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From: Frank McMillan <frank@njtogether.org>
Sent: Friday, May 21, 2021 12:22 PM
To: Comments Mailbox
Subject: [External]Comments on the "Report and Recommendations of the Judiciary Special Committee on Landlord Tenant"
Attachments: FINAL NJTogether LT Recommendation to Courts 2021-5-21.pdf

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Dear Judge Grant:

Please see attached comments from New Jersey Together, a broad-based non-partisan organization working with more than 100 religious congregations & non-profits in New Jersey, about the courts' "Report and Recommendations of the Judiciary Special Committee on Landlord Tenant."

Do not hesitate to contact us if you have any further questions.

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**Recommendations to the Administrative Office of the Courts related to
“The Report of the Special Committee on Landlord-Tenant” (April 2021)**

New Jersey Together, May 2021

In the coming months, without concerted action by the courts, the legislature, and the governor, the State of New Jersey will face an unprecedented wave of evictions that will impact all New Jerseyans and disproportionately impact the well-being of low- and moderate-income families and families of color in our state.

We believe action by the courts – in particular – has the potential to create more equitable power dynamics between tenants and landlords in the hundreds of thousands of cases expected in the coming months, as well as to save significant taxpayer money by preventing unnecessary evictions and homelessness. This unequal power dynamic existed prior to the current pandemic, but the long-term, devastating consequences of allowing it to continue demand immediate and bold action by the courts, not only to mitigate the upcoming eviction crisis, but also to create long-lasting reform necessary to make the landlord-tenant court equitable for all parties. We are thankful for the work the courts have already done, but we have specific concerns and considerations – based on the stories and experiences of those who are directly affected – that we hope are included in the final actions the courts take.

Background on New Jersey Together

New Jersey Together is a broad-based, non-partisan coalition of religious congregations and non-profits working in New Jersey on issues of common concern. This includes 35 religious congregations and non-profits in Jersey City and Hudson County (Jersey City Together), 19 religious congregations and non-profits in Morris County (Morris Area Together), and 50+ religious congregations and non-profits who are preparing to launch their work or conducting organized listening campaigns in Essex, Monmouth, and northern Somerset counties. We are affiliated with the Industrial Areas Foundation, the nation’s oldest and largest multi-faith organizing network.

Since New Jersey Together’s launch in 2016, these congregations and organizations have listened to more than 15,000 people across New Jersey about issues that matter to them and their communities, as well as created or leveraged more than \$500 million in investments around issues related to housing, education, criminal justice, and more. Housing has been a critical and repeated theme in our work.

Around tenants’ rights in Jersey City, New Jersey Together’s work has resulted in [1,750+ housing & health code violations being filed against one landlord \(and the sale of all 140 of his properties\)](#) and the appointment of [a new director who will supervise housing code and rent control for the city & a new municipal prosecutor](#) also focused on these issues.

The organization has continued its organizing during the pandemic, listening to more than 3,500 individuals since mid-March 2020, holding tenants’ rights workshops in partnership with non-profit legal services organizations, and more.

Recommendations based in stories from tenants and families

New Jersey Together has heard thousands of stories from those who are directly impacted and harmed by the eviction process. This has included hundreds of stories from tenants concerned about eviction or behind on their rent since the start of the COVID-19 Pandemic. We believe these stories should compel the courts to take the following actions:

- Providing consistent, repeated, and accessible opportunities for advice and representation prior to and during tenants' interactions with landlords. This includes, but is not limited to:

- At every possible interval, consistently referring tenants to free or affordable legal services, housing counselors, and other services that provide advice and assistance to tenants.

New Jersey Together helped prevent hundreds of evictions prior to the pandemic. In almost every case, this was made possible by connecting tenants to free or low-cost legal representation or housing counseling. Families who are facing eviction are often in crisis. Repeatedly reminding tenants that they may be able to access free legal services (particularly given many families' loss of income during this time), rental assistance, and other resources, and offering this information repeatedly and in accessible ways (i.e., written and oral, in multiple languages), will be critical.

- Providing a checklist as part of the Tenant Case Information Statement that will help tenants, mediators, and judges identify potential, legally supported defenses from eviction.

