

June 2, 2009

David Luria, Esq.
Attorney Advisor
Superior Court of the District of Columbia
500 Indiana Ave., NW, Room 5400
Washington, DC 20001

Re: Proposed New Landlord Tenant Rule 3 and Landlord Tenant Forms 1A-1C

Dear Mr. Luria:

On behalf of the Legal Aid Society of the District of Columbia,¹ we write to comment generally in support of Proposed New Landlord Tenant Rule 3 and Landlord Tenant Forms 1A-1C and to make some suggestions. The Proposed New Landlord Tenant Rule 3 and Forms 1A-1C fall short of requiring landlords to provide full factual support for their claims; nonetheless, because they will make court proceedings more consistent with the Rental Housing Act of 1985, D.C. Court of Appeals decisions, and D.C. Superior Court Rules, we support their enactment.

I. Proposed New Landlord Tenant Rule 3 and Landlord Tenant Forms 1A-1C Generally

**A. Proposed New Landlord Tenant Rule 3 and Landlord Tenant Forms 1A -1C
Improve Consistency with Landlord Tenant Rule 11 and Civil Rules 55 and 11.**

Forms 1A-1C improve consistency with Civil Rule 55 (incorporated by Landlord Tenant Rule 2) and Landlord Tenant Rule 11 by requiring landlords to verify all the elements of a claim for possession. In many LT cases, the complaint is the only pleading filed. When a tenant has not made an appearance in a case, the Court is authorized under Civil Rule LT 11(e)(2) to enter judgment based on the complaint alone without any additional proof. However, Civil Rule LT 11(b)(4) prohibits the Clerk of the Court from entering default against a tenant unless “the complaint alleges facts sufficient, if true, to entitle the plaintiff to possession of the premises.” Furthermore, Civil Rule 55 requires that the complaint be verified by the landlord or the landlord’s agent before judgment by default can be entered.

As the current LT complaint Form 1 is not verified and does not contain all the elements for some of the most common claims for possession, tenants sued with the current complaint are

¹ The Legal Aid Society was formed in 1932 to “provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs.” Legal Aid is both the oldest and the largest general civil legal services program in the District of Columbia. Over the last 75 years, tens of thousands of the District’s neediest residents have been served by Legal Aid staff and volunteers.

at risk of having judgment by default entered against them even when a prima face case has not been pleaded on the complaint. On the other hand, Forms 1A-1C contain the elements for a prima facie case for the most common eviction cases, ensuring that landlords in those cases comply with Civil Rule LT 11(b)(4) and Civil Rule 55 and verify that all the elements of a claim for possession prior to obtaining judgment by default.

Furthermore, Forms 1A-1C improve consistency with Civil Rule 11(b)(3) (incorporated by Civil Rule LT 2) which requires that complaints be well-pleaded and based on evidentiary support. Like other pleadings, claims for possession must be filed only after an inquiry reasonable under the circumstances. *Id.* Furthermore, the landlord is required to certify, to the best of her knowledge, information, and belief, that “the allegations and other factual contentions plead in the complaint have evidentiary support.” *Id.* By requiring plaintiffs to state the factual basis for the assertions in the complaint (e.g., paragraph and page number for waiver of notice provision, paragraph number for a lease violation, and which lease violations the Tenant failed to correct/cure), the revisions to the forms will help ensure that complaints have proper factual support and bring complaints filed by landlords in line with other civil complaints, which are required to have appropriate factual support.

B. Proposed New Civil Rule LT 3 and LT Forms 1A-1C Allow for Better Use of the Court and the Parties’ Resources.

By improving consistency with existing rules and law, Forms 1A-1C will likely lower the number of complaints filed that fail to meet all the elements of a claim for possession. Forms 1A-1C helps to identify cases that lack merit at the earliest stage possible, thereby saving the already scarce judicial resources spent on processing, scanning, and adjudicating facially defective cases.

Similarly, Forms 1A-1C save the parties time and energy. The new forms will likely benefit pro se landlords. Pro se landlords who do not have the facts to allege a prima facie case will learn up front that their claim is deficient and be spared the costs of hiring a lawyer, filing a complaint, serving the tenant, and appearing in court, only to learn that they must refile the case after taking additional steps. On the other hand, landlords who have conducted a reasonable inquiry under the circumstances are not prejudiced by Forms 1A-1C, which merely require a statement of facts sufficient to entitle the landlord to possession. Furthermore, with Forms 1A-1C, tenants will be spared the stress, time, and embarrassment of having to appear for numerous court dates when the case is deficient from the outset.

