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Hon. Glenn A. Grand, 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, NJ 08625

BY EMAIL TO Comments.Mailbox@njcourts.gov

Dear Judge Grand:

I am an attorney and property manager of single family homes and a commercial property located in Monmouth, Ocean, and Mercer Counties. I have been a tenant at times as well. I respectfully submit this response to the request for comment on the Report and Recommendations of the Judiciary Special Committee on Landlord Tenant. Given my unique experience and perspective, I oppose the change of summary eviction actions to a civil court action that is intended to take 60-90 days or more, not including stays of eviction.

I have clients who have been in the business as small Landlords for over 40 years. COVID-19 has caused everyone difficulty, but small Landlords who could not get any assistance were hit hard. The extension of the proceedings to 2-3 months, without regard to the cause for the action or any requirement that the Tenant pay rent, unfairly burdens Landlords with significant losses in income.

In these recommendations, there is no program of insurance offered to Landlords to cover loss of rents, damage to the premises, or municipal liability caused by the Tenants. In fact, once a Notice to Quit has issued for any reason, the law prohibits Landlords from accepting rent before an action is concluded. For a Landlord to accept rent, even to offset losses, is to result in dismissal of the action, and the Landlord must start again. Tenants should be required to pay rent into the Court's escrow at the outset, not just for an adjournment request. There needs to be a limit on the harm Tenants are permitted to inflict on the asset and the Landlord.

The proposed changes significantly disadvantage my clients and places a great burden on residential and small commercial landlords, as well as increased use of judicial resources. Presently, NJ Law permits evictions as summary actions. These are to be expeditious so that what is a stressful situation for both parties can be resolved quickly. Often, summary action still take 30-60 days to eviction at their fastest. It takes 45-60 days to get an initial hearing date in Trenton. Yet, NJ Law prevents landlords from retaining more than 45 days of rent as security. If Tenants can use their security as rent for any reason, that protection is decreased to only ½ of a full month's rent, regardless of whether the Tenant has the ability to pay or is causing a nuisance, committing crimes, exceeding occupancy limits, and destroying the property.

In many pre-COVID-19 actions, because it took some time for the Landlord to regain the asset, the Landlord would lose a month or more of income. Tenants are often judgment-proof, lacking the ability to pay back large debts once the money is spent elsewhere. This new procedure has a built-in time frame of over two months before a hearing date. Small, individual landlords that provide single family rental housing or share an owner-occupied property cannot bear the burden of any delay to evict a tenant who refuses to pay rent or who is willfully causing destruction to a rental property of flouting the rules and disturbing the neighborhood. Municipalities do not allow similarly long deadlines before fining property owners for ordinance violations, even if the property is under the control of the Tenant. Neither do taxing authorities allow much leeway to property owners who fall in arrears, even if they have filed an eviction.

The ONLY leverage a Landlord has is a summary action. Some landlords, like my elderly clients, rely on rent as their main source of income in retirement. A summary eviction action is the only way a Landlord can regain its asset and prevent further loss of income. Many times it is a last resort. To prevent prejudice to smaller landlords, it is imperative that the summary process move quickly. The combined proposed changes remove an expeditious (not fast) remedy from the Landlord.

My clients and the tenants of single family homes have spent the entire COVID-19 emergency disadvantaged and ignored, and these proposals show there is no relief in sight. Only recently have my Tenants qualified to apply for State aid. Prior to 2021, no federal or state aid was offered to Landlords who rent single family homes, or who do not have a federal mortgage. "Phase 4" and the State's new rental grant program has finally opened this door. My clients and their Tenants are still waiting to hear the outcome of our applications.

Finally, a cost analysis should be undertaken. These additional procedures will cost the courts in an already budget-strapped system to incur more costs and impose heavier burdens on taxpayers as well as Landlords and Tenants. The Judiciary should consider data regarding costs to economize the proposed procedures, and whether any should be changed after an appropriate period of implementation.

