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Comments on *Maintaining Our Communities*:
Report of the Judiciary Special Committee on Landlord Tenant
from a Coalition of Advocates for Low-Income Tenants
May 21, 2021

These comments come from a coalition of housing and racial justice advocates including:

- American Civil Liberties Union of New Jersey,
- Anti-Poverty Network of New Jersey,
- Camden Coalition of Healthcare Providers,
- Central Jersey Legal Services,
- Community Health Law Project,
- Elizabeth Coalition to House the Homeless,
- Essex County Legal Aid Association,
- Fair Share Housing Center,
- Gibbons Fellowship at Gibbons P.C.,
- Housing and Community Development Network of New Jersey,
- Ironbound Community Corporation,
- Latino Action Network,
- Latino Coalition of New Jersey,
- Lowenstein Center for the Public Interest at Lowenstein Sandler L.L.P.,
- Make the Road New Jersey,
- NAACP New Jersey State Conference
- New Jersey Citizen Action,
- New Jersey Coalition to End Homelessness,
- New Jersey Institute for Social Justice,
- New Jersey Tenants Organization,
- Rutgers Law School Pro Bono and Public Interest Program,
- Seton Hall Law School Center for Social Justice,
- Solutions to End Poverty Soon (STEPS),
- Volunteer Lawyers for Justice, and
- Wind of the Spirit.

Together, these organizations have spent thousands of hours over many decades representing and advocating on behalf of low-income residential tenants. The coalition brings this experience to bear in the comments that follow.

If the Court has questions about these comments or the appended exhibits, it can reach out to the following:

- Catherine Weiss, Lowenstein Sandler, cweiss@lowenstein.com
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INTRODUCTION

The coalition applauds the Judiciary Special Committee on Landlord Tenant (the "Special Committee" or "Committee") for its creativity in reimaging the landlord-tenant process with the goal of achieving greater fairness for all litigants. The Committee's Recommendations reflect a commitment to seeking the fair resolution of eviction matters and recognize the critical benefits of dedicating significant additional judicial resources to this docket. The Committee was convened in part in response to the threat of mass eviction in the wake of the COVID-19 pandemic. *Maintaining Our Communities*, Report of the Judiciary Special Committee on Landlord Tenant at 1 (April 2021) ("Report"). And the numbers of actual and potential eviction filings are indeed staggering. As of March 2021, there were more than 52,000 pending landlord-tenant cases statewide, N.J. Judiciary, *Court Management March 2021* at 50, and the Judiciary anticipates that an additional 194,000 cases will be filed before 2022, Judge Glenn A. Grant, *Remarks before Senate Budget Comm.* at 3 (April 13, 2021). Rather than reacting to this crisis by making docket-clearance its first priority, however, the Special Committee responded by making 18 Recommendations that aim to enhance procedural fairness for all litigants despite the overwhelming numbers. It is to the great credit of the Judiciary that its first concern is the welfare and treatment of litigants and not the rushed disposition of cases.

The goals of the Committee are both especially important and particularly difficult to achieve in the landlord-tenant docket because of the number of unrepresented litigants involved. The Administrative Office of the Courts ("AOC") reports that 16.6% of landlords and 98.8% of tenants appeared without representation in 2019. Email from Mark Davies, Chief, Quantitative Research Unit, AOC, to Catherine Weiss, Lowenstein Sandler (May 17, 2021). Because unrepresented litigants are particularly in need of information about their rights, assistance in exercising these rights, and patience as they work to comply with technical procedural rules, these comments focus particularly on suggestions to ensure their needs are met to the greatest possible extent.

Avoiding the mass displacement of neighborhoods and communities in New Jersey is also a racial justice issue. Communities of color have disproportionately faced both the health effects and the economic consequences of the pandemic. "Black people have had less confidence in their ability to pay rent and are dying at 2.1 times the rate of non-Hispanic whites. Indigenous Americans and Hispanic/Latinx people face an infection rate almost 3 times the rate of non-Hispanic whites. Disproportionate rates of both COVID-19 and eviction in communities of color compound negative health effects and make eviction prevention a critical intervention to address racial health inequity." Emily A. Benfer *et al.*, *Eviction, Health Inequity, and the Spread of COVID-19: Housing Policy as a Primary Pandemic Mitigation Strategy* 2, Journal of Urban Health (2020). While many factors contribute to these disparities, the racial wealth gap is a primary factor, and one that often reveals itself prominently in housing. *See generally* Dr. Keeanga-Yamahtta Taylor, *Race for Profit: How Banks and the Real Estate Industry Undermined Black Homeownership* (2019). In New Jersey, the racial wealth gap is among the starkest in the nation: "[T]he median net worth for white families is $352,000—the highest in the nation. But for New Jersey's Black and Latina/Latino families, it is just $6,100 and $7,300, respectively." New Jersey Institute for Social Justice, *Erasing New Jersey's Red Lines, Reducing the Racial Wealth Gap Through Homeownership and Investment in Communities of*

Color at 5-6 (2020). As a result, for most Black and Hispanic New Jersey residents, owning a home is simply out of reach.[1] Recognizing the particular harms of mass eviction to communities of color, the Court has made improving the landlord-tenant process one pillar of its public commitment to equal justice. N.J. Judiciary, *Commitment to Eliminating Barriers to Equal Justice: Immediate Action Items and Ongoing Efforts* at 3-4 (2020).

