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April 28, 2025

Acting Administrative Director of the Courts
Administrative Office of the Courts
Attn: Residential Landlord Tenant Forms & Processes
Hughes Justice Complex
P.O. Box 037
Trenton, New Jersey 08625-0037

Via email to: Comments.Mailbox@njcourts.gov

Dear Acting Administrative Director:

On behalf of Legal Services of New Jersey, please accept the following comments on the proposed changes to Landlord Tenant court forms and processes, set forth in the March 27, 2025 Notice to the Bar. These comments are provided on behalf of the Legal Services of New Jersey statewide advocate community and has the benefit of many decades of experience from the top legal advocates in the state on landlord tenant issues.

LSNJ appreciates and supports the judiciary's goal, to create forms and procedures that support the filing of correct and complete complaints, with all required attachments, in a standard format that could more easily be reviewed by court staff. In doing so, we believe that there are four key principles that should be considered:

1. Complaints should meet the needs of pro se litigants – both landlords and tenants; 2) Complaints should provide information sufficient to understand the nature of the proceeding, but not be so confusing that parties have challenges reading and understanding the key elements of the complaint.
2. While a review for completeness of the filing is necessary at the outset, Legal Services recognizes that it is not (and should not) be the role of court staff to adjudicate the legal sufficiency of a claim at the time of filing.
3. It is essential that the court at some point, review the information contained (or omitted) from an eviction case to ensure that the court has jurisdiction to enter a judgement for possession against a tenant. In many cases, a determination as to whether or not a matter is jurisdictionally sufficient and a matter has been sufficiently pled, will turn on the specific legal requirements to terminate a

tenancy, prior to the institution of a Special Civil Part court action. As such, LSNJ feels strongly that this is a determination that must be made by a judge, prior to the entry of judgment.

LSNJ supports the use of a standardized complaint form required to be filed by attorneys and by self-represented landlords.

LSNJ supports the inclusion of the trial date on the tenancy summons and believes that this reincorporation reflecting pre-COVID-19 practices is essential.

LSNJ agrees that the specific inclusion of one type of notice requirement (in this case, the CARES Act notice) is not necessary on the complaint or in a Landlord Case Information Statement, should the court continue to require an LCIS, as the proposed mandatory complaint form should require the inclusion of all federally required applicable notices.

Proposed LT Complaint Form:
LSNJ has significant concerns with the proposed form and believe that amendments are necessary to better support the court's goals in amending the form, and to make the process clearer, fairer and simpler for tenants, landlords, court staff and judges. As proposed, the complaint form is lengthy, difficult to understand, and contains information that is in some cases incomplete and in other cases unnecessary, leading to confusion and misunderstanding.

The majority of eviction complaints are filed based on nonpayment of rent and the information necessary to understand the nature of the proceeding, the factual and legal claim(s) by the landlord, the jurisdictional issues and the way in which a tenant may defend the action, must be clear and concise. The proposed form also lacks essentially important, legally required information regarding the amount that must be paid at the time of trial.

LSNJ has the following concerns and recommendations regarding specific changes to the form complaint:

A. Tenant email. LSNJ understands why having the tenant email on the complaint is valuable, however we are concerned about the accuracy of this email address, as it is provided by the landlord. The court should make clear that this email address should never be used as a form of service (or as a sole source of service) for any court notice, and ensure that if a tenant has provided an email address directly, that this address should be the one used by the court.[1]

B. Proposed 6-8: Landlord Registration. This section should be simplified to avoid confusion and to eliminate incorrect check boxes. Instead, the complaint should require a landlord to affirmatively state if the subject property is registered pursuant to the Landlord Identity

[1] Roughly a quarter of adults with household incomes below $30,000 a year (24%) say they don't own a smartphone. About four-in-ten adults with lower incomes do not have home broadband services (43%) or a desktop or laptop computer (41%). And a majority of Americans with lower incomes are not tablet owners. By comparison, each of these technologies is nearly ubiquitous among adults in households earning $100,000 or more a year. Pew Research Center, June 2021. https://www.pewresearch.org/short-reads/2021/06/22/digital-divide-persists-even-as-americans-with-lower-incomes-make-gains-in-tech-adoption/

Law, if the tenant has been served with notice of the registration statement and if not, that the property is exempt under N.J.S.A. 46:8-28.5. LSNJ proposes the following:

6. ☐ The rental property is registered as required by N.J.S.A. 46:8-27 et seq.
6.a ☐ yes; and the tenant has been given a copy of the registration statement
6.b ☐ no, the property is not exempt from registration pursuant to N.J.S.A. 46:8-28.5.

