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

Dear Judge Grant:

The following are my General and Specific comments to the proposed court rules.

General Comments

Has the Court estimated as to how long it anticipates it will take to get to the first trial and how unfair this is to landlords (remember, not all landlords are represented by counsel and not all landlords own hundreds, if not, thousands of rental units)?

The Court proposes:

Step #1- the landlord should be required to file the LCIS within 45 days of the effective date of the Court's adoption of the new Rules. When does the Court anticipate the new Rules will be adopted?

Step#2- legal staff will review complaints and required attachments for legal sufficiency-notify landlords of identified deficiencies and provide an opportunity to cure.

- a. How long is this period? Will it run simultaneously with Step #1 or will the Court staff wait until they receive the LCIS and the TCIS?
- b. How will amended documents (to cure deficiencies) be filed on JEDS?

Step#3- Landlord Tenant Legal Specialist Program (LTLS)- how long does the Court estimate it will take to get this step up and running?

Step#4- Case Management Conferences conducted by LT Legal Specialists-at the Case Management Conference, either party has the option to limit the meeting to a case management conference (primarily involving the collection of information) or immediately proceeding to a virtual settlement conference. If the tenant elects not to proceed immediately to a virtual settlement conference (why would they even appear-see below Steps #5 &6), is the matter then scheduled for trial with the required

settlement conference scheduled on the trial date? Or is it treated like a non-appearance and another Case Management Conference will be scheduled? How much time does the Court estimate there will be between the Case Management Conference and a trial date if that is, in fact, the next Step?

Step#5- If the tenant fails to appear for the 1st Case Management Conference and the landlord does appear, the Court indicates another Case Management Conference will be scheduled.

- a. How long a period of time does the Court anticipate there will be between the 1st and 2nd Case Management Conferences?
- b. If the landlord appears at the initial Case Management Conference and the tenant does not, the next step should be a trial date and, as outlined by the Court, a mandatory settlement conference if both parties appear at the calendar call. At this point, the tenant has had the opportunity to submit a TCIS and has had the opportunity to appear at a Case Management Conference. Scheduling a 2nd Case Management Conference only delays the proceedings to the detriment of the landlord. The tenant should not benefit by their own wrongdoing (failure to appear at the 1st Case Management Conference).

Step#6- trial date- both parties have the right to appear on the trial date irrespective of a prior non-appearance.

- a. How much time does the Court anticipate there will be between the re-scheduled Case Management Conference and the trial date?
- b. Why would any tenant participate in any Case Management Conferences if:
 - (i) the tenant owes the landlord thousands of dollars and
 - (ii) there is no possibility of paying all monies due and owing in full.
 - (iii) the tenant can wait for the 3rd step, the trial date (after missing 2 case management conferences) because they know "the Court will administratively vacate the default" at which time they can proceed to the required Settlement Conference and will, basically, be back at the first step (1st case Management Conference) but owe the landlord that much more money.

The Court should make it clear that the lower courts are limited to 1 Order for Orderly Removal.

If the Court is going to lengthen the dispossess process so it is no longer a **Summary Dispossess** proceeding (several months rather than the current 2 months), landlords should be permitted to collect a security deposit in excess of 1 ½ months. This may be a question for the legislature and/or the Governor who has already unilaterally amended the security deposit law.

If the Court is serious about trying to move all tenancy matters forward expeditiously, the Court should expand its trial day to 9:00 AM to 9:00 PM and schedule trials every day of the week-not just once a week as is presently the practice in many of the county courts.

Specific Comments

1. Recommendation 1 – Attachment A - provides for the LCIT to be signed by the landlord or the landlord's attorney. The form, attachment A, only provides for an attorney's signature. The only signature should be that of the landlord and the information submitted should be "to the best of Plaintiff's knowledge"- not under penalty of perjury.

2. Recommendation 2 – Attachment B - TCIS – a. should be required if the tenant is going to assert a Marini defense or disputes the landlord’s rent payment records i.e. claims not credited for a payment made. Tenant should be required to attach all relevant information re: a Marini defense incl. cost of repairs and all communications with the landlord (incl. required notice to landlord). If not provided, waived at trial. Also, the Tenant should be required to provide proofs of payment of any disputed amounts alleged owed to the Landlord. If not provided, waived at trial. There is no reason a tenant cannot provide the information in advance. This will help the LT legal specialist or settlor in their effort to reach a settlement and narrow down the issues.

b. The question “Have you asked the landlord to apply any or all of your security deposit toward rent?” is inappropriate. The Court should not be giving (or hinting at) legal advice.

2. Recommendation 6 - lease and registration statement. No Attachment has been provided to accompany the 2 documents when they are submitted.

3. Recommendation 7 – non- appearance at 2 conferences which can lead to a default or dismissal. Both parties can cure on the trial date. Need some kind of pecuniary penalty for costs incurred by the non-defaulting party. However, as indicated above, there is no reason for a second Case Management Conference if the tenant fails to appear at the first Case Management Conference.

4. Attachment D – a. Par 2 – not every settlement payment schedule will provide for equal monthly payments. The form needs room for the parties to provide for negotiated alternative payment arrangements to bring the tenant current.

b. Par. 4 – should refer to payments set forth in paragraphs 2 and 3 in sentences 1 and 3. I know the additional language as to how the tenant’s payments are to be applied attempts to address this issue but, in the real world, the way it is set up is difficult for the layman to understand and for the landlord’s bookkeeper to process and keep track of in a timely manner.

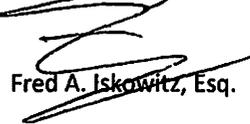
c. Par. 5 – the inserted date should be 30 days after the last payment is due. Additional language should be added requiring the landlord to copy the tenant on any default application made to the Court.

I can be reached by e-mail at fiskolaw@k-p1.com or on my cell at 973-580-6802.

Good luck on however the Court decides to proceed. The pandemic has created a real nightmare for the parties and the Court.

Thank you very much.

Very truly yours



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