The coalition is grateful to be part of this larger effort. In that vein, we ***support*** many of the Recommendations of the Special Committee, including those that require enhanced initial review of filings, submission of a landlord's prima facie proofs prior to trial, and the elimination of a de facto rule requiring deposit of the full amount of rent owed as a condition of raising a habitability defense. We also propose further changes to the Recommendations that we believe will help achieve the goals outlined by the Committee, including additional assistance for parties who need support with technology to access virtual proceedings.

Respectfully, we ***oppose*** three Recommendations that we believe, as currently conceived, do not further fairness in the landlord-tenant process. Specifically, we suggest: substituting an alternative, comprehensive Tenant Case Information Statement (TCIS) (Recommendation 2); revising court forms to eliminate settlement terms that result in the immediate entry of a judgment for possession (Recommendation 9); and leaving in place the status quo, under which tenants are not required to deposit rent to obtain an adjournment in cases where no habitability defense is raised (Recommendation 15).

Below is a detailed explanation of these positions, for each of the Special Committee's Recommendations.

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[1] Stephen Stirling, *Black and Hispanic N.J. residents less likely to own homes following housing crisis, U.S. Census reveals*, N.J. Advance Media, Nov. 26, 2011 (reporting 2010 Census data); *see also* Tim Evans, The Black-White Homeownership Gap in New Jersey, N.J. Future (Sept. 2020) (reporting 2018 American Community Survey data showing that "[i]n New Jersey, 76.9 percent of non-Hispanic white households own their home, compared to only 41.0 percent of Black households"); National Association of Hispanic Real Estate Professionals, 2019 State of Hispanic Homeownership Report 9 (reporting 2018 American Community Survey data showing that in New Jersey, 36.86 percent of Hispanic households own their home).

ANALYSIS

Recommendation 1:

Landlords should be required to submit a Landlord Case Information Statement (LCIS). That LCIS would capture pertinent information and would support case management and efficient, early review by staff.

Overview: The coalition ***supports*** the concept of the LCIS, which will assist the court in assessing filings for legal sufficiency and collecting important data on landlord-tenant disputes. To ensure that these goals are met, however, we propose both procedural and substantive amendments.

Procedural Amendments:

1. ***Clarify what consequences follow if a landlord does not file the LCIS.***

The Report suggests that the LCIS is mandatory, including for the cases now pending on the landlord-tenant docket. The coalition supports the mandate, but recommends further clarifications of how the process will work.

   a. ***For represented landlords, the LCIS for pending cases should be filed on sufficient notice from the Court, and the LCIS for new cases should be filed in conjunction with the complaint. Court staff should allow represented landlords at least one opportunity to cure if they fail to file the LCIS as directed. Then, the case should be dismissed on notice to the parties.***

The Report leaves unclear what will happen if a landlord does not file the LCIS as directed except to say, "A case management conference would not be scheduled until the LCIS is filed." Rep. at 8. While we agree that a case management conference should not be set until a represented landlord has filed an LCIS, the case should not linger indefinitely on the docket if the landlord fails to file. We therefore recommend that the court staff who will review complaints in accordance with Recommendation 3 give the landlord at least one opportunity to cure by filing a missing LCIS. If a represented landlord still does not file the form by a specified deadline, the case should be dismissed on notice to the parties, and the Report and Landlord Tenant Procedures Form should be revised to make this consequence clear.

   b. ***Unrepresented landlords should be permitted to file the LCIS at the initial case management conference if they do not file it in advance.***

For unrepresented landlords (roughly 17% according to AOC staff), we recommend that the court staff who will review initial filings in accordance with Recommendation 3 seek an LCIS, but if none is forthcoming, rely on the complaint and its attachments to assess the case and set the initial conference. The unrepresented landlord could then complete the LCIS either at or just before that conference, with the help of the Landlord Tenant Legal Specialist or the Ombudsman's Office, as appropriate and available. Unrepresented parties may have questions

about how to complete the LCIS (or TCIS), and court staff may be able to help explain the form. Moreover, the pretrial appearances built into the new process are critical to its functioning; allowing litigants to skip them because an unrepresented party has difficulty completing a case information statement would undermine the process, nor should a case be dismissed on this basis.

