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Hon. Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Hughes Justice Complex
PO Box 037
Trenton, New Jersey 0865

RE: recommendation of the Judiciary Special Committee on Landlord Tenant

Dear Judge Grant:

My comments are geared to an application of my background, to what happens in the real world. Because of this special insight, my comments strongly argue against the recommendations proposed.

I have a strong belief in Legal Services programs, as well as housing for the poor. The question of social needs and the betterment of society is best left to the legislature.

By way of background, when I attended Seton Hall University School of Law, I participated in the program with Essex County Legal Services.

During my career as an attorney I served a full four (4) year term on a District Ethics Committee, a full ten (10) year term on the Special Civil Part Practice Committee, and am a member of the Special Civil Part e-Courts filing committee. A large part of my practice is devoted to representing landlords. As this affects residential landlords, this ranges from small landlords who own a two-family house, to family businesses that may own fifty (50) give or take units, to some larger companies that own several hundred units. We must keep in mind that the same laws and procedures will affect the small landlords as the larger landlords.

I also have the premise that most eviction filings are against people who are in the low-income scale who live in cities or low-income areas. There is also a shortage of low-income housing in New Jersey.

Therefore, for the benefit of low-income people who have a problem finding an affordable place to reside, the summary dispossess proceedings must be prompt and efficient. It is not callous to evict people from apartments if they cannot afford them. This way, those in the lower income brackets who can afford the apartments can move in and will have more choice. In turn this will act as a betterment for affordable housing. As to those who get evicted and cannot afford the apartments, I do not have the answers. That is a societal ill for the legislature to address. It must not be forced welfare upon landlords, whether large or small.

I further disagree with the predicament of a "tsunami" of evictions once the landlord – tenant courts re-open. While I am not one of those attorneys who files 500 to 750 cases a month, pre-COVID I was filing 50 – 75 cases a month. Based upon this and the relationship I have with my clients, I feel that I have a pulse on what is occurring.

For the most part, while collections are down, they are not dismal. Many people who could not pay moved. At times landlords are incentivizing non-paying tenants to move by either providing moving expenses or relinquishing the right to sue for the money in return for the tenants vacating. Within my clientele it is rare that a tenant in this environment does not pay.

Unfortunately, however, there are some tenants who are taking advantage of the system and just refuse to pay because they know that they cannot get evicted at this time. For those types of tenants, the landlords must have prompt recourse. This type of tenant is especially detrimental to the small landlord.

While the court figures may show a huge backlog of summary dispossess actions which were filed but not yet heard, the query is how many of these are still viable?

The following is what I have experienced (pre-COVID) in the real world in day to day practice for non-payment cases. Most landlords do not file for eviction the first month that the tenant is behind on the rent. Usually a filing takes place mid the second month of non-payment. It takes about three (3) to four (4) weeks in most counties to get a trial date from the date of filing. In Essex County it can often take five (5) to (6) weeks. Thus, a tenant is behind give or take two-and-a-half (2 ½) months by the time of the first trial date.

Generally speaking, 10-15% of tenants either pay up, move out or make a payment plan prior to even the first trial date. Of the remaining, less than half actually show up in court. That is, only about thirty percent (30%) of those originally filed against show up in Court.

For those who show up in court there is plenty of opportunity to make a settlement with the landlord. Most landlords want to settle and do not want to evict a tenant. It takes about another three (3) weeks from the trial date to obtain a warrant of removal and to lockout out a tenant (again, longer in Essex County). By the time a landlord fixes up an apartment and re-rents it, the landlord will be out at least (4) months of rent; and only has a month or a month and a half security deposit. Additionally, most landlords will tell you that it costs several thousand dollars on average to prepare an apartment for a new tenant. Plus, at times there are real estate broker's fees to be paid.

This begs the question as to why any landlord would not want to settle with the tenant.

I have been practicing landlord – tenant law for over twenty-seven (27) years. It is extremely rare that on the trial date a tenant knows that rent is owed but is insistent upon seeing a judge, or that a *Marini* defense is raised. I am estimating, but I would say it is probably about a quarter of one percent (0.25%) of the cases I work on.