The Certification by landlord should be amended to include this as well and if exempt, require a statement as to the specific exemption.

C. Proposed 11: Written Lease. The written lease in its entirety should be included as an attachment, regardless of the length of the lease. The plaintiff landlord should not be allowed to determine which sections of the contract are relevant and this poses an impossible administrative burden on the court to determine if relevant sections are attached or if the complaint is deficient. LSNJ recommends the following:

11. There (check one) ☐ is a current written lease for the rental unit; ☐ has never been a written lease for the rental unit; the tenancy has always been an oral tenancy. A copy of the most recent written lease is attached. If the rent has been increased since the date of the lease, any written notices of rent increase since the date of the lease must also be attached

D. Proposed 13-14 Rental subsidy identification. Identification of a rental subsidy or rent reduction due to a federal or state affordable housing program is important for several reasons. First, it identifies if the rent claimed due and owing may be in dispute due to receipt of rental assistance or due to statutory limitations on rent including "additional rent." Second, it identifies if there may be pre-filing notice requirements which may be jurisdictional prerequisites.

This language should be clarified to include whether or not the tenancy was *ever* subsidized, as this issue may be in dispute. If a rental subsidy was allegedly terminated, notices may be required, the amount claimed due may be resulting from the alleged termination. In addition, the complaint should require that the landlord identify the specific type of affordable housing assistance at issue, instead of including an incomplete list. Such a list is confusing to both landlords and tenants and suggests that other types of housing programs such as Low Income Tax Credit properties do not have rent or notice requirements. A listing of federally assisted property types should be removed from the proposed complaint – as this list is not (and cannot) be exhaustive. Moreover, if the purpose of including this list is to identify specific notice requirements for each type of subsidy, the variations in types of notices, service requirements, time frames for pre-termination service and whether or not a notice is sufficient, differ program to program and are subject to state and federal law change.[1] LSNJ instead believes that the complaint should require a factual statement as to whether or not notices have been served on the tenant and a requirement that all such notices be attached to the complaint. A determination as to whether or not the tenancy has been properly terminated in compliance with state and federal law must be made prior to the entry of any

[1] As an example, there are specific notices required under the Violence Against Women Act that apply to specific types of housing assistance and not others. State rental assistance programs not listed, such as the Supportive Housing Voucher program, the Homelessness Prevention Rapid Rehousing Program, or the Temporary Rental Assistance program even though these programs have statutory or regulatory notice requirements. While in some cases, the pre-termination notices may not be jurisdictional, identification that a TRA subsidy exists is still essential in determining the rent legally due and owing.

judgment by judicial review. The current language regarding the listing of notices and service is also unclear as it does not specifically relate to subsidized or financially assisted housing and may be confusing for landlords and tenants, leading to additional administrative burdens. LSNJ recommends the following change:

☐ Check here if the tenancy is now or has previously been subsidized pursuant to either a federal or state affordable housing program or the rental unit is public housing.

a: If yes, was the tenant served with any notices relevant to this complaint? ☐ Yes OR ☐ No

b: If yes, ☐ notices are attached. [*Notices not attached will be presumed to have not been served prior to this complaint.*]

E. Proposed 12 & 17: Rent and additional rent. LSNJ strongly urges the court to not use the term "base rent" as this encourages a distinction between rent and other charges claimed due as rent. It is also an ambiguous term and one that is used in certain rental assistance programs to identify "below market rent" or to distinguish between "market rent" and a tenant's rental payment. The complaint should use rent and additional rent only – as this is also consistent with the use of these terms in case law.

In enacting N.J.S.A. 2A:18-61.1, the legislature expressly recognized that "it is in the public interest of the State to maintain for citizens the broadest protections available under State eviction laws to avoid such displacement and resultant loss of affordable housing." N.J.S.A. 2A:18-61.1a (d). In a nonpayment of rent eviction action, if the rent is paid on or before entry of judgment, the eviction action is terminated as a matter of law. N.J.S.A. 2A:18-55; N.J.S.A. 2A:42-9; Housing Authority of Morristown v. Little, 135 N.J. 274, 280 (1994). As such, the most essential aspect of any nonpayment of rent complaint is a true and accurate statement of the amount legally due, unpaid and owing so that the tenant can cure any legitimate default in the payment of rent and avoid preventable eviction.

