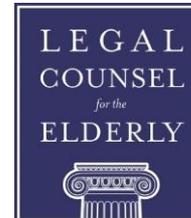


# Basic Housing Law Training - Session 1

June 4, 2020



Legal Aid Society  
OF THE DISTRICT OF COLUMBIA  
MAKING JUSTICE REAL



**RISING**  
FOR JUSTICE

# Basic Landlord-Tenant Law

Samantha Beckett, Bread for the City

Beth Mellen Harrison, Legal Aid Society of the District of Columbia

## The Landlord-Tenant Relationship

Causes for Eviction and Defenses

Non-Causes for Eviction

Technical Defenses

Common Issues Involving Subsidized Housing

# The Landlord-Tenant Relationship

- **Under D.C. law, what makes a tenant?**
  - Statutory definition in D.C. Code §42-3501.03
    - A tenant, subtenant, lessee, sublessee, or other person entitled to the possession, occupancy, or the benefits of any rental unit owned by another person
  - No written lease required, oral agreement is sufficient
  - Indicia of tenancy:
    - Payment of rent (cash, utilities, other payments or services) in exchange for right to possession
    - Agreement (oral or written)
    - Exclusive legal possession

# Important Concepts

- **DC is a for-cause eviction jurisdiction**
  - DC has limited grounds for eviction of residential tenants
  - A landlord can only sue to evict a tenant based on the limited reasons listed in D.C. Code §42-3505.01 (more on this later)
  - Landlord cannot evict a residential tenant simply because lease has expired
  - Once a lease expires it automatically converts to a month-to-month tenancy, generally with the same lease terms
- **No self-help eviction (i.e. evictions outside of court)**
  - Landlord may not just change the locks or remove belongings
  - Court process must be used
- **Redemption of tenancy**
  - Tenant sued for nonpayment of rent has right of possession even after judgment entered for landlord by tendering full amount due before eviction is completed (*Trans-Lux* doctrine)

## Important Concepts (cont.)

- **Right to cure**
  - Tenant sued for lease violation other than nonpayment has ability to cure violation within 30 days, with limited exceptions
- **Right to habitable unit**
  - Tenant has right to housing that is safe, sanitary, and meets the requirements of the Housing Code/Property Maintenance Code
- **Examples of other rights of tenants**
  - Protection from retaliation and discrimination
  - Right of first refusal (Tenant Opportunity to Purchase Act, or TOPA)
  - Right to vote on condo or cooperative conversion

# Basic Landlord-Tenant Law

The Landlord-Tenant Relationship

**Causes for Eviction and Defenses**

Non-Causes for Eviction

Technical Defenses

Common Issues Involving Subsidized Housing

# Nonpayment of Rent: Elements

- D.C. Code §42-3505.01(a)
  - Existence of landlord-tenant relationship
    - Usually proven through a lease
  - Proof that a legally sufficient Notice to Quit was properly served or waived
    - Regulations allow waiver, and most leases waive
    - Cannot be waived in public housing pursuant to federal regulations (24 C.F.R. § 966.4(l)(3)) and the standard lease applicable to public housing tenants does not waive
  - Proof that some rent is owed
    - Usually proven through a rental ledger

# Nonpayment of Rent: Housing Code Defenses

- **Breach of warranty of habitability**
  - There is an implied warranty of habitability in every lease in the District of Columbia - (*Javins v. First Nat'l Realty Corp.*, 428 F.2d 1071 (D.C. 1970); 14 D.C.M.R. § 301)
  - Elements that must be proven include:
    - The condition existed at either the inception or after the inception of the tenancy
    - The period of time that the conditions were in existence
    - The condition constituted a violation of the Housing Code/Property Maintenance Code
    - The landlord knew or reasonably ought to have know about the condition
    - The landlord failed to repair the violation within a reasonable time
    - The effect of the condition on the tenant's use and enjoyment of the premises
  - The tenant has the burden of proving the extent by which the value of the premises is or was reduced by the conditions