Almost all either make a payment plan in the hallway or agree to vacate by a designated date. For the defaults the same thing applies. Most either pay up or move out.

I am not sure of the statistics, and with all that I have read on this topic, I have not seen the statistics of the percentage of cases where tenants are actually locked out. I am not referring to cases where warrants of removal were posted, or perhaps where a tenant was locked out and

the tenancy was reinstated based upon payment. This would be an interesting statistic. I venture to state that it is probably only a few percent of all eviction cases filed.

What I am getting at is that with the shortage of affordable housing, those who can afford it should be given the opportunity to rent an apartment.

Moreover, an eviction is a summary action. It is supposed to be a quick disposition. The proposals will only delay this procedure. In turn, this will drive up the costs for landlords. This is only going to hurt the bottom line of landlords, and more than likely will drive up their legal fees. In my almost thirty years of practicing law, it has been extremely rare that any of my landlord clients asked me to actually file a suit for monetary damages against a tenant who failed to pay. Yet, with the current delays in the court system, landlords are beginning to do so.

There is always a minute chance that something may go wrong. Without a doubt, almost all eviction cases follow the proper protocol.

While the Court process on the initial trial date needs some modifications, overall the system works.

As to the initial trial date and related process a uniform statewide process would definitely help. As of now an announcement is read, usually via video. Almost always, the judges also give a lengthy speech; often about a half hour.

This is where the problem arises. The attention span of most people is short. After about five (5) minutes most people are no longer paying attention. While the judge may honorably feel that he or she is protecting a tenant's rights, a lengthy speech really does not help.

Going back to my inclination about statistics in my experience. Only about 30% to 40% of the tenants show up. Almost invariably they appear in the hope to enter a payment plan with a landlord or to get some extra time to move out. Many of these people need to get to work. The trial notice tells them to appear for example at 8:30 a.m. Most of the people I speak with in court thought that they would quickly make a settlement with the landlord and get to work. Yet, with the system in most courthouses, the process often takes all morning; at times resulting with the tenant needing to take a day off from work, just when money is at its tightest.

The process needs to be streamlined. It would help to have mediators available for those instances where the landlord and tenant cannot come to terms directly. Yet, this should be in the trial date. Also, the mediation process should not be forced. In some counties it is mandatory. Yet, almost always the landlord and tenant can work things out by themselves in the hallway.

The settlements also need not be approved on the record. This also only cause delays, and drives up landlord's costs. Yet, it would be beneficial to have someone from the court personnel to quickly review the settlement with the landlord and tenant, and place some type of marking on it that both sides understood and consented. This will need to be a very brief process; perhaps a minute or two. Again, it should not be something that makes the day grow longer. Then the person from the court could present the settlement to the judge for approval. This should be done by the judge in chambers so as not to disrupt the morning's proceedings. Only, and only if the judge has a meaningful problem with the settlement or a legitimate question about it, should a follow up hearing be scheduled. All effort should be made to do this on a virtual platform. Tenants should provide an e-mail address and mobile telephone number along with the settlement. The rule should be made clear that the judge must review all settlements within one

business day, and that any follow up hearings about questions should be held within a week. Otherwise, there will be further delays.

Settlement forms and the form for applying for a warrant of removal should also be uniform throughout the State.

The process for post-judgment relief must be streamlined as well. For an order to show cause application there must be certain standards. For example, a judge can ask the tenant how much money the tenant feels is due. Then the next requirement should be for the tenant to post that amount or a substantial amount of it. If the tenant cannot do so, then the judge should just give the tenant a few extra days to vacate through the order for orderly removal process. This process should not turn into a second or third bite at the apple for the tenant to either buy more time or try to come up with the money. It should be clear that there is only one permitted order for orderly removal and then that is it.

The object is to keep the process moving. Needless paperwork, filings and court proceedings must be avoided.

I hope that you and the Committee take my thoughts into consideration. If I can be of any assistance, please feel free to contact me. Thank you again for your consideration.

Very truly yours,

JONATHAN R. MEHL, P.C.

Jonathan R. Mehl, Esq.

By: Jonathan R. Mehl, Esq.