2. ***Exclude information in the LCIS from admission in evidence or other use at trial.***

The Report provides, "Statements on the LCIS might be admissible as evidence in the instant case or a related proceeding." Rep. at 9. We recommend a different course. The standard Civil Case Information Statement includes this sentence, in bold: "The Information Provided on this Form Cannot Be Introduced into Evidence." *See* https://www.njcourts.gov/forms/10517.pdf. We suggest that the Court follow the same rule here. Litigants, especially unrepresented ones, may make mistakes of both law and fact, or omit relevant information. Pretrial landlord-tenant proceedings will go best if the litigants are free to complete the case information statements, and to discuss their causes of action and defenses with the Landlord Tenant Legal Specialist and other court staff, without fear that what they say may be used against them at trial.

Moreover, making the LCIS admissible is unnecessary. The form Landlord Tenant Complaint already requires landlords to verify the pleading. This verification offers some protection from misstatement. The case information statements need not, and we think should not, raise the stakes by making information there admissible in evidence. We suggest, therefore, that these forms include the same evidentiary exclusion highlighted in the civil case information statement. In addition, statements in the LCIS should not be admissible for the purpose of impeachment and should not be the basis for an argument that the landlord has waived a claim. The complaint, and not the LCIS, is the pleading that states (or waives) the landlord's claims.

Substantive Amendments:

We append as Exhibit A the LCIS with comments explaining the revisions we propose. Some of these revisions are simple clarifications. We mention here only those that are substantive in nature:

3. ***Seek information related to CARES Act compliance.***

While many view the tenant protections in the CARES Act as having expired, this is not the case. Certain protections survive.

- The CARES Act prohibited covered landlords from collecting "fees, penalties, or other charges to the tenant related to . . . nonpayment of rent" during the eviction moratorium of March 27 to July 24, 2020. 15 U.S.C. § 9058(b)(2). As HUD has made clear, "fees and charges the CARES Act prohibits from assessment during the moratorium may not be imposed after the moratorium ends on an accrued and delayed basis." HUD Notice H 20-07 at 2 (July 1, 2020). Thus, a covered landlord may not, at any time, collect fees associated with a tenant's nonpayment of rent during the period from March 27 to July 24, 2020.

- Likewise, the CARES Act banned the collection of "late fees, penalties, or other charges to a tenant . . . for late payment of rent" during any period in which a covered multifamily landlord is receiving federal mortgage forbearance. 15 U.S.C. § 9057(d)(2); *see also id.* § 9057(f)(2) (defining multifamily landlords as those who own five or more units). The "covered period" for requesting forbearance under the Act ended on December 31, 2020. *Id.* § 9057(f)(5). However, the federal mortgagors have extended protections for tenants beyond that date by way of their contracts with borrowers seeking forbearance. *See, e.g.*, HUD Notice H 20-07 at 4 (adding loan condition that, "[d]uring the owner/borrower's forbearance period, during the borrower's repayment period following the forbearance and until the borrower has repaid all forborne amounts, the borrower must not charge tenants late fees or penalties due to late or missed rent payments"); Federal Housing Finance Agency, *FHFA Extends COVID-19 Multifamily Forbearance through June 30, 2021* (March 4, 2021) ("FHFA Release") (providing that Fannie Mae and Freddie Mac borrowers may "not charg[e] tenants late fees or penalties for nonpayment of rent" during repayment periods following mortgage forbearance). Thus, covered multifamily landlords may not at any time charge fees associated with a tenant's nonpayment of rent during a period of federal mortgage forbearance and repayment.
- During these same forbearance and repayment periods, covered multifamily landlords may not "evict or initiate the eviction of a tenant . . . solely for nonpayment of rent or other fees or charges." *Id.* § 9057(d)(1); HUD Notice H 20-07 at 3 (adding protection from eviction to HUD mortgage forbearance contracts); FHFA Release (same for FHFA mortgage forbearance contracts).

Despite these ongoing federal protections, the Report does not propose any inquiry to determine whether covered landlords are in compliance with the CARES Act. Nor does the Court's existing CARES Act Compliance Certification make any such inquiry; the Certification asks only for a sworn statement that a landlord is *not* covered.

The coalition therefore recommends amendments to either the existing CARES Act Compliance Certification or the proposed LCIS to capture further information about CARES Act compliance. It might make more sense to amend the CARES Act Certification, as this is a separate document that can be eliminated when the CARES Act protections in fact expire, whereas the LCIS is meant to be in use indefinitely. Either way, the missing information is necessary to determine the periods during which covered landlords were prohibited from filing eviction actions for nonpayment of rent. The missing information is also necessary to ensure that covered landlords are not making fee demands based on a tenant's nonpayment of rent during periods when the moratorium or forbearance periods were or are in effect.

If the Court decides to seek the information about CARES Act compliance through the LCIS, the coalition suggests adding the following text (additions are underlined):

☐ Rental property is not a covered property under the Federal CARES Act, 15 U.S.C.S. §§ 9057(f), 9058(a). CARES Act Certification is attached.