# Nonpayment of Rent: Housing Code Defenses

- Void Lease
  - Asks the court to declare the lease void and to confer no benefit on the landlord - *Brown v. Southall Realty Co.*, 237 A2d 834 (D.C. 1968); 14 DCMR §§ 302.1 and 302.2
  - Elements that must be proven include:
    - Condition existed at either the inception or after the inception of the tenancy
    - The period of time that the conditions were in existence
    - The conditions made the premises unsafe or unsanitary
    - The landlord knew or reasonably ought to have known about the condition
    - The landlord failed to repair the violations within a reasonable time
  - Burden shifts to the landlord to prove what value, if any, the premises have
  - Note: defense may be barred if there is a prior judgment between the same two parties

# Nonpayment of Rent: Defenses

- **Retaliation**
  - Claim that the suit is in retaliation to punish tenant for assertion of a legally protected right
  - Presumption of retaliation if a landlord acts within 6 months of a tenant exercising his/her rights, which can only be rebutted by clear and convincing evidence
  - Where proven, it is a complete defense – including to nonpayment of rent - *Bridges v. Clark*, 59 A.3d 978 (D.C. 2013)
  - D.C. Code § 42-3505.02; 14 D.C.M.R. § 4303
- **Constructive eviction**
  - Rarely used; required elements:
    - The consideration for the rent (use and occupancy of the premises) has failed
    - The deprivation of the use and occupancy has occurred because of acts or omissions of the landlord
    - The tenant vacated the premises within a reasonable time after the inception of the violations

# Nonpayment of Rent: Defenses

- Illegal levels of rent, other fees, accounting
  - Miscalculation of tenant's share
  - Conversion of other fees to rent
  - Improper legal fees or attorney's fees
  - Statute of limitations (three years)
- Rental Housing Late Fee Fairness Amendment Act, D.C. Code § 42-3505.31
  - Most important provision is that housing provider shall not “evict a tenant on the basis of the nonpayment of a late fee”
    - Redemption (*Trans-lux*) amount no longer can include late fees
    - Late fees still can be included in any money judgment and can be settled

# Nonpayment of Rent: Defenses

- Rental Housing Late Fee Fairness Amendment Act - other protections
  - Housing provider may not charge more than 5%
  - Late fee only applied to the tenant share in subsidized housing
  - Housing provider must give at least a 5-day grace period (though lease can specify more)
  - Housing provider may not:
    - Charge a tenant a late fee attributable to nonpayment or late payment by the subsidy provider of its share
    - Charge more than one late fee per late/missed payment
    - Apply future payments to past late fees (which otherwise can result in tenant being “late” in future months and being charged additional late fees)

# Nonpayment of Rent: Counterclaim/Recoupment/Setoff

- **Recoupment**
  - Equitable defense that seeks to offset the amount of unpaid rent
    - Used when there are housing code violations on the premises
    - Limited to amount of rent sought
    - Equitable defense so no statute of limitations (laches defense possible)
- **Counterclaim**
  - Applies to rent overpayments made to the landlord while the property was not in substantial compliance with the housing code
    - Unlike recoupment, can exceed amount sued for; subject to 3-year statute of limitations for contract claims
    - Counterclaims survive dismissal of landlord's claims

# Nonpayment of Rent: Counterclaim/Recoupment/Setoff

- **Setoff**
  - For expenditures made by tenant claimed as credits against rent
    - Classic example – tenant make repairs when landlord fails to do so
    - Subject to 3-year statute of limitations for contract claims
    - Some non-repair expenditures may count, *e.g.*, payment for utilities that are landlord's responsibility, for hotel if constructively evicted
- **Note on all three claims:**
  - By filing a counterclaim for money damages, tenant submits to court's jurisdiction, *i.e.*, a money judgment can be entered against tenant, even if tenant was not personally served
  - This rule does **not** apply to tenant only filing recoupment, setoff, and/or counterclaiming for injunctive relief (*See* LT Rule 3(b))

# Nonpayment of Rent: Counterclaim/Recoupment/Setoff

- **Note on claim/issue preclusion:**
  - Landlords sometimes claim that counterclaim cannot reach back further than the most recent judgment (including any consent judgment) because of claim/issue preclusion
  - Court of Appeals rejected this reasoning in *Smith v. Greenway Apts.*, 150 A.3d 1265 (D.C. 2016)
    - Counterclaims in Landlord and Tenant Branch are permissive
    - Prior failure to raise a permissive counterclaim is not res judicata
    - But claims as to specific months covered by prior judgment are precluded
    - **Note:** following this decision, some landlords are seeking broad release of claims against unrepresented tenants, so you may run into that situation

