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Comments on Report of the Judiciary Special Committee on Landlord Tenant
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RE: COMMENTS ON THE REPORT AND RECOMMENDATIONS OF THE
JUDICIARY SPECIAL COMMITTEE ON LANDLORD TENANT

Recommendation 3:

We should support more stringent gatekeeping. That being said, it's problematic that this recommendation vaguely suggests that the trained legal staff notify landlords of identified filing deficiencies and provide an opportunity to cure. The process to cure needs to be explicitly spelled out with listed deadlines. Otherwise, there's no repercussions for filing incomplete, sloppy pleadings and this will become an administrative mess and unnecessarily burden on staff. In addition, certain deficiencies should be fatal, including failure to include the LCIS and not providing the requisite notices/corresponding proof of mailing with the initial pleadings.

Recommendation 4:

The qualifications and training for the trained legal staff should be explicitly laid out so there's a consensus on their role and responsibilities in this process.

Recommendation 6:

We think more stringent requirements are necessary. Five days is simply not enough time for tenants to review the listed documents before the case management conference. For example, in family part cases, the CIS must be filed within 30 days of the filing of the complaint. Similarly, landlords should be mandated to submit the listed documents within 30 days of filing. And, for pending cases, the documents should be submitted *at least* 14 days prior to the case management conference. The bottom line is that landlords need to review the file and ensure that they are in fact prepared to move forward. We need to put the days of blindly filing cases and "sorting it out in court" behind us.

Recommendation 7:

The LT legal specialist should not only connect individuals with rental assistance and legal resources. They should also be responsible for making referrals to Adult Protective Services, making an application for a Guardian Ad Litem, etc. Courts have a real issue with forcing incapacitated adults into trials or settlements despite the fact that they don't have the capacity to consent.

Non-attendance at case management conferences must have consequences, but the consequences must be equitable for both parties. There is currently a slant in the landlord/tenant part favoring landlords, as they are frequently represented and against *pro se* tenants. Given the significant housing crisis arising out of COVID, landlords should be in a strict liability posture and face dismissal of their claim in the event of one missed case management conference. As landlords have infinitely more resources at their disposal and housing is a basic necessity, tenants should have the opportunity to miss case management conferences. In the event of a non-appearance by a tenant, the matter should be listed for trial with proper notice to the tenant, including a detailed explanation of the consequences of default.

This recommendation is put forth to assure “comparable consequences should be implemented for a party’s non-appearance.” There is nothing comparable about the consequences faced by tenants and landlords resulting from non-payment of rent. Tenants face homelessness and significant social consequences, while landlords are simply deprived of profit. If the Committee is truly interested in equity, landlords, given their familiarity with the process and the assuredness of representation by counsel, must have enhanced penalties for non-compliance with court deadlines.

Recommendation 14, 15:

This is a hidden change that seems innocuous but is going to be used to summarily remove people from their homes. Marini hearings are to determine the habitability of a rental. If the tenant raises a Marini defense, they are saying that there is something in the rental which makes it uninhabitable or, if it is a lesser problem, entitles the tenant to a rental credit for repairs.

This was a common defense for years but recently courts decided to require the tenant to post the unpaid rent with the court to even present this type of defense. Given the COVID pandemic and the economic crisis resulting from the pandemic, very few tenants will be able to post any funds with the court. This gives landlords carte blanche to render rentals uninhabitable in an attempt to illegally and improperly force tenants from their homes.

While cloaked in supposedly beneficial results for tenants, this recommendation will serve to short track many evictions and deprive tenants of their rights to bring uninhabitable conditions to the court’s attention. Presumptive requirements of 50% of the alleged rent due and owing is burdensome and onerous on tenants given the current pandemic, economic downturn, and housing crisis. And the discretion provided to the court to modify the requirements will only serve to further disenfranchise tenants, as they will likely be unrepresented by an attorney and against a represented landlord. While facially neutral, this recommendation is wholly consistent with providing a benefit and advantage to landlords over tenants.

In the alternative, we propose appointment of a Special Master for each vicinage to hold Marini hearings without the requirement of posting any bond by the tenant. Such Special Master could summarily dispose of Marini claims without facial merit and adjudicate the meritorious Marini claims prior to trial. All interests will be protected without any significant hindrance of trials moving forward.

Recommendation 15 is an offshoot of the prior recommendation and serves to disenfranchise tenants further. While this recommendation also appears facially neutral, the recommendation serves to place tenants in an indefensible Catch-22. Specifically, due to COVID, hundreds of thousands of tenants statewide do not have sufficient funds to pay rent. This recommendation would require the deposit of rental funds with the court to allow tenants to exercise their right to trial. Recommendation 15 effectively denies due process and the right to trial to tenants who cannot post their rent with the court. Thus, tenants cannot present a defense to non-payment of rent at trial unless they can pay their rent. Now is not the time for clever procedural tricks to deprive people of their homes and shelter.