☐ Rental property is a covered property under the Federal CARES Act, 15 U.S.C.S. § 9058(a), and:
  ☐ This eviction action does not seek fees, penalties, or other charges related to the tenant's nonpayment of rent between March 27 and July 24, 2020.

☐ Rental property is a covered multifamily property under the Federal CARES Act, 15 U.S.C.S. § 9057(f), and:
  ☐ This eviction action was not filed during a period when landlord was receiving or repaying federal mortgage forbearance.
  ☐ This eviction action does not seek fees or penalties related to the tenant's nonpayment of rent during a period when landlord was receiving or repaying federal mortgage forbearance.

4. ***Add a check-box to reveal whether the property is excepted from the Anti-Eviction Act.***

The Anti-Eviction Act, N.J.S.A. 2A:18-61.1, has an important exception: it does not cover "owner-occupied premises with not more than two rental units." The proposed LCIS includes causes of action on its second page that apply to exempted landlords pursuant to N.J.S.A. 2A:10-53 *et seq.* But the draft LCIS does not ask on the first page whether the premises fall under the exemption. We therefore recommend adding a checkbox as follows: ☐ Plaintiff/landlord lives on the premises, which contain two or fewer rental units (in addition to the landlord's unit).

5. ***Add a checkbox to reveal whether the landlord must be represented by counsel under Rule 6:10.***

Rule 6:10 prohibits most business entities from "appearances and filing of court papers" in eviction proceedings unless they are represented by counsel. *R.* 6:10; *see also R.* 1:21(c). On their face, these Rules require representation to file or appear. The LCIS should inquire whether a landlord is in compliance. We therefore recommend adding a checkbox as follows:
☐ Plaintiff/landlord is a business entity, other than a sole proprietorship or general partnership, and is represented by counsel in accordance with Rule 6:10.

6. ***Specify all distinct causes of action under N.J.S.A. 2A:18-61.1(g).***

The second page of the proposed LCIS outlines the causes of action under the Anti-Eviction Act. One section of the Act, however, actually contains four distinct causes of action. *See* N.J.S.A. 2A:18-61.1(g). The current LCIS describes this section as pertaining to actions in which the landlord intends to "Demolish/Board Up Premises." Rep. at 35. But that language describes only subsection (1) of section (g). We therefore recommend that the text describing subsection (g) be amended as follows (additions are underlined):

7	Demolish/Board Up Premises	N.J.S.A. 2A:18-61.1(g)(1)
8	Comply with Substantial Code Citations	N.J.S.A. 2A:18-61.1(g)(2)
9	Correct Illegal Occupancy	N.J.S.A. 2A:18-61.1(g)(3)
10	Blight Clearance by Government Agency	N.J.S.A. 2A:18-61.1(g)(4)

Subsequent causes of action would need to be renumbered sequentially.[2]

7. ***Make further amendments as reflected in Exhibit A.***

Recommendation 2:
Tenants should complete a Tenant Case Information Statement (TCIS).

Overview: The coalition ***supports*** the concept of the TCIS, which will give tenants a more consistent opportunity to learn about and assert their defenses to an eviction action. As written, however, the Recommendation falls short of fully accomplishing its intended goals. The coalition therefore ***opposes*** the TCIS in its current form. Below, we suggest significant procedural and substantive amendments.

Procedural Amendments:

1. ***Ask the tenant to complete a TCIS only after the court's legal staff has reviewed the complaint for filing deficiencies and given the landlord an opportunity to cure as provided in Recommendation 3.***

The landlord bears the burden of proof in an eviction action. *Hale v. Farrakhan*, 390 N.J. Super. 335, 341 (App. Div. 2007) ("In holding that a landlord has the burden of proof regarding any disputed fact relevant to 'good cause' grounds for eviction under N.J.S.A. 2A:18–61.1, we relied not only upon the language of this section but also the fact that the landlord has superior access to relevant information."). Moreover, a landlord may not compel testimony from a tenant until the landlord has made a *prima facie* case. *Chase Manhattan Mortg. Corp. v. Hunt*, 364 N.J. Super. 587 (Law Div. Essex Cnty. 2003) (Fast, J.) (citing N.J.S.A. 2A:81-6). It makes sense, therefore, to ask a tenant to assert potential defenses only once court staff have reviewed the landlord's complaint "for jurisdictional allegations and filing deficiencies" and given the landlord "an opportunity to cure," as proposed in Recommendation 3. Rep. at 10. A landlord's failure to file an LCIS would be treated as described in the comments on Recommendation 1, above.

2. ***As with information in the LCIS, exclude information in the TCIS from admission in evidence or other use at trial.***

Just as landlords (especially the 17% who are unrepresented) may make mistakes in initial filings, tenants (especially the 99% who are unrepresented) may make inadvertent admissions or omissions in the TCIS. Excluding information on the forms from admission into evidence will better protect the parties in providing full information to the court, which will advance the goals of facilitating the fair assessment and resolution of cases before trial. For the same reasons, information in the TCIS should not be used for the purpose of impeachment or to support an argument that the tenant has waived any defense.

