

May 12, 2014

Via electronic mail

Ryan K. Mullady
Assistant General Counsel
Superior Court of the District of Columbia
500 Indiana Avenue, NW, Room 6715
Washington, DC 20001
Ryan.Mullady@dcsc.gov

Re: Notice of Proposed Amendments to Superior Court Rule of Procedure for the Landlord and Tenant Branch 15 and L&T Form 6

Dear Mr. Mullady:

Our organizations – the Legal Aid Society of the District of Columbia, Bread for the City, and the D.C. Law Students in Court Program – write to offer our strong support for the proposed amendments to Superior Court Rule of Procedure for the Landlord and Tenant Branch 15 and L&T Form 6. These amendments will eliminate the requirement that tenants redeeming their tenancies pay a \$195 execution fee for the U.S. Marshals Service’s supervision of their planned eviction, even in cases where the Marshals will never charge or collect this fee. Eliminating this up-front fee will make a real difference for low-income tenants struggling to pull together the funds to redeem their tenancies and will allow emergency rental assistance resources to help even more tenants avoid eviction and homelessness.

Our organizations receive funding from the D.C. Bar Foundation to run the Court Based Legal Services Project – also referred to as the Attorney of the Day – to provide same-day representation to low-income tenants in the Landlord and Tenant Branch. Collectively, we represent thousands of low-income tenants facing eviction in the District each year.

Currently, Rule 15 authorizes the Court to impose all fees for the issuance of the writ of restitution on the tenant following the entry of judgment. In order to redeem her tenancy pursuant to *Trans-Lux Radio City Corp. v. Service Parking Corporation*, 54 A.2d 144 (D.C. 1947) and remain in possession, the tenant must pay this writ fee in full. The writ fee includes a \$10 filing fee for the Clerk of the Superior Court, an \$8 administrative fee for the U.S. Marshals Service, and a \$195 execution fee for three United States Marshals to appear and supervise the eviction, should it occur. While the tenant must pay the execution fee up front, it is not charged or collected by the U.S. Marshals Service unless they appear at the property for an eviction. When the eviction is never scheduled or the Marshals for other reasons do not have to appear, the execution fee is refunded back to the landlord, and thereafter should be credited back to the tenant’s account.

The result is that many tenants are forced to scrape together the extra \$195 execution fee as part of their redemption amount, even though the amount has not yet become due. For low-

income tenants facing eviction, this extra \$195 can make the difference between being able to redeem their tenancies or facing eviction and homelessness. Moreover, we have seen far too many cases in which the tenant redeems prior to the Marshals appearing, but the landlord never credits back the \$195 fee to the tenant's account. Most of the tenants appearing in the Landlord and Tenant Branch do not have the benefit of counsel, and they likely are unaware of their right to demand this rent credit.

The amendments to Rule 15 will relieve tenants of paying the execution fee except in those rare cases where a tenant redeems once the Marshals already have appeared at the property for the eviction. The vast majority of low-income tenants who find a way to pay up will no longer have to include an extra \$195 in order to avoid eviction. Nor will they have to rely on their landlords to credit this payment back to their accounts.

The imposition of the execution fee as part of the redemption amount also affects the work of programs across the District providing emergency rental assistance to tenants facing eviction for nonpayment of rent. Chief among these is the District's Emergency Rental Assistance Program (ERAP) – administered by Housing Counseling Services, the Salvation Army, Catholic Charities, and the Community Partnership for the Prevention of Homeless – which is slated to receive \$8.3 million in District funds from the D.C. Department of Human Services next year. ERAP assists several thousand tenants each year to pay off rental arrearages and redeem the tenancies.

The ERAP organizations focus these scarce dollars on tenants with active cases in the Landlord and Tenant Branch. Faced with an overwhelming demand, they often must prioritize tenants with live writs of restitution. Under current practice, the ERAP organization must include the \$195 execution fee with their award to each such tenant, in order to ensure that the tenancy is redeemed.

The proposed amendments to Rule 15, by eliminating this fee in the vast majority of cases, will allow the ERAP organizations to spread their already-scarce dollars even further. The \$195 execution fee that previously would have been paid by ERAP only to be refunded back to the tenant now can provide help to the next marginal tenant instead. We expect the proposed amendments to “save” ERAP organizations tens of thousands of dollars each year, allowing them to help tenants who previously would have been turned away for lack of funds.

To an outside observer, the proposed amendments to Rule 15 may seem technical and unimportant. We know quite the opposite is true. The amendments will make a real difference for low-income tenants in the District struggling to redeem their tenancies. We applaud the Landlord and Tenant Branch Rules Committee for proposing this sensible change, and we urge the Superior Court Rules Committee and the Superior Court Board of Judges to adopt it.

If you have any questions or concerns, you can reach us through Beth Mellen Harrison of Legal Aid at (202) 661-5971 or bharrison@legalaiddc.org. Thank you for your consideration of our comments.

Sincerely yours,

Bread for the City
Vytas Vergeer, Legal Clinic Director
Rebecca Lindhurst, Managing Attorney

The Legal Aid Society of the District of Columbia
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Beth Mellen Harrison, Supervising Attorney

The D.C. Law Students in Court Program
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