In its current form and in the proposed amendment, the standard form eviction complaint runs afoul of state and federal law, and – perhaps most importantly -- the public policy underlying the Anti-Eviction Act. Specifically, by including "other charges" in the same section of the complaint with "base rent,"[1] the complaint form invites plaintiffs and their attorneys to demand payment of non-rent fees as "additional rent" whether or not the parties have defined those fees as "additional rent" in the lease agreement and whether or not those fees are legally permitted to be charged as "additional rent" as a matter of federal, state and local law or some superior contravening public policy. By doing so, it misleads tenants and courts to believe that the tenant can be evicted for amounts not lawfully due, it deprives tenants of the ability to cure the default and avoid entry of judgment and it subjects landlords' attorneys to liability under the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. Section 1692 et seq.; Hodges v. Sasil, 189 N.J. 210 (2007) (attorneys who regularly engage in summary dispossess litigation are subject to the FDCPA).

[1] The term "base rent" should be omitted in favor or the term "rent" because "base rent" is an undefined and misleading term. Most leases define the term "rent" as the amount due for the use of the premises. A minority of leases define "base rent" in some way but most do not, and it lacks a standard meaning. In certain federal programs, "basic rent" is a defined term meaning "the rental charge established to cover expenses in the housing project's approved budget and the required loan payment contained in the promissory note reduced by the interest credit agreement," and refers to the minimum amount of rent a tenant must pay if the tenant has no rent subsidy. 7 C.F.R. Section 3560.11 (definitions).

It is axiomatic that in order for a court to have jurisdiction to enter a judgment for possession for nonpayment of rent, the rent must be legally due, unpaid and owing. See e.g., Housing Authority of City of Passaic v. Torres, 143 N.J. Super. 231, 236 (App. Div. 1976) (court lacked jurisdiction to evict for non-payment of rent where rent sought violated HUD regulations and was not legally owing). Parties are free to define the term "rent" in the lease agreement absent contravening law or some superior public policy. Housing Authority & Urban Redevelopment Agency of the City of Atlantic City v. Taylor, 171 N.J. 580, 586 (2002).

In Community Realty Management v. Harris, 155 N.J. 212 (1998), the New Jersey Supreme Court made clear that "[a] landlord is not entitled to evict based upon failure to pay any attorneys' fees, costs or late charges, unless there is a lease provision which states that such fees are collectible as rent. Even if there is such a provision in the lease, the amount due as rent may be limited by a rent control ordinance, or the case of public or federally-assisted housing, by federal law." Harris at 242. See also, Housing Authority & Urban Redevelopment Agency of the City of Atlantic City v. Taylor, 171 N.J. 580 (2002) (federal law prohibits public housing authority from assessing fees as "additional rent" in eviction proceeding); Ivy Hill Park Apartments v. Sidisin, 258 N.J. Super. 19, 23 (App. Div. 1992) (court lacked jurisdiction to evict for "additional rent" charges where those charges violated rent control ordinance).

Importantly, in Hodges v. Sasil, the New Jersey Supreme Court recognized that "[t]he tenant and landlord understand the summons and complaint to be a demand for payment of rental arrears, a demand that prompts defaulting tenants to pay owed rent and frequently . . . coerces those tenants to pay additional fees unnecessary to prevent eviction." Hodges at 227-228. The Hodges Court quoted with approval the Appellate Division's recognition that the eviction complaints "were pled in such a manner as to lead [tenants] to believe they had to pay the full amount of rent plus extraneous charges to avoid eviction" and that the Appellate Division "was struck by the fundamental unfairness of such conduct." Id. The current and proposed amended complaint permits this fundamentally unfair conduct to persist and must be corrected – "rent" must be clearly distinguished from non-rent fees, and it is the landlord's burden to plead and prove that any non-rent fees sought "as additional rent" are lawfully due, unpaid and owing as such as a matter of prevailing law and the terms of the lease.

Similarly, when a plaintiff seeks an award of attorneys fees "as additional rent," the burden is upon the plaintiff to show not only that the lease agreement permits fees to be charged, but that the amount charged satisfies the factors set forth in the New Jersey Supreme Court opinions in Litton Industries v. IMO Industries, 200 N.J. 372, 386 (2009) (setting forth the court process for calculating an award of fees) and Green v. Morgan Properties, 215 N.J. 431 (2013) (burden is upon the landlord to show that attorneys' fees under a fee shifting provision in a residential lease agreement is reasonable in light of the work involved and the fees actually incurred). Neither the current complaint form nor the proposed amended form requires the landlord to prove any of the elements underlying an award of fees. Additionally, the attorney Certification form should require certification of compliance with the applicable law cited for any attorneys' fees claimed due.