Responses to Recommendations

Recommendation 1. LCIS – My general practice is to indicate the type of action on the Complaint. Having a classification system indicating the type of action – destruction of property, for example, should then result in a faster track and payment of rents into the Court's escrow. There should not be a question about the application of security as explained with regard to the TCIS, below.

Recommendation 2. TCIS – The Tenant's response should be submitted within 10 days of proper service of the Summons and Complaint.

The form as proposed asks whether Tenants have asked the Landlord to apply their security to rent. Executive Order 128 is presently facing a Constitutional challenge and should not be included on this form. Additionally, the form should mandate a response by the Tenant as to why they are not paying rent or a basic response to other causes of action to prevent surprise defenses.

Recommendation 3. The Judiciary should hire enough short-term staff to efficiently move the backlog of cases within 45-60 days of the end of the eviction moratorium. A requirement for filing a LCIS

within 45 days creates an automatic 45 day delay. The court should request, but not require, attorneys to file the LCIS before the new rule takes place.

Recommendation 4. The Judiciary should recruit appropriate staff to process the backlog of Landlord Tenant cases quickly. If the "legal specialist" is a mediator, mediation of cases should continue to occur the first time the parties meet. In past practice, this was the day of trial. If a new conference requirement is instituted, a binding mediation should be held on that day. This will expedite resolutions for all parties in these matters, which are often not truly adversarial.

Recommendation 5. If case management conferences are conducted, they should occur within 10 days of service of the Complaint and Summons. Ten (10) days from the first conference date to a second conference equals delay and waste of judicial resources and additional notice expenses. There should be an express distinction between residential and commercial properties over certain income limits. Recommendations for virtual appearances should be phased out over time, as one of the best motivators for parties to resolve their disputes independently and before trial is the time and expense of appearing in court.

Recommendation 6. The lease requirement unfairly shifts a greater paperwork burden to the Landlord. The law requires a lease to be signed and provided to the Tenant at the beginning of the leasehold. The Judiciary seeks to duplicate this requirement at the outset, to provide a document that the Tenant should posses. Residential leases are often longer than 10 pages in length, at 12-point type, with rules and regulations. Some of my clients still appear on their own behalf in actions. The required mailing would be hefty, with significant paperwork obligations. This change could result in 8 point type leases.

The concern addressed in this Recommendation – that Landlords are entitled to the relief they seek, is the purpose of the Landlord Certification and Verification accompanying the Complaint. If Landlord Certifications are no longer considered adequate evidence, then that part of the Complaint can be eliminated.

Certainly, lease copies can be provided if the Tenant requests. Documentation provided by the Court regarding procedures can inform a Landlord that the lase and registration are required at trial. If the Tenant contests the validity of some part of the lease, they should provide it in support of their case. Requiring a lease at the beginning of what is supposed to be a streamlined procedure adds further burdens and expenses upon the Landlord. It also exposes in a public document what some parties may prefer to keep a private and confidential agreement.

Recommendation 7. This Recommendation delays what is intended to be a summary proceeding. 10 days to reschedule a conference that it took likely 30 days to obtain (according to the flow chart), just adds to the Tenant's ability to delay what should be an expedited and less formal proceeding. There are so many recommendations for conferences in this report that the case will be much like a municipal debacle in Trenton where the case never actually gets heard but goes on *ad infinitum* while the Tenant holds the asset rent-free.

More notices mean more expense to the Court. If there is a backlog of 50,000 cases and notices need to go out to 2 parties, that is 100,000 notices just for one conference. If the conference needs to be

rescheduled, that is 200,000 notices. At .51 each, that is a cost of $102,000. (Amount taken from most recent Trenton Municipal Court Mailing).

The Recommendations do not sufficiently require Tenants to uphold their contractual obligations or show deference to the Court. If a party is a "no show no call" to a trial date, in civil cases, a default judgment is entered against them. Here, the judiciary proposes no consequence for a "no show no call" other than rescheduling. A party who needs to reschedule must contact the court, at the very least, in fairness to all parties. In the alternative, they can apply to have the default removed for good cause after entry, as in any other case. If not required at the TCIS filing, any adjournment should require payment of rent arrears to Court escrow.