# Violation of Obligations of Tenancy: Elements

- D.C. Code 42-3505.01(b); 14 DCMR §§ 4300, 4301, 4302
  - Existence of landlord-tenant relationship
  - Violation of some obligation of tenancy – which means a provision in a written lease or a violation of D.C. Housing Code
  - Proper service of legally sufficient **Notice to Quit/Correct/Vacate**
  - Failure to cure and/or vacate within 30 days

# Notice to Quit/Correct/Vacate

- Condition precedent
  - *Moody v. Winchester Mgmt. Corp.*, 321 A.2d 562 (D.C. 1974)
- Prior 30-day notice requirement cannot be waived or modified
- Letter to tenant alleging valid reason for landlord to regain possession and giving tenant opportunity to cure alleged violation
- Proof of notice is landlord's burden
- Must describe specific factual basis for eviction
- Description of how to cure must be specific

# Notice to Quit/Correct/Vacate: Timing Issues

- **Landlord cannot sue until notice has expired** (cure period has ended) – 30 or more days from service
- For **consistent late payment of rent**, notice must expire on or after 1<sup>st</sup> day of rental period following expiration of 30-day notice period (so often more than 30 days)
- Notice must allege violations occurring no more than **six months** before notice issued
  - But note this does not apply in public housing, see *Pratt v. D.C. Housing Authority*, 942 A.2d 656 (D.C. 2008) (3 years)
- If tenant cures during 30-day period but later violates lease again, new notice must be served with new cure period afforded
  - But any cure must be maintained for some period after expiration, *Borger v. Nelson Lee*, 959 A.2d 694 (D.C. 2008)

# Violation of Obligations of Tenancy: Defenses

- Denial of alleged violation
- Violation cured by the time notice expired
- Violation is *de minimis*/forfeiture is not warranted
- Waiver (affirming tenancy after notice expires – *e.g.*, accepting rent)
  - But note that waiver of enforcement of a lease provision may be withdrawn by giving clear notice to tenant, *i.e.*, 30-day NTQ
- Landlord's acquiescence (similar limitations as waiver)
- Retaliation
- Violation of D.C. Human Rights Act
  - Most common are refusal of reasonable accommodation or other disability discrimination or source of income discrimination (wanting to evict because tenant has voucher or other subsidy)
- Violation is the result of an intrafamily offense (*i.e.* domestic violence, stalking) - D.C. Code § 42-3505.01(c-1)

# Criminal Activity Cases

- Lease violation cases
  - Under D.C. Code § 42-3505.01(b), tenant has opportunity to cure – at least in most circumstances, *Pratt v. D.C. Housing Authority*, 942 A.2d 656 (D.C. 2008)
- 501(c) cases
  - Under D.C. Code § 42-3505.01(c), landlord can recover possession if court of competent jurisdiction determines that tenant or other occupant engaged in illegal act in rental unit or housing accommodation
  - Tenant must have actual or constructive knowledge of illegal act
  - Right to 30-day notice but no opportunity to cure

## Criminal Activity Cases (cont.)

- “One-strike” cases
  - Applies to tenants in public housing, site-based section 8, or Voucher Program – any federally subsidized housing
  - Landlord claims that tenant, household member, or guest/visitor engaged in certain criminal activity
  - Proven by preponderance of evidence – no arrest or criminal plea or conviction required
  - Right to 30-day notice but no opportunity to cure
    - Cure opportunity pre-empted by federal law, *Scarborough v. Winn Residential, LLP/Atlantic Terrace Apartments*, 890 A.2d 249 (D.C. 2005)
  - DCHA/private landlord has discretion to consider circumstances – not mandatory to pursue eviction in every case
  - Note: the requirements vary slightly by program (public housing, site-based section 8, voucher program)