C. Proposed New LT Civil Rule 3 and LT Forms 1A-1C Reflect the Differences in the Law for Nonpayment of Rent versus Notice to Quit Cases.

New LT Forms 1A-1C will be particularly helpful to pro se parties who are not familiar with landlord tenant law. The corresponding forms for nonpayment of rent and notice to quit cases alert pro se parties that different laws apply to the two types of claims. In addition, the separate forms make it easier for judges, clerks, and attorneys to quickly distinguish one type of case from the other. This quick identification should not only allow for faster administrative processing, but also reduce the incidence of clerical or judicial error, such as a non-redeemable judgment being entered in a nonpayment of rent case.

D. We Suggest that Forms 1A-1C Require a Copy of the Lease Be Attached to the Complaint.

The written lease is the basis for most landlord tenant relationships and obligations. As such, we suggest that in the interest of expediency, full disclosure, and equity, Forms 1A-1C require plaintiffs to attach a copy of the written lease, where applicable, to the complaint. Landlord Tenant Court proceedings are summary process where the vast majority of cases do not have discovery as of right. As a result, many cases are adjudicated based on the complaint alone, without any other additional evidence. Currently tenants may be evicted based solely on the facts alleged on the Complaint by the landlord, despite not having any supporting attachments or exhibits. In light of both the grave nature of the claim asserted – a claim for possession of the defendant’s home – and the summary nature of the proceedings, it is only proper to require plaintiffs to provide factual support for their claims by attaching the lease to the complaint. We would request, therefore, that Forms 1A-1C require the lease to be attached to the complaint.

E. We Suggest that Forms 1A-1C Clarify the “Important Note to Parties” to Inform Parties that Non-Lawyers May Assist with Securing a Continuance.

The “Important Note to Parties” on Forms 1A-1C alerts individuals that if they act on the behalf of another person in court, then they may be engaging in the unauthorized practice of law. While we do not object to the addition of this note to complaint forms, we suggest that the clause “for any purpose other than securing a continuance” be added to the end of the last sentence to more closely track Landlord Tenant Rule 9. Without such a clause, *pro se* parties who are ill or otherwise unable to appear in court may misinterpret the notice to mean that they cannot have others appear on their behalf to request a continuance. Such misinterpretation may result in increased dismissals for want of prosecution and defaults for failure to appear. Clarifying that

non-lawyers may assist parties with securing a continuance would help minimize the likelihood of that misinterpretation.

II. Proposed New Summons To Appear in Court

A. “Notice to Occupant(s) Not Named on the Summons” is Crucial to Ensuring that Tenants of Foreclosed Owners are Not Evicted Without An Opportunity to Present Their Defenses.

Legal Aid strongly supports the new “Notice to Occupant(s)” on the Summons. When filing an eviction case, landlords frequently name an individual other than the current occupant(s) as the tenants. In the current foreclosure crisis, a common example is when financial institutions file eviction cases against foreclosed homeowners without including the tenants on the complaint. Landlords also often file eviction cases against deceased leaseholders without including the remaining household members on the complaint. Because the occupants who receive the complaint and summons do not see their names on the court documents, they mistakenly believe that the eviction case does not affect them. In some cases, the occupants come to understand the nature of the eviction case only after the U.S. Marshals appear at their doors. In other instances, occupants may make their first court appearance only after a writ of restitution has been issued for the premises. The “Notice to the Occupant(s) Not Named on the Summons” is critically important to alerting occupants at the earliest stage that the eviction case affects their housing. Without such a notice, tenants of foreclosed homeowners and remaining household members of a deceased leaseholder may continue to be evicted without an opportunity to present their defenses.

III. Proposed New LT Form 1A

A. Form 1A improves Consistency with Existing Law in Nonpayment of Rent Cases.

1. *Form 1A improves consistency with existing law in a nonpayment of rent case by requiring the party swearing out the complaint to locate the waiver provision in the lease when alleging that the notice to quit has been waived.* In *Jamison v. S. & H. Associates*, the D.C. Court of Appeals held that expiration of a legally sufficient Notice to Quit or waiver of a Notice to Quit is a condition precedent to the filing of a suit for possession. 487 A.2d 619, 621 (D.C. 1985) citing *Moody v. Winchester*, 321 A.2d 562, 563 (D.C. 1974); 42 D.C. Code § 3505.01. Form 1A enforces the Rental Housing Act and D.C. Court of Appeals case law by requiring the paragraph number and page number for the waiver provision in the lease when waiver of notice is asserted. Unless landlords are required to locate the waiver provision in the lease, tenants risk being evicted even when their landlords fail to meet an element of the claim for possession.