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[2] For the sake of brevity, the causes of action under subsection (l) of the Act could be collapsed as follows: "Personal Occupancy by Owner or Purchaser of Unit in Certain Premises."

3. ***Give unrepresented tenants (like unrepresented landlords) an opportunity to complete the TCIS just before or during the initial case management conference if they have not submitted it earlier.***

The coalition appreciates that the Committee has proposed to make the TCIS optional when the new system is launched. We favor keeping the TCIS optional, but even if it becomes mandatory, we suggest that unrepresented tenants, like unrepresented landlords, have an opportunity to complete the form at or just before the initial case management conference, with the assistance of the Landlord Tenant Legal Specialist or the Ombudsman's Office, as appropriate and available. The reasoning outlined above for unrepresented landlords applies as well to unrepresented tenants. They may need help understanding and completing the form. And pretrial conferences should not be sacrificed if unrepresented parties cannot or do not submit the form in advance. The result of skipping pretrial conferences could be a reversion to the present system, where unrepresented parties show up on the trial date with little understanding of either the process or the law. Pretrial opportunities to direct the parties to counsel and to potential sources of rental assistance would also be lost. Thus, it is preferable to schedule the first case management conference and permit unrepresented parties to complete the case information statements at or just before this conference if they have not done so earlier.

Substantive Amendments:

4. ***Adopt a more comprehensive alternative TCIS.***

The TCIS included as Attachment B to the draft Report has the virtue of brevity and relative simplicity. These are real benefits given that unrepresented tenants will be the primary users of the form. In the service of keeping the form simple, however, the proposed draft denies tenants important information about their potential defenses.

On balance, we believe the benefits of a more comprehensive form outweigh the risk that such a form will overwhelm unrepresented tenants. We outline below some of the factors that support the use of an alternative form.

- **Helping to fill the information gap** – In our experience representing low-income tenants, a core recurring problem is that they do not know what defenses are available to them when they face an eviction complaint. While small print at the top of the proposed form suggests that tenants refer to online resources, the majority of low-income tenants own only one electronic device, a cell phone, and some lack even that. Searching and reading online resources is difficult on a cell phone and impossible without one. The paper documents the court sends to tenants will often be the only information they actually can and do read. It is therefore critical that the paper documents include essential information, such as available defenses. The coalition proposes an alternative TCIS, which is attached to these comments as Exhibit B. This version of the TCIS outlines a broader range of possible defenses, stated as simply as possible.

- **Striving toward parity between landlords and tenants** – Unlike the draft TCIS, the draft Landlord Case Information Statement (Attachment A to the Report, with an alternative version attached as Exhibit A to these comments) includes a second page listing the grounds for eviction under the Anti-Eviction Act, N.J.S.A. 2A:18-61.1, as well as other grounds under N.J.S.A. 2A:18-53. The form thus assists landlords, approximately 83% of whom do have lawyers, in identifying potential legal bases for their complaints. The coalition supports offering this kind of assistance to landlords in the LCIS, but believes the Court should in fairness offer comparable guidance to tenants.

- **Putting landlords on notice of more defenses** – As the Report recognizes, requiring the parties to complete the LCIS and TCIS enables the exchange of information early in the process. Rep. at 9-10. A more comprehensive TCIS would allow tenants to identify defenses with more particularity, thereby putting the landlord on notice of potential defenses early in the process. Early notice will allow the landlord to prepare a response and may provide a basis for resolving the case before trial.

- **Maintaining the neutrality of Landlord-Tenant Legal Specialists (LTLSs)** – As we understand the role of the LTLSs, they are to act as "impartial facilitators of court processes," Rep. at 13, and may not offer legal advice to any party. This makes sense for members of the judiciary staff whose job is to help assess and assist parties in resolving landlord-tenant disputes. The LTLS may not take sides and may not appear to be doing so. The draft Case Management Conference Information Sheet (Attachment C to the Report), however, includes many potential defenses that are nowhere listed in the materials supplied to the tenants. As noted above, we consider it appropriate for the LTLS or other court staff to assist unrepresented litigants in completing their respective CISs. It seems more problematic, however, for the LTLS to run through potential defenses with tenants who have not before seen or heard of such defenses because they are not included in the current TCIS. An LTLS might appear to be showing favoritism if he or she were responsible for introducing tenants to defenses not otherwise presented to or described for them.

We therefore support the substitution of an alternative TCIS, attached as Exhibit B, in place of the one currently appended to the Report.

Recommendation 3:

The Judiciary should implement a process for enhanced, initial review of landlord tenant complaints. The Judiciary would commit additional resources to support this process.

