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BY EMAIL

Justice Stuart Rabner

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Judge Glenn A. Grant

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Dear Chief Justice Rabner and Judge Grant:

The undersigned represent a coalition of tenant advocates throughout New Jersey. Over the past several months, we have welcomed the opportunity to collaborate with the Administrative Office of the Courts (“AOC”), which, under the dedicated leadership of Judge Grant and as part of the Supreme Court’s Action Plan for Equal Justice, has initiated some critical reforms of landlord-tenant practices throughout the state. The AOC’s efforts promise real impact. We are immensely grateful for the Court’s continued engagement with stakeholders involved in the landlord-tenant process in furtherance of the goal of a fair and effective system of justice for parties who appear in tenancy court.

However, the AOC’s current work should be viewed as a beginning, not an end. We write today to urge the Court to continue to work with stakeholders to ensure that the crisis of mass evictions, an urgent civil justice issue even before COVID-19, becomes a top priority given the threat of mass homelessness in the wake of the pandemic. As detailed below, in addition to the current significant backlog of landlord-tenant matters, the Judiciary will likely see hundreds of thousands of eviction filings in the months after the eviction moratorium is lifted, and communities of color will be disproportionately affected as they are more likely to face eviction and COVID-related illness and impact. “Black people have had less confidence in their ability to pay rent and are dying at 2.1 times the rate of non-Hispanic whites. Indigenous Americans and Hispanic/Latinx people face an infection rate almost 3 times the rate of non-Hispanic whites. Disproportionate rates of both COVID-19 and eviction in communities of color compound negative health effects and make eviction prevention a critical intervention to address racial health inequity.” Emily A. Benfer *et al.*, [*Eviction, Health Inequity, and the Spread of COVID-19: Housing Policy as a Primary Pandemic Mitigation Strategy*](#) 2, *Journal of Urban Health* (2020).¹

¹ While many factors contribute to these disparities, the racial wealth gap is a primary factor, and one that often reveals itself prominently in housing. *See generally* Dr. Keeanga-Yamahtta Taylor, *Race for Profit: How Banks and the Real Estate Industry Undermined Black Homeownership* (2019). In New Jersey, the racial wealth gap is among the starkest in the nation: “[T]he median net worth for white families is \$352,000—the highest in the nation. But for New Jersey’s Black and Latina/Latino families, it is just \$6,100 and \$7,300, respectively.” [*Erasing New Jersey’s Red Lines, Reducing the Racial Wealth Gap Through Homeownership and Investment in Communities of Color*](#) 5-6 (New Jersey Institute for Social Justice 2020). As a result, “[d]ata from the U.S. Census Bureau show that for most Hispanic and Black New Jersey residents, owning a home is simply out of reach.” Stephen Stirling, [*Black and Hispanic N.J.*](#)

The situation is even more precarious because we are building on a weak foundation. As described below, the landlord-tenant courts have long functioned in a way that disadvantages tenants and fails to protect basic due process. Unless swift action is taken, these underlying cracks in the system will widen into chasms under the stress of escalating numbers when the moratorium is lifted, and tens of thousands of tenants will fall through.

Thus, we urge the Court to take action on two fronts: preparing for the immediate prospect of mass eviction filings once the eviction moratorium lifts, and making overdue reforms to court rules and practices that have long undermined due process and that pose a grave threat to basic fairness when the number of cases explodes.

The Immediate Crisis

First, as New Jersey braces for an unprecedented number of eviction filings in the coming months, planning for the resumption of the landlord-tenant docket must be an immediate priority. As of November, there was already a backlog of more than 40,000 eviction filings statewide. [N.J. Judiciary Court Management](#) 50 (Nov. 2020) (showing 41,656 pending tenancy cases). Far more concerning, though, is the avalanche of new filings sure to occur once the eviction moratorium lifts. A study from July estimated that “after the lifting of eviction moratoriums, New Jersey could experience 304,000 eviction filings in the coming four months,” as compared to an ordinary annual average of 150,000 eviction filings. Stout Risius Ross LLC, [The Potential Impact of COVID-19 Related Evictions in New Jersey](#) 7-8 (July 23, 2020). That number could very well be higher now, because accumulated unpaid rent “will continue to grow as . . . households face ongoing unemployment and hardship resulting from COVID-19.” *Id.* at 7. Unemployment, together with pervasive underemployment resulting from the pandemic, underlie census data released on December 2 revealing that 1 in 6 renters nationwide are currently behind in rent. Arloc Sherman *et al.*, [New Data on Hardship Underscore Continued Need for Substantial COVID Relief](#) (Ctr. on Budget & Policy Priorities Dec. 2, 2020).