2. *Form 1A, Paragraph 4 improves consistency with existing law by asking if the property is subsidized.* On the current complaint, there is no way for the Court or the parties to discern whether a tenant is in a subsidized property or unsubsidized property. Federal regulations and contracts governing subsidized housing prohibit landlords from evicting tenants for the D.C. Housing Authority's nonpayment of the housing assistance payment. 24 C.F.R. § 982.310. However, with the current complaint form, subsidized tenants may be evicted for nonpayment of rent despite owing zero tenant rent, as the complaint is often the only pleading filed in an eviction case. Landlord Tenant Form 1A safeguards against the possibility of judgment being entered against a subsidized tenant who pays no portion of the rent (often referred to as a "zero-rent tenant"), by inquiring whether a tenant receives a subsidy, the amount of the subsidy, and the amount of the tenant rent. Furthermore, Form 1A, Paragraph 4 indicates to the Court and the parties that the Rent Stabilization Act does not apply, as subsidized tenancies are typically exempt from the Rent Stabilization Act. 42 D.C. Code Section 3502.05(a). Form 1A, Paragraph 4 helps the Court and the parties to quickly discern what laws apply to the case, thereby improving compliance with the Rent Stabilization Act, the federal regulations, and housing assistance payment contracts.

3. *Form 1A, Paragraph 3 improves compliance with the lease by having landlords write in the monthly late fee amount permitted under the lease.* Without such a requirement, tenants may be charged late fees in excess of the amount set forth in the lease, violating the terms of the lease and tenants' rights.

4. *Form 1A, Paragraph 3 encourages compliance with the Rent Stabilization Act and federal regulations by requiring landlords that are seeking other fees as rent to verify that the properties are not subsidized or rent-controlled.* The Rent Stabilization Act limits the maximum rent charged for all non-exempt properties; federal and local regulations limit the maximum rent to tenants for all subsidized properties. 42 D.C. Code Section 3502.05. Properties governed by the Rent Stabilization Act and subsidized properties are prohibited from raising rents above their respective limits. 42 D.C. Code Section 3502.05. Form 1A, Paragraph 3 improves consistency with those laws by ensuring that the Court does not approve the charging rent in excess of the limit by adding on additional fees as rent.

5. *We Suggest that Form 1A Require a Copy of the Tenant Ledger To Be Attached to the Complaint to Improve Consistency with Existing Law.* The most important document to a claim for possession for a nonpayment of rent is the tenant ledger, as it shows the rent and fees charged to the tenant and the payments made by the tenant. In the interest of expediency, full disclosure, and equity, Form 1A should require plaintiffs to attach a copy of the tenant ledger to the complaint. The ledger would help the Court and the parties to set the correct redemption and to

ensure that the landlord is not improperly seeking other fees as rent. Furthermore, it provides factual support for the allegations plead in the complaint. The Court would better able to administer justice if the tenant ledger is attached to the complaint; otherwise, landlords or landlords' attorneys may continue to evict tenants despite not having tenant ledgers to prove the amount owed.

IV. Proposed New LT Form 1B

A. Form 1B Improves Consistency with Existing Law in Notice to Quit and Other Cases.

1. *Landlord Tenant Form 1B Delineates Those Factors that Must Be Proven for Possession Based on Violation of Obligations of Tenancy.* Landlord Tenant Form 1B requires that the landlord allege only those facts needed for a well-pleaded complaint for possession based on violation of obligations of tenancy. D.C. law states that before the landlord commences an action for possession based on alleged lease violations, a tenant is entitled to receive a notice describing: 1) which obligations of tenancy he or she is allegedly violating; and 2) the actions he or she must take to correct those alleged violations. *See* 14 D.C.M.R. §§ 4301.2, 4302.1. Furthermore, an action based on violations of the “obligations of tenancy” is limited to “those obligations which are contained in a valid, written lease or in the D.C. Housing Code.” 14 D.C.M.R. § 4301.4. This limitation, and the notice requirement, permit the tenant to avoid eviction by identifying and curing any lease violations within 30 days after receiving the notice to quit. *See* D.C. Code §§ 42-3505.01(a) (“All notices to vacate shall contain a statement detailing the reasons for the eviction”); 42-3505.01(b) (permitting an action for possession only where the tenant has received notice of lease violation and “fails to correct the violation within” the specified 30-day period). The parts of Form 1B, as outlined below, require landlords to plead each element that is required to prove a landlord’s case based upon expiration of a notice to quit.