Families who do not have legal advice are often unaware of the potential defenses they can offer in response to a landlord-tenant case. Asking tenants specific questions about their experience that correlates to specific defenses could help tenants, mediators, housing counselors, court staff, judges, and others identify if there may be defenses that would prevent an unnecessary and unlawful eviction.

- Providing housing counselors and other supports to tenants (in addition to mediators).

We understand the court's commitment to independent mediators through the Landlord Tenant Legal Specialist program. However, a mediator between two unequal parties will not ameliorate the power imbalance between landlords (usually represented by attorneys) and tenants (almost always unrepresented). The court should also invest in housing counselors who will support tenants during and prior to mediations. These counselors – at the bare minimum – should provide workshops and identify potential defenses in their cases, potential supports (e.g., free or low-cost legal representation or rental assistance), and answer questions. These workshops, combined with the checklist described above, would – we believe – significantly decrease unnecessary evictions.

- Take immediate, swift action to prevent tenant blacklisting as soon as possible. This includes, but is not limited to:

- Sealing court records for cases without a final determination.

New Jersey Together has heard repeated stories of tenants struggling to access

apartments because of court proceedings that never resulted in eviction as well as of tenants who faced repeated, frivolous court proceedings that were used as a threat or punishment by landlords. The courts considered a rule earlier in the pandemic that would have sealed records of these proceedings, but thus far no action has been taken. This rule can and should be changed now. In the aftermath of the current pandemic, with hundreds of thousands of cases expected to be filed, the impact of these court records (if unsealed) would be devastating. Waiting on the legislature to act when the courts have the ability to stop this type of treatment of tenants now is unacceptable, and the courts should remedy this immediately.

- Changing or clarifying the current court form for settlement to prevent the immediate entry of a judgment.

The structure of the current form can result in the unnecessary, immediate entry of a judgment when tenants may have agreed to a payment plan or other workaround that may prevent an eviction. The human impact of this unnecessary entry of a judgment because of current tenant blacklisting practices has already been described and catalogued in stories New Jersey Together has heard. Ideally, this form would not provide an option for immediate entry of a judgment.

- Ensuring habitability defenses can be raised by tenants without needing to post the full rent owed and ensuring maximum flexibility for tenants in raising these defenses;

New Jersey Together has heard repeated stories of landlords who used unsafe conditions and refusing to make repairs as a way to get around the current, eviction moratorium. Tenants who were behind on their rent and fed up with poor treatment moved out of their apartments to avoid this type of continued abuse. Many understood the legal rights they had but chose to discount them because "it was not worth the trouble." Even before the pandemic, the requirement that tenants be able to post the full rent in order to raise a habitability defense has long been a problem in New Jersey. It has resulted in untold numbers of unnecessary evictions, including of tenants we have worked with. Especially in this time, when many tenants are six months or more behind on their rent, the court should provide maximum flexibility to allow tenants to employ habitability defenses in court.

- Ensuring accessibility and equity for those who have trouble accessing technology.

The current pandemic has exposed long pre-existing inequities around technology access. New Jersey Together has heard repeated stories of individuals who struggle to access video conferencing services, email, and more during the current pandemic. Others lose access to their cell phone because of losses in income (both before and during the current pandemic). Access to technology can be complicated further or made more difficult because of language ability, immigration status, and more. While the courts have rightly taken advantage of technology during the current pandemic, it will be critical that the courts prevent individuals from being punished for not being able to access or not being comfortable with technology.

- Ensuring courts make clear the difference between Landlord-Tenant cases and DC Docket filings, particularly as those filings seem to be increasing for tenant debt under the current eviction moratorium.

New Jersey Together and tenant attorneys have seen an increase in DC Docket filings for debt owed to landlords. This has resulted in confusion among tenants who think the DC Docket filings are the same as their landlord-tenant cases and believe that they do not need to appear while the eviction moratorium is in place. Tenants therefore do not seek legal services and do not make use of the processes and defenses available on the DC docket, such as answers, counterclaims, and discovery. Instead, tenants simply do not appear and a default judgement is entered. Given that civil debt judgments have similar long-term impacts on tenants' ability to secure housing, the notices in the DC cases need to make clear (and in an accessible way) that the debt cases are distinct from landlord-tenant cases; that tenants have additional process in DC court, including answers, counterclaims, and discovery; and that the tenant/defendant needs to appear irrespective of the status of their LT eviction matter.