

From: Jamie Borodin <Jamie.borodin@ntnj.com>
Sent: Friday, September 25, 2020 11:09 AM
To: Comments Mailbox
Subject: [External]Comments on Proposed Amendments to Rule 1:38-3 – Records of Landlord/Tenant Matters Not Resulting in Judgment for Possession

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To Whom It May Concern:

I am writing to provide comments followed the proposed amendment to remove certain LT record matters from public access.

National Tenant Network (NTN) is one of the companies that purchases bulk records from the NJ Administrative Office of the Courts. NTN is a screening company that has been serving landlords not just across the country, but right here in New Jersey, since 1990. NTN screens hundreds of rental applicants every day, and we work with many of landlords across the state and region, ranging from small landlords to larger property management companies.

We are very concerns about the proposed limits on public record reporting, and we hope that the Committee considers the following as it evaluates a decision about this proposal.

- 1) **Record Misuse:** The proposed policy amendment posits that one of the primary reasons to approve this proposal is that the amendment would help “eliminate barriers to equal justice, including for individuals historically and currently excluded from or disadvantaged by court processes.” NTN works with many of the largest property management companies and landlord companies throughout the region, and while there are inevitably a small handful of landlords who misuse these records by categorically denying applicants who were filed against in LT court, I can categorically state that this practice is extraordinarily rare and in the rare cases where a landlord sets this kind of unreasonably strict qualification criteria, we advise against it. Among the larger landlords in the state – those landlords or management companies that manage over 100 units – it is almost unheard of for these larger landlords to use such a policy. On the contrary, most of the largest management companies with which we work are relatively tolerant of LT records that did not result in a judgment such that while a non-judgment record can result in a slight reduction in the applicant’s score – much like a late credit card payment can result in a slight reduction in a credit score – provided the applicant has an otherwise acceptable credit background, the applicant will generally still qualify for housing.
- 2) **Why Non-Judgment Records Matter:** Another argument in favor of the approval of the proposal suggests that non-judgment records are meritless. It is important to note that an LT filing against a tenant is almost always initiated as a result of non-payment of rent and in the vast majority of cases, only happens when the applicants is at least 15 days late with paying rent. Much like a late credit card payment reported on a credit report can have an adverse effect on a credit score, an LT filing – even one that results in a dismissal – is still generally reflective of a late rent payment, and while a late payment is a far cry from an LT judgment, that late payment – particularly one that is recent – is still meaningful in that it does allow the landlord to see that the applicant has been late with rent. Again, it is important to point out that an applicant with otherwise acceptable credit will, in most cases, still qualify for a rental apartment if there is only one dismissed record – even if that record is more recent.

It is also important to point out that a dismissed case is also not the same thing as a settled case. While some applicants do later settle cases, some settlement agreements are approved by landlord plaintiffs with a reduced

settlement amount in exchange for unit possession. In other words, some landlords will settle a case to rid themselves of a problem applicant so that they can re-rent the rental unit to another resident who will be less of a burden to the property, and many settle cases for far less than the true amount owed by the resident/defendant. These cases can still prove harmful to landlords through lost rent, apartment damages and turnover cost. If the Judiciary were to approve this proposal, landlords would now be completely blind to cases like these.

- 3) **Administrative Burden:** While most LT matters are isolated events for a given tenant, it is important to recognize that some tenants are in fact repeat offenders – tenants that repeatedly and chronically pay rent not just late, but late enough to result in an LT court proceeding. These kinds of chronic offenders are not just administratively burdensome to current landlords, but to future landlords, and if the Committee were to approve this proposal, landlords would be blind to these repeat offenders. Further, it's important to consider that these chronic defendants are not just a burden to landlords, but to the courts. Some of these offenders are in court every other month, and all of these court proceedings result in endless work for the courts.
- 4) **Undisposed Cases:** If the Committee ultimately decides that the removal of adjudicated cases that result in a dismissal or settlement is in the best interest of relevant stakeholders, we respectfully request that newly filed cases pending court are made available as part of public record if or until a said case is adjudicated and results in dismissal or settlement. The reason why these undisposed cases are significant is because these non-adjudicated cases in fact have an unknown outcome, and some of these cases will ultimately result in default by the defendant. In addition, these cases are reflective of recent behavior, and arguably, that kind of recent behavior – which is more often than not related to non-payment of rent – is relevant and significant for a prospective landlord to consider. Please note, as with adjudicated cases that result in a non-judgment, the presence of a non-adjudicated case is rarely grounds for a categorical denial by a landlord; moreover, the filed case serves as a flag for follow up by the landlord, so that the landlord can meaningfully follow up with the plaintiff to determine the outcome of the case.

I hope these comments prove helpful for the Committee, and we wish to thank you for allowing us the opportunity to present an argument for the continued inclusion of all LT records.

Sincerely,

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