An additional conference requirement and the delay in ordering the judgment of possession delays the Landlord's remedy of a quick and speedy hearing on the matter. It also adds to the stress of parties who have their living situation hanging in the balance.

With only a guideline for the scheduling of trials (60 days from filing), there is no limit on the losses the Landlord will incur, and no timeline as to when the parties will have a full resolution to what can be a stressful situation for all.

Recommendation 8. Yet another conference is proposed. Presently, settlement and trial are held on the same date. Typically, the trial date is scheduled, the parties show up and settle. This date may be adjourned, but there is a lot of pressure to come to an agreement before trial. These are not typical adverse parties, and many result in continued occupancy, but the court date does give the Landlord some leverage to use to obtain the Tenant's cooperation.

Limiting the types of agreements that can be reached at a settlement conference again takes power away from the parties. The settlement conference now seems an exercise in procedure. Many of our tenants cannot pay an attorney but do not qualify for legal assistance. My clients are individual investors who often appear on their own behalf. More matters will need to go to trial in an already taxed system.

Again delay is an issue if the court must approve any agreement between the parties. Parties in Landlord Tenant cases have a mutually beneficial arrangement that is not expressly adversarial. The parties in these matters independently negotiated a lease and should be able to negotiate a settlement if it is desirable to all. The Court can provide translators where necessary, and *pro bono* or *per diem* attorneys paid by the courts to assist those who do not otherwise qualify for legal assistance.

Recommendation 9. The Judgment for Possession form still seems unclear. Parties can agree to withdraw the complaint as a part of settlement. Judgment of Possession is required before a Warrant of Removal can issue, and a Certification of breach is already required – the Landlord does this when completing the Warrant of Removal. Typically when checking tenants' rental records, it is clear whether the case was a "pay and stay" or if the Tenant had to be removed.

Again, this step adds delay and burden to the Landlords, especially in central and southern New Jersey. It also is unfair to Tenants who pay in good faith. Often, repayment is in months or years – especially in

the COVID-19 emergency – not days, so adding an automatic dismissal deadline if the Landlord does not allege a breach is punitive and disallows compromise by the Landlord.

Recommendation 10. It is my sincere hope that the Judiciary will add additional judges to adjudicate the backlog of Landlord Tenant cases as well as civil and criminal matters. Many cases have been postponed voluntarily and have yet to be filed with the Court. In order to ensure fairness, as this Recommendation seems to pursue, it is necessary to have more staff to engage in the required judicial review proposed. This should be of utmost priority.

There should be a short deadline for approval in cases of settlement so that all parties may resume the normal course of their lives.

Recommendation 11. All required conferences should be scheduled on the trial date. Every effort should be made to ensure that a trial date, whether virtual or in-person, is scheduled within 30 days of filing. Any other arrangement causes unnecessary delay and burdensome additional costs to both parties that must take additional time to appear.

If "[t]he Special Committee acknowledges that in pre-pandemic practice, landlords (and landlord attorneys) and tenants often attempted to resolve matters on the trial date, including, at times, without any involvement of a neutral settlor," then this practice should continue. The key for summary actions is timeliness and early resolution.

Given the volume of current cases and the public health crisis, appearances should be remote where possible.

Recommendation 12. The present announcement pre-trial is sufficient. Parties would benefit from announcements regarding virtual proceedings.

Recommendation 13. The Judiciary has a document explaining what to expect in Landlord Tenant Court, and it should be updated for both Tenants and Landlords.

However, the burden should NOT fall on the Landlord to provide another lengthy document to the Tenant upon filing a complaint in what is to be a summary proceeding. An individual Landlord already bears the burden to provide pages of legal assistance forms. The Tenant should undertake some responsibility for their own advocacy. A directive to the URL where such a document can be found should be sufficient. The document can also be supplied in hard copy to libraries statewide for reference.

Recommendation 14 & 15. I am in favor of requiring the tenant to raise a habitability defense as an affirmative defense at the outside on the TCIS. Habitability should not be a surprise defense except in rare circumstances.