2. *Landlord Tenant Form 1B Recognizes Established Law that the Notice to Quit Is Part of the Complaint and Requires for it to be Sworn to as Such.* Landlord Tenant Form 1B, Paragraph 3(A)(1) requires landlords to swear to the content of a notice to quit. Civil Rule 10(c), incorporated by Landlord Tenant Rule 2, provides that “a copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.” Thus the notice to quit, attached to the complaint as required by the current Form 1, is a part of the pleading. Currently, although complaints are verified, there is no mechanism by which the party pleading the complaint may swear also to the facts stated in the notice.

3. *Landlord Tenant Form 1B Improves Consistency with Existing Law That a Tenant Must Be Notified of Precisely What Provision of the Lease or the D.C. Housing Code was Violated by*

His or Her Conduct. Form 1B, Paragraph 3(A)(2)(a) requires a landlord to plead that the tenant failed to correct/cure a violation. Under the Rental Housing Act, “a housing provider may recover possession of a rental unit where tenant is violating an obligation of tenancy and fails to correct the violation” within 30 days of service of a notice to correct. D.C. Code § 42-3505.01(b). “Violations of obligation of tenancy refer only to those obligations contained in a valid, written lease or in the D.C. Housing Code.” 14 D.C.M.R. § 4301.4. By requiring landlords to plead which part of the lease or D.C. Housing Code was violated, this part will reduce lawsuits filed where there is no actual violation of the lease or the Housing Code, and will help landlords properly plead an action for possession based on a notice to quit.

4. *Landlord Tenant Form 1B Improves Consistency with Existing Law That a Tenant Be Allowed to Cure Certain Violations of Obligations of Tenancy and Will Reduce the Number of Cases Filed Where a Tenant Has So Cured.* Form 1B, Paragraph 3(A)(2)(c) requires a landlord to plead that the tenant failed to correct/cure a violation. D.C. law holds that before the landlord commences an action for possession based on alleged lease violations, a tenant is entitled to receive a notice describing: 1) which obligations of tenancy he or she is allegedly violating; and 2) the actions he or she must take to correct those alleged violations. *See* 14 D.C.M.R. §§ 4301.2, 4302.1. If a tenant cures a violation within the allotted time period, they can avoid eviction. *See id.* By requiring a landlord to verify that violations remained uncured, the automatic filing of complaints after expiration of notices to quit will be reduced. This part also allows landlords to limit the notice where appropriate. This latter point is in the interest of judicial economy because it will allow Landlords to pursue only those aspects of a Notice that continue to be violations.

5. *Clarify Landlord Tenant Form 1B, Paragraph 3(B) “Tenant is a Terminated Employee” to State “Tenant is a Terminated Employee and is Not a Tenant” in Order to Reflect the Rights Under the Rental Housing Act of Terminated Employees Who are Also Tenants.* Form 1B, Paragraph 3(B) allows Landlords to plead grounds for eviction other than nonpayment of rent or violation of an obligation of tenancy. The fifth check box allows the plaintiff to plead that it seeks possession because “Tenant is a terminated employee.” Although this is proper if a Tenant is only a terminated employee, *see Anderson v. William J. Davis*, 533 A.2d 648 (D.C. 1989), it is improper if the defendant is *also* a tenant. D.C. Law is clear that tenants have all the protections of the Rental Housing Act. *See, e.g.,* D.C. Code § 42-3505.01 et seq.

For the above reasons, we support Proposed New Landlord Tenant Rule 3 and Landlord Tenant Forms 1A-1C. We also make the above suggestions requiring leases to be attached, where applicable, for Forms 1A-1B; and tenant ledgers to Forms 1A and 1C. Thank you for the opportunity to submit our comments and make suggestions.

Sincerely,

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Staff Attorneys
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