

Tenant Eviction – Legislature Should Fix the Problem Properly

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There is little doubt that the last 17 months and counting, of coping with the disruptive effects of the pandemic is unprecedented and hopefully a once in a lifetime experience. Our hazy historical view of prior pandemics like that in 1918 have now given way to everyone experiencing an actual crisis of global proportions. The experiences are not the same for everyone. This time, many suffered the serious illness and death from the pandemic within their families, while others did not. Some experienced loss of income and job loss, while others made more money than they ever had previously.

This variation of experience is difficult to address from a public policy and legislative standpoint which tends to classify and attend to issues along traditional lines. Government should be cautious in attempting to address these matters and should strive to be even handed and focused on the problem they are trying to address. With that background, consider the fact that since the declared state of emergency in New Jersey, the government has prevented any tenant eviction actions to proceed based on the failure to pay rent. The stated purpose—to prevent homelessness during a pandemic—undisputedly a noble goal. However, in removing the most direct tool that the landlord has to deal with tenants who are not paying their rent, the Governor by his action, and the legislature by their inaction, have failed to address both sides of the landlord-tenant equation in a way that is even handed and focused on the task at hand. Specifically, if a tenant cannot pay the rent that they normally could because of the pandemic, the cause is not the landlord. The cause is the absence of money on the part of the tenant caused by the pandemic. While preventing eviction actions from being prosecuted for non-payment, which more often than not results in the landlord being paid rather than a tenant becoming homeless, the Governor and the legislature did nothing to assist the tenant in meeting their obligations to the landlord.

For example, while not permitting eviction actions for nonpayment to occur, there was no statewide plan to provide rent payments on behalf of tenants. Thus for the entire 17+ months of pandemic emergency tenants, regardless of whether they have been economically impacted by the pandemic, have been relieved of their obligation to pay rent to the landlord; while the state did virtually nothing to assist any genuine financial need of the tenant. Most tenants were able to and did meet their financial obligations to their landlords. Many, many landlords did what they could to assist tenants by taking partial payments, delaying scheduled rent increases, or even reducing rent obligations when they could. However, it is a sad fact that many tenants decided not to pay rent because there was nothing that the landlord could do to force them to pay. Eviction actions are the most effective collection tool in the landlords toolbox and it is actually recognized as debt collection under the law. At the same time the tax authorities, fuel vendors, exterminators, lenders and others that the landlord has financial obligations to fully expected that the landlord would and should continue to pay them without regard to the pandemic.

This created an imbalance. Tenants can decide whether they wanted to pay rent, regardless of whether they suffered any economic impact from COVID-19; while landlords were deprived of their most effective collection tool and were forced to pay their taxes, insurance, and banks as if it were normal times. Now the legislature has the ability to address this. So what do they propose—more imbalance.

First, the legislature is considering a bill to continue to prevent landlords from evicting tenants for ANY rent that came due in the past 17 months regardless of whether the tenant in fact had been economically impacted by COVID-19. This bill would presumptively declare that if the rent was not paid, it was because the tenant could not pay due to the impact of COVID-19. This would institutionalize the imbalance and provide a windfall to tenants, many of whom did not have an economic impact from COVID. Worse yet, it provides no offsetting balance into the landlord tenant equation.

Second, the legislation replaces the most effective tool to collect unpaid rent, with a non-tool. If a landlord has not been paid

rent for the past year and a half, the landlord may sue the tenant and get a judgment for money against the tenant. A judgement is just a piece of paper that says X owes Y a certain amount of money. It is not payment. It requires the landlord to find and execute upon assets that the tenant may have. This process takes months and months to run its course and most often does not result in payment. Payment is the only way the landlord can pay his obligations. This creates further imbalance.

Third, there is no requirement in the legislation that the tenant demonstrate financial need or an impact from COVID upon their income or the ability to pay rent. At the same time, if a landlord uses the only tool provided, a lawsuit for money, they are barred from providing an adverse credit report even though they obtained a judgment against the tenant for the back rent. This is now creating an additional imbalance in the landlord tenant relationship. Every other judgement creditor has the ability to report their judgment to credit reporting services and this legislation unfairly makes landlords second class creditors. More imbalance.

Protecting those who suffered an economic impact from COVID is a noble governmental goal. However the proposed legislation offers this protection by altering the normal landlord tenant relationship and unfairly burdening the landlord with the costs of addressing this societal problem. In order to truly address genuine economic damage caused to tenants during COVID the following are essential:

- Require the tenant to demonstrate with reliable disclosure that they have suffered an adverse economic impact from the COVID-19 pandemic that prevented them from paying rent. This should be an essential part of any government subsidy of the tenants financial obligation to the landlord. This is also an important check on the use of government funds for a public purpose, no different than showing you are unemployed in order to obtain unemployment benefits;
- Require the tenant to admit that the rent that they did not pay to the landlord is in fact due and owing the landlord. The tenant has received housing from the landlord and if the rent has not been paid during this period, the landlord should not have to be subjected to counterclaims and setoffs that will likely be made if the landlord sues for back rent;
- Allow tenants who meet #1 and #2 to confess a judgment to the benefit of the landlord. There is no reason to create an additional burden on the courts if a tenant's rent obligation is going to be paid by the people rather than the tenant. Landlord and tenant should jointly stipulate the amount of rent unpaid;
- Provide that the state will satisfy any judgment for rent by making a direct payment to the landlord in the amount of the judgment which will deem the judgment satisfied. This would eliminate the need for a landlord to provide adverse credit reporting and provide the most efficient way for the government to address the direct problem for those that were actually impacted economically by the pandemic.

This would directly address the issue without creating additional imbalances at the expense of the landlord and efficiently put the cost of addressing this impact on the taxpayers where it belongs.