## Criminal Activity Cases (cont.)

- “Drug haven” cases
  - Residential Drug-Related Evictions Act (RDEA) (D.C. Code § 42-3601 *et seq.*) authorizes eviction if rental unit is being used as “drug haven” as defined under the statute
    - Statute lists multiple factors the court *shall* consider
  - Can be very difficult to prove - landlord must show that property remains drug haven at time of hearing/trial
    - *Crescent Properties v. Inabinet*, 897 A.2d 782 (D.C. 2006)
  - Court process (theoretically) expedited
    - Notice of action must be served on tenant at least 5 days before hearing; no 30-day notice required
    - Landlord may seek preliminary injunction to prevent operation of “drug haven”
    - Eviction can occur within 72 hours of court’s order – but very rare
  - Affirmative defenses (set forth in statute)
    - Tenant could not have known about the activity
    - Activities were not part of a pattern or practice
    - Activities were reported to the police by a tenant or occupant

## Other Grounds for Eviction

- Personal use and occupancy (90-day notice) (42-3505.01(d))
- Sale for immediate personal use and occupancy (90-day notice, with Tenant Opportunity to Purchase Act, or TOPA, rights) (42-3505.01(e))
- Immediate alterations or renovations that cannot safely be performed (120-day notice with relocation assistance and rights, right to reoccupy) (42-3505.01(f))
- Demolition of building (180-day notice with relocation assistance, TOPA rights) (42-3505.01(g))
- Substantial rehabilitation pursuant to rent control petition (120-day notice with relocation assistance, right to reoccupy) (42-3505.01(h))
- Discontinuance of housing use (180-day notice with relocation assistance, TOPA rights) (42-3505.01(i))
- Condo or co-op conversion (120-day notice) – but certain tenants have the right to stay as tenants (42-3505.01(j))

# Break-Out Session

- In your small group, please discuss the following situation. What are the tenant's defenses? How will the landlord respond?
  - Your client Ms. Johnson receives a housing subsidy through the Housing Choice Voucher Program. The total rent is \$1300 for the unit, and Ms. Johnson's portion of the rent is \$600 per month. Ms. Johnson has been sued by her landlord based for alleged nonpayment of rent.
  - She has current Housing Code violations, including an insect infestation, a clogged and leaky kitchen sink, and damp walls in the kitchen with mold spots. There is also an issue with lack of sufficient hot water.
  - Ms. Johnson does not get along with her landlord, Rufus. Every time she tells him about a repair issue, he sends his nephew Bernard – who is not a licensed contractor – to make repairs. Bernard is unprofessional, doesn't call in advance, and doesn't clean up after himself. Neither Rufus nor Bernard have a key to her unit, and Ms. Johnson is not comfortable giving either of them a key.

# Basic Landlord-Tenant Law

The Landlord-Tenant Relationship

Causes for Eviction and Defenses

**Non-Causes for Eviction**

Technical Defenses

Common Issues Involving Subsidized Housing

## Non-Causes for Eviction

- Expiration of lease or 30-day notice from landlord without any reason
- Sale of building, foreclosure, or other changes in ownership
- Refusal to accept vouchers or other subsidy (source-of-income discrimination)

# Basic Landlord-Tenant Law

The Landlord-Tenant Relationship

Causes for Eviction and Defenses

Non-Causes for Eviction

**Technical Defenses**

Common Issues Involving Subsidized Housing

# Technical Defenses

- Defective Notice to Quit (NTQ)
  - NTQ must be sufficiently specific, state minimum time to vacate, and include rent control registration or exemption number
  - NTQ must be in English and Spanish (but lack of Spanish is harmless error unless tenant speaks Spanish)
  - Service and timing
    - Personal service, substituted service (person of proper age in possession of the premises), or posting and mailing
    - Serve tenant first
    - Serve Rent Administrator within 5 days (for all notices except nonpayment)
    - For voucher tenants – also must be served on DCHA

# Technical Defenses (cont.)

- Defective Service of Process
  - Service must occur at least 7 days before initial hearing (excluding Sundays and holidays)
  - Personal service preferred, diligent efforts required
    - Personal service also allows for money judgment
  - Substituted service – someone age 16 or over who resides or is in possession of unit
  - Posting and mailing only after diligent efforts (2 days at 2 different times of day) at personal service
    - If landlord knows (or possibly even if landlord should/could know) tenant is not home and personal service is attempted there, service attempt may be insufficient
  - Proper affidavit of service entitled to presumption of accuracy
  - Service by plaintiff (party) is not proper