The total amount of rent due, less expenses to cure supported by receipts, should be submitted to the Court's escrow for any adjournment.

In other cases, the Tenant should be required to deposit rent payments to the Court's escrow; as they are able if the cause is for non-payment of rent. The law should maintain the requirement that Tenants are obligated to pay rent to remain.

Recommendation 16. One single judgment form, as in most civil motions, should be used and altered by the judge or court system as necessary. This reduces paperwork and conserves judicial resources.

Recommendation 17 & 18. This Recommendation increases the delay in the proceedings. A Request for a Warrant of Removal can only take place 8 days after a Judgment of Possession, and cannot be served until 3 days after that. So, approximately 30 days for a conference date, using a Monmouth County pre-covid estimate, 15 days for a rescheduled date with mail time, plus 30 days for a trial date (according to the flow chart), plus 8 days for a Judgment and 3 business days for removal equals an elongated process of 60 + days at a minimum. With a half month's rent – maybe a few hundred dollars – as the Landlord's only offset. And, the possibility exists that even after a formal lock-out with a Court Officer the Landlord may not have a resolution to the matter, as the Tenant is allowed 3 more business days to cure without filing an application for a Stay.

The creation of 4 different forms plus an expanded timeline to remove Tenants increases the paperwork burden and the expenditure of judicial resources. Whether required notice has been given under the CARES Act sees appropriately established at the outset of the action or cured during the pendency of an action. This consideration will no longer be relevant after the legislation's expiration date.

Attachment C: The Judiciary should consider removing the representation by an attorney requirement for small businesses. In light of today's personal risks in renting, such as doxxing, theft, and personal assault, some Landlords are creating business entities to protect themselves and their families from abusive Tenants. A small family LLC with one or a few members, for example, should be able to represent itself in a summary proceeding.

Conclusion

The Judiciary should look at streamlining the system and procedures in Landlord Tenant matters. Many of these recommendations complicate and prolong matters and place undue burdens on the Landlords, whose only remedy for loss is a summary eviction proceeding. The law has not permitted for additional security or acceptance of rent during a summary eviction proceeding. This Report does not make mention of a Tenant paying rent into escrow if a demand for possession is made for reasons other than non-payment of rent, regardless of the ability to pay. In fact, none of the Recommendations put the burden on the Tenant to be a responsible lease holder. The Court Recommendations offer little to no protection for the Landlord. Landlords are penalized for negotiating prior to or during an eviction action.

There need to be financial protections for small Landlords, and those that rent single-family homes or owner-occupied properties. A survey of the rental markets in New Jersey may provide helpful data in crafting a responsive process to the needs of varied markets. Many of these recommendations ignore the differences between residential and commercial landlords, and individual and large corporate holdings. They also give no attention to the distinct differences between New Jersey's rural and urban

areas and the differences in housing offered across the State. Further, increasing the number of judges that will be needed for all the new "judicial review" requirements for the backlog of cases throughout the State should be a high priority.

I predict the change from a summary action to a full procedural civil action will have unforeseen effects on the fair administration of justice and the rental market in New Jersey. I believe it will eliminate nearly all individual investors, which often provide desirable rental properties in areas often out of reach for people who cannot purchase their homes at today's high prices. Remedies will be sought by other civil actions, such as small claims, for matters previously resolved in Landlord Tenant as a matter of course.

The Judiciary could also consider a "sunset" review for provisions related to COVID-19 and an efficiency assessment for a period after any changes are implemented to evaluate whether the process has improved or become more challenging, as well as whether costs have increased or decreased comparatively over time.

After a year of COVID with no relief, my clients deserve recourse for willful destruction and wrongful retention of their property. I predict the proposed changes will deny secure housing to many, many families who do not meet more stringent income or residency standards that will now be required by Landlords who wish to avoid recourse to a system that offers them little to no remedy.

Thank you for considering the issues that face the parties and the Court in Landlord Tenant matters. Should you have any questions or if there is further information I can provide, kindly contact me at my office, (732) 389-0369.

Very Truly Yours,

S/ Sheila S. Hatami

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