Overview: The coalition ***supports*** this Recommendation. In particular, we support enhanced review by court staff to ensure the legal sufficiency of filings, and we appreciate the Report's emphasis on the limitations of this review, such that parties would remain free to raise "any issues—including as to jurisdiction or other potential factual disputes—before or at trial." Rep. at 10. As suggested above, we recommend that the initial review of the complaint and its attachments, and the landlord's opportunity to cure this filing, precede the point at which a tenant is asked to complete a TCIS. The tenant should have no obligation to identify potential defenses if the initial filing remains legally insufficient after an opportunity to cure.

Further Amendments:

1. ***Clarify how and what checklists are to be used in initial case screening.***

Recommendation 3 refers to a "prescribed checklist" that staff will use to review filings. Rep. at 10. We are unsure, but we assume this checklist is Attachment C to the Report, the Case Management Conference Information Sheet. Rep. at 37. We assume further that court staff may fill in some of the information on this form during initial case review while leaving other fields to be completed during case management conferences, when additional documents will be available in accordance with Recommendation 6. If these assumptions are incorrect, we suggest clarifying how court staff engaged in initial review and then in case management conferences will use the Case Management Conference Information Sheet or other checklists.

2. ***Incorporate a separate section on fee demands in the Case Management Conference Information Sheet.***

Our only substantive recommendation on Exhibit C is to incorporate a separate section on fee demands. In our extensive collective experience representing low-income tenants, improper fee demands are among the most common problems we see. Landlords frequently seek fees when the law does not authorize their collection through an eviction action. The case law requires a written lease to support a fee demand. *Cmty. Realty Mgmt., Inc. v. Harris*, 155 N.J. 212, 234 (1998) ("The *written* lease, however, must expressly permit a landlord to recover reasonable attorneys' fees and damages in a summary dispossess proceeding before a landlord/tenant court may consider those expenses as additional rent.") (emphasis added). Moreover, the lease must explicitly designate fees as additional rent. *Id.* at 242 ("A landlord is not entitled to evict based upon failure to pay any attorneys' fees, costs or late charges unless there is a lease provision which states that such fees are collectible as rent."); *Hodges v. Sasil Corp.*, 189 *N.J.* 210, 221 (2007) (same). Moreover, landlords may not use eviction actions to collect fees from subsidized tenants whose rent is set as a portion of their income. *Harris*, 155 N.J. at 233; *Hous. Auth. & Urban Redev. Agency v. Taylor*, 171 N.J. 580 (2002); *Hodges*, 189 N.J. at 222; *see also 175 Executive House, L.L.C. v. Miles*, 449 N.J. Super. 197, 207 (App. Div. 2017) (same, for state S-RAP program). Nor may landlords seek fees in an eviction action when the demand would increase the rent above an applicable rent-control limit. *Ivy Hill Apartments v. Sidisin*, 258 N.J. Super. 19, 22-23 (App. Div. 1992); *Hudson View Gardens, LLC v. Reyes*, 2008 WL 4648246, at *7-8 (N.J. Super. App. Div. Oct. 15, 2008); *Opex Realty Mgmt. v. Taylor*, 460 N.J. Super. 287 (Law Div., Essex County, Spec. Civ. Part 2019). Moreover, as discussed above, the federal CARES Act limits the collection of fees in certain circumstances. 15 U.S.C. §§ 9057(d)(2), 9058(b)(2). Given the body of law on this subject, we feel strongly that the Case Management Conference Information Sheet should highlight this problem for the court staff reviewing the filing. We propose that this text be added to the form:

☐ **Fees Are Improper --**
- ☐ There is no written lease.
- ☐ Tenant contests validity of lease landlord has presented.

- ☐ The written lease does not say that fees are "additional rent."
- ☐ The tenancy is subsidized, and the tenant's portion of the rent is fixed as a percentage of their income; therefore, the landlord may not collect fees through an eviction action.
- ☐ The property is rent-controlled, and fees would increase the rent above the maximum allowable amount.
- ☐ The property is covered by the CARES Act, and the complaint asks for fees related to unpaid rent between March 27 and July 24, 2020.
- ☐ The multifamily property is covered by the CARES Act, and the complaint asks for fees related to unpaid rent while the landlord was receiving or repaying federal mortgage forbearance.

Recommendation 4:

The Judiciary should expand opportunities for resolving landlord tenant cases before trial by establishing a Landlord Tenant Legal Specialist (LTLS) Program. The program would include trained legal staff to conduct required case management conferences, confidential settlement conferences, and other administrative functions that support judicial functions.