We respectfully request that the Court allow tenant advocates to weigh in on the Judiciary’s plan for managing the immense task ahead. We have appreciated the Court’s transparency and inclusiveness over the past several months, and we hope to see both continue as the Court grapples with upcoming questions and challenges. We have concerns about the courts’ capacity to manage the sharp increase in filings, and provide appropriate due process to tenants, without additional resources. We anticipate the need to address a series of issues including the following:

- How will the clerks’ offices manage the sharp increase in filings?

[residents less likely to own homes following housing crisis](#), *U.S. Census reveals*, N.J. Advance Media, Nov. 26, 2011 (reporting 2010 Census data); *see also* Tim Evans, [The Black-White Homeownership Gap in New Jersey](#), N.J. Future (Sept. 2020), (reporting 2018 American Community Survey data showing that “[i]n New Jersey, 76.9 percent of non-Hispanic white households own their home, compared to only 41.0 percent of Black households”); National Association of Hispanic Real Estate Professionals, [2019 State of Hispanic Homeownership Report](#) 9, (reporting 2018 American Community Survey data showing that in New Jersey, 36.86 percent of Hispanic households own their home).

- How will service be accomplished, especially given the number of people not currently residing at their regular addresses due to the pandemic?
- How will the courts ensure that these filings are legally sound? (As is described in more detail below, tenant advocates have long been concerned about judgments that are entered against tenants contrary to the strict statutory and regulatory requirements that apply to summary dispossess proceedings.) For example, how will the courts confirm:
 - That they have jurisdiction over the complaints?
 - That the filings comply with restrictions attached to various forms of federal and state relief that limit, or may yet limit, how, when, and whether landlords receiving assistance may proceed to remove tenants?
 - That tenants have a meaningful opportunity to raise their defenses?
 - That judgments are not entered without a basis in law?
- Would mandatory pretrial mediation, as has been instituted in other locales in response to the pandemic, make sense in New Jersey? If so, how should it be structured and who would conduct the mediation? How will mediators be trained and qualified? *See generally* Alexandra Kanik, [*To Halt Evictions, US Cities Turn to Mediation Programmes*](#), City Monitor (Sept. 2020).
- Who will hear the cases that go to trial? If additional judges will be brought in to hear landlord-tenant matters, how and when will they be trained?

No doubt there are other critical issues as well. We would welcome the opportunity to assist in the development of the Court's plans to address these issues. At a minimum, we urge the Court to provide notice and an opportunity to comment before plans are finalized so that we can effectively assist the Court, and our clients, in ensuring due process as the landlord-tenant docket resumes.

Issues with the Preexisting Court Process

Unfortunately, the current emergency will be more difficult to weather because the tenancy courts have long operated in a way that does not meet the Legislature's and the Court's stated goal of protecting tenants from predatory practices and improper evictions. *See* N.J.S.A. 2A:18-61.1a(d) ("It is in the public interest of the State to maintain for citizens the broadest protection available under State eviction laws to avoid such displacement and resultant loss of affordable housing"); *Harris*, 155 N.J. at 240 (noting "the strong public policy of protecting tenants from improper evictions" and explaining that "[t]he need for protection is heightened because the majority of tenants facing eviction . . . are unrepresented by counsel"); *Hodges v. Sasil Corp.*, 189 N.J. 210, 231 (2007) (describing "the ultimate goal" as "preventing the victimization of unsophisticated tenants by deceptive debt collectors seeking payment of amounts exceeding the statutory minimums to halt evictions"); *447 Assocs. v. Miranda*, 115 N.J. 522, 533 (1989) ("[T]enants . . . cannot be expected to appreciate what, if any, recourse is available to them, or what constitutes a legally-acceptable method of challenging the reasonableness of a renewal term.").

