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*Sent by Email (Comments.Mailbox@njcourts.gov)*

February 14, 2022

Hon. Glenn A. Grant, J.A.D.  
Administrative Director of the Courts  
Comments on Proposed Amendments to Rule 1:38-3  
Hughes Justice Complex, P.O. Box 037  
Trenton, New Jersey 08625-0037

Re: Comments on Proposed Amendments to Rule 1:38-3

Dear Judge Grant:

This letter is submitted, on behalf of The Waterfront Project, Inc. (WFP) pursuant to Your Honor's Notice to the Bar inviting comment on the Supreme Court's proposed change of R. 1:38-3 to remove certain judgments of possession from public record. As detailed below, we wholeheartedly support the change, but ask for additional expungements for (1) successful Marini defenses; (2) certain judgments of possession entered at no fault of the tenant pursuant to N.J.S.A. 2A:18-61.1(g), (h), (k), (l), (m) and (3) when a tenant successfully defends against a holdover.

The Waterfront Project is a 501(c)(3) nonprofit organization dedicated to assisting economically disadvantaged people by providing information, advice, and pro bono legal representation to address their civil legal issues and concerns. A large portion of our practice is dedicated to representing tenants in landlord-tenant court, defending them from eviction and enforcing their right to safe, legal, and affordable housing in their respective communities. Everyday, we see how a judgment of possession, or even a landlord-tenant complaint filed and subsequently dismissed, can prejudice a tenant's ability to secure safe and affordable housing.

While we full heartedly support any effort by the Court to remove from public record a judgment of possession, we believe that the Court can and should do more to ensure that New Jersey residents aren't punished for vindicating their rights in court. In addition to what is already proposed, we ask the Court to also expunge all landlord-tenant court records when (1) the tenant withholds rent and successfully asserts a Marini defense in a non-payment of rent case; (2) a judgment of possession enters with cause under the Anti-Eviction Act, but due to no fault of the tenant pursuant to N.J.S.A. 2A:18-61.1(g), (h), (k), (l), (m); and (3) when the tenant successfully defends a holdover case pursuant to N.J.S.A. 2A:18-61.1(b), (c), (d), (e), (f), (i), (n), (o), (p), and (q).

Our position is supported by New Jersey's historical efforts to protect tenants from unjustified evictions and provide them with an opportunity to assert their rights without threat or intimidation. The New Jersey Legislature passed the Anti-Eviction Act as a remedial piece of legislation to redress the "severe shortage of housing in the state" by requiring landlords to have good cause before it can evict a tenant. A.P. Dev. Corp v. Band, 113 N.J. 485, 492 (1988). New Jersey courts have historically recognized this public policy and have interpreted it broadly due to its remedial purpose. See, et al, Franklin Tower One v. N.M., 157 N.J. 602, 614 (1999) (recognizing New Jersey's strong public policy of protecting tenants from unjustified evictions); Maglies v. Estate of Guy, 193 N.J. 108 (2007) (recognizing "[t]he Act's chief purpose is to keep residential tenants in intact homes and avoid the imposition of personal dislocation so long as the tenancy's financial and other responsibilities are met."). Recognizing New Jersey's strong policy to protect tenants, the Court is in a unique position to further redress tenants' ability to find new housing if they have been forced to relocate due to no fault of their own or if they have used the court system to vindicate their rights.

First, under the procedures outlined in Berzito v. Gambino, 63 N.J. 460 (1973) and Marini v. Ireland, 56 N.J. 130 (1970), a tenant may withhold rent after providing reasonable notice to the landlord of problems in his or her apartment and assert a breach of the implied covenant of habitability as a defense to his or her non-payment of rent. This is an effective way for tenants to compel landlords to make repairs under court supervision. However, this procedure requires the tenant to evaluate whether it's worth having a court case filed against him or her for non-payment of rent. Given the importance of the Marini doctrine, tenants should not be discouraged from vindicating their rights due to the possibility that a prospective landlord will scrutinize and use the case against them when evaluating their tenancy application. It is our position that the Court can correct this problem if it expunges these records after a tenant successfully asserts a Marini defense. Accordingly, we ask that the Court amend the proposed rule to include the removal of all court records from non-payment of rent cases after the tenant successfully asserts a Marini defense.

Second, the Anti-Eviction Act provides the landlord with an opportunity to evict a tenant in compliance with his or her rental obligations when the landlord has made a unilateral decision that necessitates the removal of a tenant, such as curing an illegal occupancy, selling his or her property, personally occupying a unit, terminating the employment of a superintendent, converting the building to a condominium, etc. See N.J.S.A. 2A:18-61.1(g), (h), (k), (l), (m). It is our position that the Court should expunge these court records so that they do not prejudice the tenant while he or she is searching for new housing. Accordingly, we ask that the Court amend the proposed rule to include the removal of all court records where the landlord has good cause under N.J.S.A. 2A:18-61.1(g), (h), (k), (l), (m) to evict the tenant in good standing.

Third, the Anti-Eviction Act provides landlords with the opportunity to evict a tenant for allegations that a judge must find true by a preponderance of the evidence, such as habitual late payment of rent, lease violations, criminal activity, failure to accept a proposed lease with reasonable changes, etc. N.J.S.A. 2A:18-61.1(b), (c), (d), (e), (f), (i), (n), (o), (p), and (q). It is our position that if a tenant is successful in defending him or herself from eviction under one of these provisions, the Court should expunge these court records. Given the serious nature of allegations made in these court cases, similar to criminal indictments or arrests, the unproven allegations can impact tenants' personal and professional relationships and prevent them from finding new housing or employment. Accordingly, we ask that the Court amend the proposed rule to include the removal of all court records when the tenant successfully defends him or herself from eviction under N.J.S.A. 2A:18-61.1(b), (c), (d), (e), (f), (i), (n), (o), (p), and (q).

Thank you for the opportunity to comment on the Supreme Court's proposed change of R. 1:38-3. For these reasons, while we full heartedly support any effort by the Court to remove from public record a judgment of possession that could prejudice a tenant, we believe that the Court can and should do more to ensure that New Jersey residents aren't punished for vindicating their rights in court. In addition to what is already proposed, we ask the Court to also expunge all landlord-tenant court records when (1) the tenant withholds rent and successfully asserts a Marini defense in a non-payment of rent case; (2) a judgment of possession enters with cause under the Anti-Eviction Act, but due to no fault of the tenant pursuant to N.J.S.A. 2A:18-61.1(g), (h), (k), (l), (m); and (3) when the tenant successfully defends a holdover case pursuant to N.J.S.A. 2A:18-61.1(b), (c), (d), (e), (f), (i), (n), (o), (p), and (q).

Sincerely,

Brian Rans, Esq

Brian Rans, Esq.  
Staff Attorney