Overview: The Coalition ***supports*** this Recommendation. The LTLSs are an essential component in the implementation of the Special Committee's Recommendations. As such, and given the expected volume of cases to be adjudicated, it is of particular importance that the LTLS training be thorough, accurate, and balanced in the area of landlord-tenant law, as well as uniform across vicinages. The training should also reinforce the Report's caution that LTLSs are not authorized "to make final decisions or to enter orders or judgments." Rep. at 12. To assist in developing the best possible training curriculum, we recommend that both tenant and landlord advocates be given an opportunity to review and comment on training materials for the LTLS Program. Recognizing the diverse population of the state, the LTLSs should also receive training and specific guidelines that enable them to offer meaningful assistance to litigants with disabilities or limited English proficiency.

Recommendation 5:

All landlord tenant cases should be scheduled for required case management conferences. LT legal specialists should conduct these required conferences in a virtual format to the greatest extent possible. At the conference, the LTLS would solicit information about the case, reduce to writing asserted claims and defenses, and refer parties to available rental assistance and legal resources. The LTLS also would facilitate the parties in proceeding immediately to a settlement conference whenever possible.

Overview: The coalition ***supports*** this Recommendation. Pretrial review and case management are at the heart of the reimagined system. As the Report notes, this proposal will promote fairness, efficiency, and pretrial resolution in the presence of a neutral arbiter. In particular, we commend the committee for recommending that the Court take steps to narrow the digital divide for litigants, including by allowing them to use on-site technology rooms in the courthouses and permitting some in-person and hybrid conferences. Rep. at 13; *see also* Comments on Recommendation 11 for further suggestions on use of technology.

Our suggestions on the Case Management Conference Information Sheet are above, in comments on the previous Recommendation.

Further Amendments:

1. ***Give litigants time to seek counsel and/or rental assistance.***

We propose that the Court make clear that the parties will not be expected or pressured to "proceed[] immediately to a settlement conference," Rep. at 12, in cases where either or both litigants are unrepresented and need time to follow up on the LTLS's referrals to counsel. An immediate transition to settlement is also inappropriate where a tenant has a soon-to-be-filed or pending application for rental assistance and needs time to learn whether financial support will help cover any arrears. In these circumstances, we suggest that the Recommendation clarify that the LTLSs should permit the parties to adjourn and return within the two-week period contemplated for any possible second case management conference. *See* Rep. Attachment Q. As the new reforms take hold, the Court might consider the kinds of partnerships that other state courts have developed to make successful referrals for legal and rental assistance. *See, e.g.*, NYU Furman Center, Local Housing Solutions, *Eviction Prevention Programs* (2021).

2. ***Ensure the presence of a neutral settlor when any party is unrepresented.***

This Court has recognized that unmonitored and unrecorded conversations between a landlord's attorney and an unrepresented tenant "raise ethical and public policy concerns." *Harris*, 155 N.J. at 241. Coalition members have extensive experience assisting tenants who agreed to settlements that were unfair or unjustified after negotiating directly with the landlord's attorney. Given this long and troubling history of settlement conversations between unrepresented tenants and landlords' lawyers, the coalition strongly recommends that the Court require the presence of neutral settlors at settlement conferences when either party is unrepresented, and permit represented parties to proceed independently only when both agree to do so.

3. ***Ensure the availability of interpreters.***

To enable the participation of litigants with limited English proficiency, the courts will need to make interpreters available for mandatory case management and settlement conferences.

Recommendation 6:

The landlord should be required to submit a copy of the lease, the landlord's registration statement (if applicable), and a certification of the landlord's lease and registration statement before the case management conference.

Overview: The coalition ***supports*** this Recommendation. The documents requested are critical. The registration statement is necessary to confirm that the court has the statutory authority to enter a judgment for possession under N.J.S.A. 46:8-33. The lease is necessary to support the claims made in the complaint, including claims for base rent, fees, and lease violations. Because the applicable terms of a written lease continue to govern the tenancy even after the lease term has expired and the tenancy has been converted to month-to-month, *Heyman v. Bishop*, 15 N.J.

Super. 266, 269 (App. Div. 1951), the landlord should produce any written lease, whether expired or not, that has not been replaced by a new lease.

Further Amendment:

1. ***Require the landlord to submit a rent control registration statement if the property is subject to a rent control ordinance that requires such statements.***

If the property is subject to a municipal rent-control ordinance, we request that the landlord also be required to submit a rent control registration statement in jurisdictions that require such statements. *E.g.*, Newark Ordinances § 19:2-9.8; Jersey City Ordinances § 260-2; Edison Ordinances § 17-2.3. The burden on the landlord of supplying this document should be slight, as the landlord must file it with the municipality in any event and can retain a copy. On the other hand, the benefits to the landlord-tenant process are significant. Review of the rent registration statement would help establish whether the base rent designated in the lease is the legal rent, whether any rent increase was authorized, and whether any fees demanded would increase the rent above the allowable limit. The Report notes that one goal of the requirement that documents be submitted is "to confirm . . . the amount of monthly rent." Rep. at 14. For properties in rent-controlled jurisdictions, a rent registration statement is critical to this goal. If the Court decides to require submission of a rent registration form (where applicable), this requirement would need to be added to appropriate forms, as indicated in the markups of these forms we append to these comments.

