#001

From: Steven Zweig <stevenjzweiglaw@gmail.com>
Sent: Wednesday, September 23, 2020 4:19 PM
To: Comments Mailbox
Subject: [External]Comments on Proposed Amendments to Rule 1:38-3 – Records of Landlord/Tenant Matters Not Resulting in Judgment for Possession

To Whom It May Concern:

I am a landlord-tenant attorney (10 years experience) and the proposed Rule Amendment to classify as "confidential" any landlord-tenant records where a judgment of possession did not result would profoundly disadvantage landlords while rewarding tenants who repeatedly violate their obligations.

As the landlord-tenant court is well aware, most LT matters are for nonpayment of rent and most settle. That means that in most cases, the tenant ended up agreeing to pay the amount due: i.e. the tenant legitimately owed some or (usually) all of the rent but failed or refused to pay it until hauled into court.

That means that the landlord had to expend time and money to recover money to which it was entitled and which the tenant could have paid without legal process. It is not the case that the tenant "successfully defend[ed]" the case; rather, most often, the tenant agreed under duress (the threat of eviction) to pay the amounts he or she lawfully owed.

In the case of tenants who suffered a one-time reversal (e.g. a loss of a job; an unexpected health expense), it is understandable to want to spare them from the negative effects of having a record of an LT proceeding against them being publically available--though even in that case, I will still note that the tenant could almost always have spoken to the landlord and worked out a payment plan without the need for litigation. Thus, the landlord still incurred a cost due to the tenant's nonfeasance.

However, as the LT bar and I believe the LT court knows, there is a significant minority of tenants who regularly, sometimes multiple times per year, fail to pay rent and only do so at the last moment, when hauled into court--or sometimes even after the last moment, on an Order to Show Cause where they belatedly produce the rent they should have paid earlier. They only way when forced to. These "repeat offenders" can cost their landlords thousands of dollars per year in unnecessary legal expenses.

Clearly, it would be relevant information for a prospective new landlord to know that a tenant has a history of nonpayment and forcing their landlord(s) to repeatedly spend money on lawyers to compel the tenant to honor the obligations they should be honoring anyway. But if the records of LT cases which do not result in a judgment of possession are rendered confidential, there will be no way for landlords to see that a prospective tenant has a history of violating lease and/or legal obligations and forcing their landlord(s) to file against them to get the tenant to honor their obligations. In that way, landlords will be deprived of valuable information about the risks and costs that a prospective tenant would impose on them. A landlord will be unable to avoid leasing to tenants who expose them to significant business risks and costs.

The court should bear in mind that a settlement almost always means that the LT action was justified: it was filed due to the tenant violating some lease or legal obligation, and settled by the tenant agreeing to pay the money owed or, in the case of a holdover matter, agreeing to stop engaging in disorderly, damaging, or lease violating conduct. Similarly, most cases voluntarily dismissed by landlords are dismissed because the tenant paid past due rent after--and only after--being filed against, but prior to the day of trial. Landlords very rarely file spurious cases, as evidenced by the small percentage

of cases where a tenant prevails at trial, for a number of reasons--not least of which that can be very costly to them to file cases. Landlords, in my experience, do not lightly incur legal fees.

In the vast majority of cases, even if the tenant later cured their default, they were initially at fault, such as in not paying rent, and there is nothing unjust about keeping the information about the tenant's default or violations publically accessible--and, as stated, considerable potential harm to landlords by depriving them of relevant information about prospective tenant's history of defaults.

The only cases where it may make sense to render the records "invisible" to the public are where the tenant prevails at trial, because only in those cases can we reliably say that the tenant had a good defense to the claim(s) brought against him or her. In other cases, even without a judgment of possession, it is highly likely--indeed, virtually certain--that the tenant at minimum initially violated his or her lease or legal obligations, even if the default were later cured under duress. Records of such lease or legal violations should remain public.

Best regards,

Steve Zweig

--
Steven J. Zweig, Esq.
(ph) 1.862.220.8791
(fax) 1.888.511.7862
180 Glenridge Avenue
Montclair, NJ 07042