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Hon. Glenn A. Grant, J.A.D,
Acting Administrative Director of the Courts
Comments on Report of Judiciary Special Committee on Landlord Tenant
Hughes Justice Complex-PO Box 037
Trenton, NJ 08625-0037

Re: Report of Judiciary Special Committee on Landlord Tenant

Judge Grant and Committee Members,

Thank you for the opportunity to comment on the report. I appreciate the hours and efforts that must have been put into this project but I cite the cliché that the cure should not be worse than the ailment.

In my opinion there are three factors that must be kept in mind when dealing with the subject of landlord-tenant proceedings:

1. Summary dispossess originated as an expeditious way for a property owner to regain possession of his property without having to go through the common law remedy of ejectment. While that may have been over 100 years ago the procedure remains "summary" with only one pleading and no discovery.

2. A large percentage of landlords and a very large percentage of tenants are self-represented. (pro-se)

3. A very large percentage of cases, I would guess over 90%, are non-payment cases. The underlying cause is poverty.

Given the first two factors my concern is that a number of the recommendations will make the procedure more complex and longer when the goal should be the opposite.

With reference to **Recommendation 1** much of the information that is required by the proposed C.I.S. is already contained in the Complaint form and that can be expanded to include the other information required by the C.I.S. While it may not be a burden to an

attorney to complete a C.I.S. it certainly adds a burden to an unrepresented lay person, especially one who may be limited as to education and whose first language may not be English. I have represented a number of small landlords who failed at attempts to proceed on their own because of those factors and had to turn to an attorney. With all due respect it should not be a goal to create more business for attorneys.

As to currently pending cases the C.I.S. requirement together with the Case Management Conference in **Recommendation 5** is even more onerous. I have cases pending from the beginning of the pandemic against tenants who were in substantial arrears at that point. Some involve breaches of settlements and Orders to Show Cause which have never been adjudicated. At least one of my clients, an owner-occupant has received no rent in 18 months.

My concerns are even more pertinent with respect to **Recommendation 2** requiring tenants to file a C.I.S. With reference to Recommendations 4 and 5, with which I concur, the information required by the proposed Tenant C.I.S. could be gathered by LT Legal Specialist in the first few minutes of the Case Management Conference.

Recommendation 4. I would give the LTLS more power with respect to habitability defenses. It is my understanding that Child Support Hearing Officers to whom you compare the proposed LTLS actually make determinations that can then be appealed to a Judge. I think trained LTLS should be able to make determinations of rent abatements in habitability cases. (See my comments below as to Recommendations 14 and 15)

Recommendation 6. The Landlord should just be required to bring those items with her to the C.M.C. That requirement can be included in the Notice to the landlord.

Recommendation 7. The consequence of the landlord's failure to appear, if the tenant appears, should be dismissal. I have seen many tenants in Court with small children because they could not arrange daycare or babysitting. I have had numerous tenants tell me in Court that they wanted to settle their cases quickly so they could go back to work. Tenants are in Court because they cannot afford their rent or cannot afford apartments where habitability is not a serious problem. They can hardly afford to miss one day of work. A party who has filed an action with a Court, in this case a landlord, should be obligated to appear. Failure to do so should not work a hardship on a tenant.

I have a similar concern for landlords who appear where their tenant fails to appear. I have represented many working class owners of small properties who also cannot afford days off from their jobs or their small businesses. Furthermore most will not file actions immediately when a tenant is late with a rent payment but will "wait and see" if payment is forthcoming and only file when a second month's payment is missed. By the time of the proposed Case Management Conference the tenant may be two, three or even more months in arrears. For the landlord who has appeared when the tenant has not to have to return on a rescheduled date is rather unfair.

The problem is exacerbated by the provision that a party who has not appeared at the rescheduled C.M.C. would be allowed to appear at the trial date and automatically have the matter reinstated.

Recommendation 12 – The Harris Announcement. The problems with this mandatory announcement at the beginning of every session are well known. I strongly suggest is that a printed copy be mailed to the Tenant with the Summons and Complaint and perhaps also mailed to self-represented Landlords with notice of the Case Management Conference. In my opinion parties are more likely to read the statement than pay full attention to a Judge reading it.

I note that there is no recommendation with respect to the form of Summons. It should be simplified for clarity. To me there is little reason for it to contain the entire caption of the case. The following should be in a large font and dominate the Summons:

NOTICE TO TENANT: The purpose of the attached complaint is to permanently remove you and your belongings from the premises. If you want the court to hear your side of the case you must appear in court on this date and time: _____ at _____a.m./p.m., or the court may rule against you.
REPORT TO:_____

Recommendations 14 and 15. Perhaps this is a good opportunity to start correctly calling it a *Berzito* defense. In any event, the entire concept of the deposit arose from just one short line in *Marini v. Ireland*, and, in fact, was problematic in that case in the first place. Ms. Ireland hired and paid a plumber, deducted the amount from her rent payment and sent the landlord the balance. What would she have had left to deposit?

I favor Landlord-Tenant proceedings being handled quickly and expeditiously and do not think they should be delayed on account of a habitability defense. Too often the requirement has been used to thwart a tenant's right to raise a defense or to hold hostage money due a landlord to compel action by that landlord. The former was not dealt with in *Berzito* or *Marini* and the latter was never a proper function of summary dispossess proceedings. I absolutely disagree with the statement in *Community Realty Management v. Harris* that where "the judge does not have the time" to try the case on the trial date the tenant must make a deposit or suffer entry of judgment for possession. That statement contradicts the underlying reasoning of the rest of the Court's decision. First I know of no other litigation where a defendant who is ready to proceed must meet a requirement because the Court or plaintiff is not ready. Secondly it allows entry of judgement without any testimony.

According to case law to sustain habitability defense a tenant must show that they complained to the landlord about a serious problem and the landlord did not promptly correct same. It would be of benefit to both landlords and tenants if this could be resolved by settlement at the C.M.C. or by adjudication at the first trial date. The tenant presents the defense, the landlord responds, and the Court makes a determination of the rent due and owing. The tenant pays it or vacates. (See my comment to Recommendation 4 above).

Recommendation 17. Clarification is needed as to any requirements of the CARES act once the pandemic is over. Is it a requirement that in addition to the filing and service of the Summons and Complaint and notice to the tenant of a C.M.C and trial, and after the conclusion of same or simultaneously there must be a separate 30 day notice from landlord to tenant? I would hope not.

Again my focus would be to make the summary dispossess process simpler, clearer and more expeditious for both landlords and tenants. Many of the Committee's recommendations accomplish that. Those that do not should be reconsidered.

Thank you again for the opportunity to voice my concerns.

Very truly yours,

STANLEY M. VARON

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