## Technical Defenses (cont.)

- Defective Pleading
  - *Iqbal/Twombly* puts a new gloss on notice pleading, tightening the requirements
  - Adopted by D.C. Court of Appeals in *Potomac Dev. Corp. v. D.C.*, 28 A.3d 531 (D.C. 2011)
  - LT Rule 3 specifies form of process but LT Rules incorporate Civil Rule 8
  - Examples: insufficient pleading of failure to cure or of elements for drug haven (including continuing violation)

# Basic Landlord-Tenant Law

The Landlord-Tenant Relationship

Causes for Eviction and Defenses

Non-Causes for Eviction

Technical Defenses

**Common Issues Involving Subsidized  
Housing**

# Common Issues - Unauthorized Occupants

- All household occupants must be approved and listed on subsidy paperwork and lease
  - Depending on program, may not be allowed to add adult family members except in limited circumstances
  - New adult members typically will be subject to screening (criminal record, credit)
  - Should be able to add children or other minors with care-taking relationship, spouse, live-in aide
    - But live-in aide requires separate approval process as reasonable accommodation for disability, plus screening
- Occupants relevant for rent calculation
  - Income of all occupants is included except for live-in aide – with certain exclusions, e.g. minors, students

## Common Issues - Unauthorized Occupants (cont.)

- Issue arises if occupant is not reported and landlord later finds out about it
  - Can result in debt owed once occupant's income is added – rent can be retroactively increased
  - But still have right to cure lease violation based on unauthorized occupants by removing them or properly adding them
- Note: each program also has rules for removing a household member who has left – important for income calculation and criminal activity

## Common Issues - Failure to Recertify

- In public housing, failure to recertify results in Notice to Correct or Vacate
  - Treated as lease violation, can be cured
  - Administrative process available, but generally not practical
- In site-based Section 8, results in rent increase to market rent and/or Notice to Correct or Vacate
  - Federal regulations allow landlord to increase rent to market, which is more straightforward process and thus preferred by most landlords
  - But also can be treated as lease violation, subject to cure
  - No administrative process to challenge, though can request meeting with rental office
- In HCVP, results in DCHA issuing a recommendation for termination to the voucher holder
  - Voucher holder can challenge termination through administrative process
  - DCHA may stop its payments to the landlord, resulting in nonpayment of rent case

# Common Issues - Other Recertification Issues

- Failure to report new/higher income, so rent should have been higher
  - DCHA/LL can impose change retroactively and seek missing funds from tenant
  - Statute of limitations issue arises if DCHA/LL then sits on the debt for more than 3 years
- Failure to report loss of/lower income, so rent should have been lower
  - Lower rent does not go into effect until change is reported – timely reporting critical
- Difficulty verifying income, particularly loss of income
  - Easiest if tenant can facilitate verification through income source
  - Read regulations and guidance on alternative verification procedures, e.g. sworn and notarized statement from tenant as last resort if third party is not responding
- Sporadic income
  - Read regulations/guidance on treatment and possible solutions

## Common Issues - Criminal Activity

- In addition to violating lease, criminal activity also is a basis for terminating a tenant's subsidy in the HCVP
- Issue of marijuana
  - Simple possession of two ounces or less is legal under local law
  - HUD has made clear that it is still illegal under federal law and DCHA/landlord still must have ability to evict/terminate subsidy
  - But DCHA and landlords still may exercise discretion – including in settlement
- Consider record-sealing
  - Will limit DCHA/landlord's available proof, *see Reid v. DCHA* (Super. Ct. 2013)
  - Because of long wait periods and other onerous requirements, many tenants will not be eligible
  - But newer law on decriminalized/legalized offenses can be used for marijuana

