that proceeding? If so, having a second proceeding in which the only issue is the amount of damages is a bifurcation that is unnecessary, burdensome to the wronged party, and a waste of judicial resources.

The Special Civil Part Subcommittee Report reveals that there was significant disagreement within the Subcommittee about the proposal. It appears that the problem sought to be resolved by the proposal is whether discovery is allowed in an ejectment action. Discovery is rarely requested in ejectment actions but may be ordered by a court if deemed necessary. Any possible issue with discovery that may be resolved by this proposal is far outweighed by the substantial harm to tenants who have been illegally locked out of their homes.

Ejectment actions by tenants who are illegally locked out are very different from landlord-tenant eviction actions and need to be treated differently. A landlord-tenant eviction action is brought pursuant to law, and not the result of an illegal act. Although discovery is not generally provided in eviction actions, there is a mechanism for transfer out of landlord-tenant court, which is not available in ejectment actions.

For all the foregoing reasons, the undersigned urge the Court to reject the proposals for amendment to R. 6:1-2, R. 6:3-4 and R. 6:4-3.

Respectfully submitted,

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s/ Lauren Herman, Legal Director
Make the Road New Jersey

s/ Matt Shapiro, President
New Jersey Tenants Organization

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s/ Allison Nolan, Senior Staff Attorney
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s/ Patricia A. Legge, Executive Director
s/ Patricia K. O'Connor, Housing Justice Corps Fellow
Volunteer UP Legal Clinic

s/ Lissette Diaz, Legal Director
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