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March 29, 2024

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Hon. Glenn A. Grant  
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 Submitted via email to: [Comments.Mailbox@njcourts.gov](mailto:Comments.Mailbox@njcourts.gov)

**Comments on Proposed Amendments to Rule 6:1-2 Cognizability; Rule 6:3-4 Summary Actions for Possession of Premises; and Rule 6:4-3 Interrogatories; Admissions; Production**

Dear Judge Grant:

Please accept the following comments on behalf of Legal Services of New Jersey. The proposed rule change to 6:1-2 changes actions cognizable in the Special Civil Part by redefining summary ejectment and unlawful entry and detainer actions all as ejectments. The proposed rule 6:3-4 then limits all such summary matters to actions for possession only. As set forth below, LSNJ urges the Court to reject the proposed amendments and to retain current procedures for unlawful entry and detainer actions pursuant to N.J.S.A. 2A:39-1 *et seq.*<sup>1</sup> These proposed rule changes would in effect, be contrary to the goals of the Committee and the Special Civil Part, as stated in the Committee Report: to “have access and fairness, break down barriers to justice, and eliminate racial disparities, and ... to have a court that has simple procedures and proportionately lower fees.”

<sup>1</sup> Should the Court seek to limit summary ejectment actions pursuant to N.J.S.A. 2A:35-1 *et seq* to possession only, these matters should be identified separately in a new section under R. 6:1-2 and should be distinct from summary unlawful entry and detainer matters pursuant to N.J.S.A. 2A:39.1 *et seq.*

Of particular concern, the proposed rule would require an illegally locked out tenant seeking relief to file a second (non-summary) action for monetary damages, despite the forcible entry and detainer statute's provision for summary action regarding *both* restoration to the premises and/or damages when appropriate. Bifurcating the two elements of N.J.S.A. 2A:39-1 *et seq.* will lead to illegally displaced low-income tenants being homeless without resources to secure alternate housing. When a tenant is restored to possession of the premises, the Court may schedule a second hearing regarding damages when necessary. However, when restoration to the premises is not possible or when a tenant's possessions have already destroyed or disposed of, the availability of a simple, expeditious damage award is both provided for under the statute, and essential for the tenant to pay for other housing or for the quick replacement of basic essential items.

Across the Legal Services network in New Jersey, we provide legal assistance to thousands of tenants each year – many dealing with a threatened or actual unlawful entry and detainer, aka an “illegal lockout” by a landlord. In over 90% of these instances, a displaced tenant will file an emergent application for relief on their own without the benefit of an attorney. Typically, this means that tenants must make an emergency application to the court for relief – seeking immediate restoration to the premises and protection of their possessions. In the most egregious instances, landlords who engage in self-help evictions will also ensure the rental property cannot be re-occupied by the displaced tenant. We have seen instances where landlords illegally lock out a tenant after hours on a Friday and by Monday morning, the property has been re-rented to new tenants, or has been rendered uninhabitable by removing vital facilities. In situations when it is not appropriate for a judge to order the tenant back to possession, that statute provides for treble damages to be awarded in lieu restoration of possession.

In any action under this chapter, a plaintiff recovering judgment shall be entitled to possession of the real property and shall recover all damages proximately caused by the unlawful entry and detainer including court costs and reasonable attorney's fees. **When a return to possession would be an inappropriate remedy, treble damages shall be awarded in lieu thereof. The judgment may be enforced against either party in a summary manner by any process necessary to secure complete compliance therewith, including the payment of the costs. 2A:39-8.**

If the proposed rule change were implemented, a tenant in the above circumstance would not be able to be restored to possession and would be left to file a separate action seeking damages, rather than being able to

prosecute a claim for damages in the same order to show cause. This unnecessary delay and implementation of an additional procedural hurdle, creates an untenable situation for the displaced tenant.

Unlike an action in Landlord-Tenant court for eviction, where the Court's jurisdiction is statutorily limited solely to actions for possession, the unlawful entry detainer statute - which is one of the two statutes subject to this court rule - specifically provides for a summary hearing and summary enforcement of a judgment granting both possession and damages. It is not clear if an emergent application is available in a separate action solely for monetary damages. Even if a claim for damages may be filed via an emergent application, it would require the payment of an additional filing fee, filing and service of a summons and verified complaint, and the scheduling of a return date a least ten (10) days after service. While this is not a lengthy process in ordinary legal practice, it can be a very long time for a homeless tenant without the means to pay for alternate housing or essential items. It can easily make the difference between sleeping outside on the street and having shelter, resulting from a landlord's illegal actions. These are not trivial barriers for a low-income tenant.

Requiring a suddenly and illegally displaced tenant to file a separate action for monetary damages following a forcible entry and detainer based upon the same statute and the same set of facts, would create confusion and unnecessary burdens for litigants – particularly for low-income unrepresented tenants in need of emergent relief. Finally, the additional court filings and proceedings that the rule change would require cut against judicial economy and efficiency. Legal Services of New Jersey urges the Court to reject these rule changes as proposed.

Respectfully submitted,

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