# The Landlord-Tenant Court Process

Lauren King, DC Bar Pro Bono Center

**Landlord-Tenant Court Overview**

Defending a Landlord-Tenant Case

Practice Tips

# Landlord-Tenant Court Overview

- Landlord and Tenant Branch of D.C. Superior Court's Civil Division
- Location: Court Building B, 510 4<sup>th</sup> Street NW
  - Main Courtroom – Room 109, Second Courtroom – B-53 (second floor)
- Main courtroom staffed by magistrate judges
- Second courtroom staffed by rotating senior associate judges
- High volume court with distinct dynamics
  - Over 30,000 cases annually (though nearly half are dismissed)
  - 90 to 95% of landlords have counsel
  - Only 5 to 10% of tenants have counsel in contested cases
- Generally applicable rules:
  - Rules of Procedure for Landlord and Tenant Branch
  - D.C. Super. Ct. Rules of Civil Procedure (as incorporated, see LT Rule 2)

# Magistrate Judges

- Magistrate judges sit in main courtroom
- Both parties must consent to magistrate judge handling proceeding scheduled for that day
  - Consent form must be completed by both parties/attorneys
  - If one or both parties do not consent, then case must be heard by senior associate judge in upstairs courtroom and is not called until 2:00 p.m.
- Magistrate judges' powers are limited in certain respects, including no contempt power
- Decisions by magistrate judges are appealable to an associate judge, and only then to the DC Court of Appeals

# The Landlord-Tenant Court Process

Landlord-Tenant Court Overview

**Defending a Landlord-Tenant Case**

Practice Tips

# The Initial Hearing

- Timing: Approx. 4-7 weeks after case is filed
- Can request two-week continuance **WITH ALL RIGHTS RESERVED**; court will schedule further initial hearing
  - PRIOR to the initial hearing, a party can file an **application requesting to continue the initial hearing**, and the court will hold a hearing that day. (LT R. 7(c)(2))
  - If opposing counsel consents, can file consent praecipe prior to or the same day as the initial hearing
  - If party wishes to request jury demand, two-week continuance granted unless good cause shown, LT Rule 11(b)(5)

# Application to Proceed *In Forma Pauperis* (IFP)

- Civ. R. 54-II
  - IFP waives \$75 jury demand fee plus motion, witness, and other fees
  - IFP can be submitted in advance of next hearing and ruled on paper; otherwise must appear before judge
    - Clerks are authorized to approve applications for parties receiving SSI, GAC, POWER (presumptively eligible)
    - Other applications are approved by judge
    - Note: even though application form says tenants receiving Medicare or DC Healthcare Alliance do not have to complete rest of form, some magistrate judges require that additional information be provided

## Landlord's Obligation to Produce Ledger

- LT R. 10 requires landlord to bring payment ledger or other documentation to every court date
  - Must go back to last time balance was zero
- Can sanction landlord for failure to produce ledger
  - May order production (which can lead to contempt sanctions)
  - May grant continuance, decline to enter protective order, or vacate/modify existing protective order

# Responsive Pleadings

- Answering the Complaint
  - Jury Trials
    - Tenant must file a verified (affirmed and signed by client) Answer & Jury Demand (LT R. 6)
    - Jury trial must be requested at the initial hearing or further initial hearing (if rights were reserved)
    - Must include counterclaims, recoupment, and setoff in Answer or Amended Answer (LT R. 5(b))
    - Answers can be amended within 21 days of filing without leave of court (Civ. R. 15)
  - Bench Trials
    - Written Answers are not required for bench trials
    - Counterclaim, recoupment, and setoff, must be filed in writing at least 14 days before trial, unless the court extends the deadline for good cause shown (LT R. 5(b)(2)(B))
    - It's a good idea to file an Answer if there are housing code violations to put the landlord on clear notice

## Responsive Pleadings (cont.)

- Motion to Dismiss
  - Timing: must be filed before Answer as to certain defenses (see Civ. R. 12)
  - MTD could be based on wide range of issues, including:
    - Improper service of complaint
    - Failure to properly serve legally sufficient Notice to Quit before filing complaint
    - Insufficient facts alleged in complaint (and notice) to support landlord's claim
- Motion for Summary Judgment
  - Some issues are best raised after discovery (unless clear on Complaint)
    - *E.g.*, no evidence of failure to cure, no evidence of ongoing activity in drug haven case, no rent owed based on accounting issues/challenges to fees, statute of limitations defenses