A lead role for the courts is especially critical given the extreme scarcity of legal representation for tenants in New Jersey. By some estimates, "99% of tenants who face[] eviction in New Jersey d[o] not have an attorney." Cathy Keenan & Tammy Murphy, [*As Housing Crisis Looms, A Call*](#)

[to Action for NJ's Legal Community](#), N.J.L.J., Oct. 30, 2020; *see also* Legal Servs. of N.J., *New Jersey's Civil Legal Assistance Gap 5* (June 2012) (reporting, based on information from the AOC, that 99% of tenants were unrepresented in eviction cases filed for the court year ending on June 30, 2011). In contrast, most landlords are represented, in part because many landlords are corporations, which are required to have attorney representatives under *Rule* 1:21-1(c). *See* Norrinda Brown Hayat and Marta Paczkowska, Opinion, [After monitoring eviction court for a month, it's clear that the system is failing tenants](#), (Newark) Star-Ledger, Mar. 1, 2020 (based on a month of daily observations of Essex County Landlord-Tenant Court, noting that “represented tenants are few and far between” while “[l]andlords, on the other hand, were almost always represented by attorneys”).

This inequity calls for urgent reform of court rules and procedures to protect pro se litigants. All of the following are within the purview of the Courts to address.

1. Engaging in judicial oversight before a judgment for possession is entered

The majority of eviction proceedings in New Jersey result in default judgment against the tenant or in a judgment for possession on “consent” of the parties. There is no meaningful review of the landlord’s pleadings in either circumstance. While judgment can be entered only after submission of an affidavit from a landlord and its attorney, *see R. 6:6-3(b); R. 6:6-4(a), (b)*, landlords are not required to submit proof that they have complied with jurisdictional prerequisites or that the allegations and demands in their complaints are supported in fact. This is unique to landlord-tenant proceedings. In ordinary civil matters, a plaintiff must present some modicum of proof to the clerk or a judge (depending on the circumstances) to obtain an enforceable final judgment by default. *R. 4:32-2*. This ensures that the plaintiff is actually entitled to the relief it seeks, even when the defendant does not appear. Eviction judgments are far too consequential to continue to rest on no proof.

2. Establishing lawful jurisdiction over the complaint and authority to enter judgment

New Jersey law authorizes the entry of judgments for possession only if the landlord has complied with a number of statutory prerequisites. For example, a court may not enter a judgment for possession if the landlord has failed to meet its obligation to register the property. N.J.S.A. 46:8-33; *Iuso v. Capehart*, 140 N.J. Super. 209, 212 (App. Div. 1976). The landlord may not invoke the court’s jurisdiction unless and until it has provided the tenant with statutorily required notices. *See Carteret Props. v. Variety Donuts, Inc.*, 49 N.J. 116, 124–25 (1967) (explicit, detailed notice is a jurisdictional prerequisite); *see also, e.g.*, N.J.S.A. 2A:18-61.2 (notices required under the Anti-Eviction Act); 24 C.F.R. §§ 982.308, 310 (notices required for Section 8 tenants); 24 C.F.R. §§ 247.4, 882.511(d) (notices required for other federally subsidized tenants); 24 C.F.R. § 966.4 (notice required for tenants of Public Housing Authorities). Finally, the party filing the eviction action must be the owner of the property or otherwise authorized to act on the owner’s behalf with respect to the tenancy. *See* N.J.S.A. 2A:18-52. But when pro se tenants settle or default in their cases, there is currently no judicial review to ensure that the landlord has complied with these and other requirements before obtaining a judgment. Indeed, tenant attorneys regularly file emergent motions to vacate eviction judgments that were entered without jurisdiction; there are certainly countless other tenants who do not or cannot obtain legal assistance and are therefore unlawfully evicted. The courts should not be entering judgments in cases over which they lack jurisdiction.