Importantly, New Jersey disfavors the shifting of attorneys fees, and when "fee-shifting is controlled by a contractual provision, the provision should be strictly construed in light of our general policy disfavoring the award of attorneys' fees. Litton Industries at 385, quoting N.

Bergen Rex Transportation v. Trailer Leasing, 158 N.J. 561, 570 (1999). Thus, allowing the plaintiff merely to assert some unexplained amount of attorneys' fees as an element of the rent due in order to avoid eviction runs afoul of both basic landlord tenant law and basic attorney fee shifting law.

F. Proposed 22-23: Amounts Due. The complaint must clearly state the amount due in order for the complaint to be dismissed, including the amount due on the trial date. Tenants, especially pro se tenants, are frequently confused about the amount of rent and additional rent legally due and owing as of the date of trial. This confusion is particularly prevalent for amounts added when the complaint is amended to include charges that come due after the filing, but prior to the day of trial. Not only is it crucial for tenants to be clear on the amount required to be paid to avoid eviction, but it is what the law requires.

Our Supreme Court in Hodges v. Sasil Corp., 189 N.J. 210 (2007) found attorneys and firms that regularly appear on behalf of landlords in summary eviction proceedings are considered "debt collectors" within the meaning of the Fair Debt Collection Practices Act (FDCPA), 15 USC 1692 et seq., as such, tenants are afforded protection as consumers.

15 USC 1692g requires debt collectors to state the amount of the debt due and owing in a written notice and give the consumer/tenant and opportunity to dispute its validity. Failing to amend the complaint with the specific charges required to be paid to avoid eviction violates the FDCPA.

The Supreme Court's opinion in Hodges is replete with language emphasizing the need for clarity and specific notice to tenants as to the amount to be paid to avoid eviction. The Court stated: "…the Committee must remain cognizant of the ultimate goal—preventing the victimization of unsophisticated tenants by deceptive debt collectors seeking payment of amounts exceeding the statutory minimums to halt evictions" Id. @ p.231 The Court further opined: "the complaint filed against a defaulting tenant should expressly and conspicuously emphasize the amount a tenant is required to remit to avoid eviction." Id. @ 232 The Court again emphasized: "…the amount due to prevent eviction should be explicitly itemized in the pleadings and should be limited so as not to include any requests or demands for money to be owed, such as future rent. The clarity we recommend, as amplified by the Committee if necessary, will provide tenants with a comprehensive understanding of the debts they owe and will permit them to make informed decisions as they seek to fulfill payment obligations and utilize the FDCPA's protections." Id. @ 232

In addition to the language above, the Court in Hodges laid out interim guidance on the form of the complaint pending further review of the Special Civil Part Committee, stating: "Specifically, we require that such complaints expressly state the amount of debt owed, the creditor's identity, and that the amount must be paid to the landlord or the clerk before 4:30 p.m. on the day of trial for the case to be dismissed. Further, to provide a modicum of uniformity to our summary dispossess proceedings, the interim requirements shall apply to all landlords, represented or pro se, and regardless of their counsel's status as a "debt collector" under the FDCPA… This interim requirement is a modest compromise that furthers the competing concerns embodied in the FDCPA's validation notice requirements while imposing a minimal responsibility on landlords and attorneys. By verifying the amount of debt owed and the creditor's identity—two integral

components of 15 U.S.C.A. § 1692g(a)—we further Congress' goal of providing defaulting consumers with clear information regarding their debt. Correspondingly, by requiring such information to be contained in legal pleadings…" Id @ p. 233-4

Our Supreme Court also addressed this issue in Community Realty Management V. Harris, 155 N.J. 212 (1998). In the context of a pro se tenant entering into a settlement agreement, the Court stated: "The presence of a tenant who appears, but has not been informed by the court about his or her rights and obligations, provides the court with little or no meaningful assurance that the jurisdictional conditions have been satisfied. As occurred in the present case, pro se tenants are unlikely to dispute fees and charges added as additional rent. No doubt many of them believe that by making the payments demanded they can remain in possession." Id @ p. 241

In the Harris opinion, the Court emphasized it was a judicial function to inform a tenant of their rights and that leaving that task to landlord's counsel posed a number of problems. The Court stated: "By far, the most inappropriate component of Burlington County's eviction procedures is the way that pro se tenants obtain information crucial to their case. In the present case, Weishoff and his paralegal played an integral role in informing Harris of the amount due and her legal rights. Although we credit Weishoff for performing a significant quasi-judicial function, that procedure can no longer be tolerated. If left unabated as a substitute for the court's function, it can raise ethical and public policy concerns. Because those conversations between the landlord's lawyer and tenants are not on the record, it is difficult for a court to monitor whether pro se tenants have been properly advised of their rights. Furthermore, since the attorney giving the advice generally represents the landlord, there is an apparent conflict of interest."