# Protective Order

- Court order requiring tenant to pay prospective rent to court registry while case is pending
  - Does not include prior unpaid rent
  - Starts from initial hearing as long as landlord reserves rights
- Protects tenant from falling further behind and creates protected fund in case landlord not entitled to money; can be helpful for settlement; protects landlord from losing rent
- Sanctions for failure to make protective order payments: striking jury demand, striking counterclaim, expedited trial date, striking defenses (judgment)

## Protective Order (cont.)

- See LT R. 12-I , which essentially codifies prior case law
- Timing: at or any time after initial hearing; court may continue hearing for parties to gather evidence
  - Continuances are common but not required
- May be requested by either party
  - Oral motion at initial or further initial hearing, otherwise written
- “Hearing” required – but often proceeds by proffer
- Generally only applies in nonpayment of rent cases
  - No protective order may be entered in any other cases (except for non-tenant cases) as long as tenant stipulates that future acceptance of rent does not constitute waiver by landlord

## Protective Order (cont.)

- Request **Bell hearing** if amount should be lowered
  - Most common reason is seeking reduction due to Housing Code violations
    - Present photos, client testimony, investigator testimony (if applicable), DCRA or DCHA reports (with witnesses)
    - Be prepared to proffer evidence
  - But in subsidized housing cases, other issues will arise regarding the calculation of the rent
    - *E.g.*, income-based rent calculation is wrong/has not been adjusted following a change; subsidy has been terminated for landlord violations
    - Very helpful to file opposition briefs laying out legal arguments in these cases – judges may not be familiar with law
    - Also helpful to ask the judge to schedule this for a motion hearing (which makes a difference in whether the Court's Attorney Advisor will brief the judge ahead of time on the legal issues in your filing)

# Break-Out Session

- In your small group, go back to Ms. Johnson's case. What responsive pleadings will you prepare? How will you handle the protective order? What additional questions do you need to ask your client?
  - Your client Ms. Johnson receives a housing subsidy through the Housing Choice Voucher Program. The total rent is \$1300 for the unit, and Ms. Johnson's portion of the rent is \$600 per month. Ms. Johnson has been sued by her landlord based for alleged nonpayment of rent.
  - She has current Housing Code violations, including an insect infestation, a clogged and leaky kitchen sink, and damp walls in the kitchen with light mold spots. There is also an issue with the hot water – Ms. Johnson often has to take lukewarm showers.
  - Ms. Johnson does not get along with her landlord, Rufus. Every time she tells him about a repair issue, he sends his nephew Bernard – who is not a licensed contractor – to make repairs. Bernard is unprofessional, doesn't call in advance, and doesn't clean up after himself. Neither Rufus nor Bernard have a key to her unit, and Ms. Johnson is not comfortable giving either of them a key.

# Bench Trial vs. Jury Trial Considerations

- **Jury Trial:**
  - Can take 6-12 months - more time for tenant to stay in home, for you and tenant to consider options, make plans, prepare case
  - Much more expensive for landlord with counsel to litigate
  - Limited discovery as a matter of right
  - Mediation prior to trial
  - Note: jury demand can be withdrawn by consent of both parties, may make sense in some circumstances – e.g., pro se landlord
- **Bench Trial:**
  - Usually takes 6-12 weeks - quicker outcome
  - Especially good if client might not be able to pay protective order or case presents very straightforward issue
  - Client may prefer - Housing Code violations need to be addressed soon, does not want delay of jury trial
  - Mediation same day as trial (but can try for earlier date)

# JURY TRIAL TRACK

- Scheduling order issued by Court at the time jury demand is filed
  - Court no longer holds scheduling conferences
  - Two dates: close of discovery, mediation
    - Default order closes discovery 45 days after jury demand filed; good idea to ask for at least a 15- to 30-day extension (60-75 days total)
    - Mediation typically scheduled at least 60-75 days out
- After jury demand, case certified and moved to Civil Division, assigned to specific judge
  - Some motions still heard in LT Court, see LT R. 13-I
  - Summary process is maintained – limited discovery, limited schedule