3. Ensuring that fees demanded as part of unpaid rent are legally due to avoid eviction

A landlord-tenant matter based on nonpayment is limited to amounts of rent that are legally due and owing, including base rent and any charges that are “expressly permit[ted]” by a “written lease” to be charged as “additional rent.” *Harris*, 155 N.J. at 234. Moreover, the legal rent is frequently limited by federal, state, or local law, including regulations associated with housing subsidies or municipal rent control ordinances. *See Housing Auth. of Atl. City v. Taylor*, 171 N.J. 580, 594 (2002); *Ivy Hill Park Apts. v. Sidisin*, 258 N.J. Super. 19, 21 (App. Div. 1992); *Opex Realty Mgmt. v. Taylor*, 460 N.J. Super. 287 (Law Div., Essex County, Spec. Civ. Part 2019). But if a *pro se* tenant reaches a settlement to pay rent and fees claimed by a landlord, or defaults because of his or her inability to pay rent and fees, there is currently no judicial oversight ensuring that the rent and fees are due and owing for the purpose of avoiding eviction (or at all). In the experience of housing advocates, tenants regularly either agree to pay rent and fees that are not due to resolve their cases or are evicted for the failure to pay such rent and fees, without any meaningful judicial review of the merits of the landlord’s claims.

4. Notifying tenants of default judgments and how to challenge them

Many tenants who miss their court date (for a wide array of valid reasons) do not know that a default judgment has been entered against them, causing them to lose precious time needed to vacate the judgment. The Court must consider providing notice to tenants of any default judgment entered against them, and the process for vacating such judgments needs to be more accessible.²

5. Abolishing judgments for possession on “consent”

In another practice that is unique to landlord-tenant proceedings, the current landlord-tenant settlement form calls for a judgment of possession to be entered against the tenant contemporaneously with any settlement. Traditionally, in other civil matters, when parties settle a case, the matter is dismissed. If there is a breach, the non-breaching party is free to reopen the matter, or it can file an action to enforce the settlement. Given how dire a judgment for possession is for tenants (among other things, it marks a tenant as a bad risk when seeking a new rental unit), the entry of such a judgment on “consent” should be abolished.

6. Enabling tenants to use the *Marini* defense

Thousands of tenants reside in substandard housing conditions. *See, e.g.,* Karen Rouse, [Why Tenants Lose When They Go Up Against Landlords in Newark](#), WNYC, Mar. 6, 2017, Shannon Mullen, [Mold plagues NJ renters who have nowhere to turn](#), Asbury Park Press, Apr. 5, 2018. Yet the judicial remedy for this issue— withholding rent and litigating a claim for violation of the implied warranty of habitability, *see Marini v. Ireland*, 56 N.J. 130 (1970)—is rarely invoked: the AOC reports that Essex County courts heard just 80 habitability claims out of over 40,000 cases filed in 2016. Paula A. Franzese, Abbott Gorin, & David J. Guzik, [The Implied Warranty of Habitability Lives: Making Real the Promise of Landlord-Tenant Reform](#), 69 Rutgers U. L. Rev. 1, 5 (2016). Under current practice, the courts nearly always preclude a habitability defense unless an eviction complaint has already been filed; the tenant deposits the full amount of rent owed with the court; and the tenant continues to make full, timely deposits into the court until a hearing is scheduled. The requirement of depositing full rent

² By way of example, the New York Courts website provides an online “Do-It-Yourself” form for tenants seeking to vacate default judgments, <http://www.nycourts.gov/Courthelp/DIY/index.shtml>.

into court, which is not mandated by *Marini* or any other law, has the effect of barring many tenants living in poverty, who often live with the worst conditions, from asserting their right to safe and habitable housing. It is therefore virtually impossible for a tenant to seek redress, even when faced with oftentimes unimaginably unsafe conditions.

7. Modifying the website

During the pandemic, the online accessibility of court information has become even more vital. We commend the Court for the recent e-filing advances and the assistance that the ombudsmen are providing to pro se litigants. We recognize that the N.J. Courts website is regularly updated, but more can be done to make resources available to tenants, landlords, and Court staff and to provide such assistance in plain language.

We have myriad suggestions for addressing the problems identified above and would welcome the opportunity to meet with you to discuss the process for arriving at solutions. Both the oncoming crisis and the longer-term problems demand responses that can help protect due process even as the number of filings climbs. Thank you for your consideration of this request.

Respectfully submitted,

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