The current proposed form becomes goes against this ruling in Harris. Unless the complaint contains specific information about the amended amount due and owing, it will lead to the same situation which the Court found "raised ethical and public policy concerns" in Harris - the conversations between the landlord's lawyer and the pro se tenant being the only source of information for what is due to avoid eviction. As noted, settlement discussions and conversations between the landlord's attorney and pro se tenants are not on the record and without a clear statement in the complaint of the amount due and owing, the process is open to misunderstanding and abuse.

In addition to the above requirements of the FDCPA and the Hodges opinion, there are three statutes: NJSA 2A:18-55, NJSA 2A:42-9, and NJSA 2A:42-10.16a that require the dismissal of a case upon payment of all the rent and proper costs due and owing. Failing to notify a tenant of the specific amount due and owing to have a case dismissed frustrates the purpose of these statutes and allows a tenant to be surprised on the day of trial with charges and amounts not previously disclosed. It robs tenants of the opportunity to adequately prepare for trial, access potential resources or rental assistance and plan for their future.

Further, rental assistance agencies routinely require a specific amount of rent due in order to process and approve a tenant's application for assistance. A complaint that notifies the tenant of amounts that will be due and owing on the trial date allows a tenant to access rental assistance in advance of a trial date. If the amount on the complaint is subject to change, it will be nearly

impossible for a tenant to secure promise of payment ahead of time, unnecessarily delaying trials with one or more adjournment requests and verification of amounts currently due.

We propose the following amendment to the form, necessary to provide tenants with the required clarity regarding amounts due to have their complaint dismissed.

> 23A. The complaint may be amended to include rent and/or additional rent (if applicable/allowable as above) that comes due after the complaint is filed, but prior to the trial date.
>
> 23B. Amendment for the month following the filing date. The date that the next rent is due is (date) . If tenant pays the total due in paragraph 12C plus rent due for _____(month and year), by _____ (date rent is due plus any grace period in lease), the matter will be dismissed. If tenant pays after this date, but no later than the last day of the month, the total due is _____ and if paid prior to the last day of this month or the trial date, whichever is sooner, the matter will be dismissed.
>
> 23C. Amendment for the second month following the filing date. The date that the next rent is due is (date) _____. If tenant pays the total due in paragraph 12C plus rent due for _____(month and year), by _____ (date rent is due plus any grace period in lease), the matter will be dismissed. If tenant pays after this date, but no later than the last day of the month, the total due is _____ and if paid prior to the last day of this month or the trial date, whichever is sooner, the matter will be dismissed.
>
> **Payment of the total amount due, including rent accrued since the filing of the complaint, plus accrued costs (filing fees) may be made to the landlord or the clerk of the court at any time before the trial date, but on the trial date payment must be made by 4:30 p.m. to get the case dismissed.**

G. Proposed 26 & 27: Holdover complaints and notices. LSNJ agrees that landlords must state a statutory ground for eviction in the complaint. However, as an individual or entity engaged in renting housing, a plaintiff landlord should be presumed to know the legal basis for an eviction action and referencing a list of grounds for eviction contained in the LCIS is not necessary. In addition, the explanation section must be required, as the plaintiff landlord must identify in the complaint the specific basis for the eviction. As to notices, the service requirements vary depending on the type of tenancy and the date of service lines should be omitted.[1] Instead, the landlord Certification should include a certification by the landlord regarding the specific information as to how and when any notices were served.

[1] 1) Service requirements are specified in N.J.A.C. 5:24–1.5, N.J.S.A. 2A: 18-53-54, and N.J.S.A. 2A:18-61.2.

Implementation of changes to LT forms and procedures:
While referenced briefly in the notice, the court does not address the ongoing usage of the Landlord and Tenant CIS forms, developed as part of a pre-trial conference process with Landlord Tenant Specialists. Specifically, the information contained in these forms was to be used for settlement purposes only and has not been admissible at trial. This pre-trail process was repealed however, and the bulk of the information contained therein is now incorporated into the complaint, making the continued use of such forms of less value. LSNJ offers Legal Services of New Jersey would welcome to provide input on the development of any additional forms, instructions or educational materials related to the Landlord Tenant summons and complaint or related process. LSNJ is also available to provide further information or answer any questions related to these comments. Thank you.

Respectfully Submitted,

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