# Discovery as a Matter of Right

- See LT R. 10 for details
- 10 interrogatories and 10 requests for production allowed for jury trials
  - Timing: try to serve these by or very soon after jury demand is filed
  - Discovery responses due 30 days after service (Civ. R. 33(b)(3))
  - Note: under Civ. R. 16(b)(5)(A)(i), a party may not serve discovery requests within 30 days of close of discovery
- Can move for additional discovery (e.g. depositions), but most judges are wary because of summary process
- Note that any motion for summary judgment must be filed within 30 days of close of discovery

## Mediating Case Set for Jury Trial

- Timing: Typically after close of discovery
- Mediators from Multi-Door Dispute Resolution
- 30 days before, file **Confidential Settlement Statement**:
  - Defendant describes facts and defenses being raised and any counterclaims
  - Both parties assess value of case
  - Form available online or ask mentor for sample
- At mediation, come prepared with documents, photos and other evidence, and know your client's position
- If mediation fails, court schedules pretrial conference

# Pretrial Conference

- See Civ. R. 16 for detailed requirements
- Timing: Scheduled at conclusion of failed mediation, no more than 60 days out (unless judge agrees to more time)
- Preparation:
  - 4 weeks before: meet with landlord's attorney for 16(c) conference, provide exhibits, discuss stipulations, narrow issues
  - 3 weeks before: all pre-trial motions due (e.g., motions in limine)
  - 1 week before: joint pre-trial statement due
- At pretrial conference, be prepared to discuss pre-trial statement, outstanding motions, trial logistics
- Judge may help parties engage in one last mediation attempt before setting trial date

# Jury Trial

- Scheduling of jury trial will happen at pretrial conference
  - Occasionally, pretrial conference will be continued, *e.g.*, if parties are not fully prepared or are in settlement negotiations
- Trial date may be a few weeks or a few months (or more) away, depends on judge's calendar
- Consider asking judge to schedule a final pre-trial status hearing a week or two before trial
  - Resolve any new issues, outstanding objections/evidentiary issues

## BENCH TRIAL TRACK

- Case heard by Landlord and Tenant Branch
  - Everything stays in LT Court
  - No schedule – bench trial typically set 1-3 months out
  - **No discovery as matter of right**
  - Typically no specific judge assigned until day of trial
  - Not unusual for trial to start late in day and require subsequent court date(s) – prepare your client and your calendar!
- Try to negotiate limited discovery with other side when scheduling bench trial date
  - If motion required, file as soon as possible
  - Because of timing, often may need to include motion to continue trial if bench trial date already has been set
  - Also can ask judge to shorten response period
- Include narrow, relevant discovery requests
  - Often parties will limit to 5 interrogatories and 5 requests for production

## Mediating a Case Set for Bench Trial

- Timing: Day of trial, but can request at an earlier court date
- Parties “encouraged” to mediate
- Mediators from Multi-Door available without advance notice everyday in LT Court
- Consider agreeing with opposing counsel/party to set a mediation date/status hearing several weeks in advance of trial date to allow for pre-trial mediation

# Motions Practice

- Consult LT R. 13, 13-I
  - If jury trial, some motions go to LT judge (automatic oral hearing) and others go to trial judge in Civil Calendar (can request oral hearing)
  - If bench trial, all motions go to presiding LT judge
- Motion to Compel Discovery
  - Motion may be filed about lack of any response or inadequate responses (with different rules for each)
  - Consult Civ. R. 37 for detailed requirements
- Motion for TRO/Preliminary Injunction – for immediate repairs
- Motion for Joinder
  - E.g. to join DCHA or other third party

## E-Filing Requirement

- Effective Oct. 14, 2018, parties represented by counsel in the Landlord and Tenant Branch must use Court's e-filing system, CaseFileExpress
  - Note that legal services providers are exempt
- If your firm is not already registered, register soon
- You may still file documents in person with courtroom clerk when making related court appearance and will also avoid e-filing processing delays that way
- If client has IFP status, enter “dccourtapprovedifp” code in CaseFileExpress to have e-filing fees waived
- Check File & ServeExpress website for more info