The Court may also want to acknowledge in Recommendation 6 that not all leases are written, and that the landlord must submit the lease only if it is in writing.

Recommendation 7:

Case management conferences should provide benefits to both parties, including options to connect with rental assistance and legal resources. Non-appearance by a party at the required case management conference should have a consequence. At least initially, however, the consequence would not be dispositive.

- **Landlords and tenants should have incentives to appear at the required case management conference. Among other benefits, parties should have the opportunity to receive information from the LTLS, to share or update information for the case file, to resolve the case when practicable, and to connect with rental assistance, legal, and other resources.**

- **Initially, the consequence for a failure of either party to appear for a case management conference should be a rescheduled conference. The consequence for a failure of either party to appear at the rescheduled conference should be a default for a tenant or dismissal for a landlord.**

- **If one or both parties fail to appear for the scheduled case management conference, a trial notice should be sent (by mail and electronically) to all parties and attorneys.**

Parties should have the opportunity to appear on the trial date irrespective of a prior non-appearance.

- **In instances of default entry, applications for entry of judgment for possession may be filed prior to the trial date but should be entertained by the court no sooner than the trial date.**

Overview: The coalition ***supports*** Recommendation 7 and commends the Special Committee for its fairness, parity, and leniency in implementing consequences for failure to attend required case management conferences.

Further Amendments:

1. ***Mark cases for default/dismissal on the trial date, but do not dismiss or default based on a party's failure to appear at case management conferences.***

The coalition is concerned about the possibility of confusion for parties who receive notice that the matter has been dismissed or defaulted, followed by a second notice setting a trial date. We fear that unrepresented parties in particular may not understand the need to show up for trial once they have received a default or dismissal notice. We note further that the system proposed in Recommendation 7 imposes administrative burdens on the courts by requiring the entry of defaults and dismissals that would later be subject to automatic vacatur or reinstatement if the parties appeared on the trial date.

We recommend instead that the consequence for a party's failure to appear at a second scheduled case management conference should be that the case is *marked* for dismissal or entry of a default judgment on the trial date. Notices to the parties might then include this clarifying language in bold text: For landlord's non-appearance – **"Because of the landlord's failure to appear at scheduled case management conferences, this case has been marked for dismissal on the trial date. A landlord may avoid dismissal by appearing at trial. The tenant must also appear at trial to avoid a default judgment."** For tenant's non-appearance – **"Because of the tenant's failure to appear at scheduled case management conferences, this case has been marked for entry of a default judgment on the trial date. A tenant may avoid a default judgment by appearing at trial. The landlord must also appear at trial to avoid dismissal."** If there are separate trial notices, we recommend similar language in such notices.

2. ***Allow more time for mailings.***

Further, the coalition expresses concern regarding the recommended 10-day timeline for mailing notice of case management conferences, given ongoing delays in the United States Postal Service. In particular, we have concerns that those notices returned as undeliverable will not arrive back at the courthouse before the conference is held. Accordingly, the coalition recommends that mailed notices of case management conferences (and all mailings suggested in the Report) be sent *at least* 14 days before the scheduled event.

Recommendation 8:

In addition to case management conferences, the LTLS would also conduct settlement conferences, which could immediately follow a case management conference and generally would be conducted virtually. LTLS authority to review settlement agreements would be limited to: (1) cases with represented tenants; (2) commercial cases; and (3) cases where the parties enter settlement agreements without Consent Judgments for possession. All settlement agreements reviewed by an LTLS would be presented to the court for final review before entry of judgment.

Overview: The coalition **supports** this Recommendation. Settlements have always been an integral part of landlord-tenant practice, and this Recommendation (along with others) will help restore some fairness to the sometimes imbalanced negotiations between unrepresented tenants and landlords' lawyers that have long characterized the process. Scheduled settlement conferences in the presence of a trained LTLS represent a significant improvement over current practices. Moreover, the Report identifies cases in which it is appropriate for an LTLS to review negotiated agreements, including in commercial cases, cases where both parties are represented, and cases where no consent judgment is entered at the time of settlement. Rep. at 18. In keeping with the exclusive authority of judges to enter judgments, the Report notes that a judge will review the settlement and the certification of a breach before entering a judgment in the event of an eventual breach. *Id.* at 18 n.5.

Further Amendments:

1. ***Refer again for legal assistance and rental assistance.***

Evidence shows that represented tenants are far more likely to avoid eviction than unrepresented tenants.[3] The coalition therefore supports making referrals for legal and rental assistance, both orally and in writing, at multiple points throughout the process, including at settlement conferences.

2. ***Require that parties with settlement authority attend or make themselves available.***

The settlement process should not be impeded or slowed by the absence or unreachability of parties with settlement authority. In the past, landlords' lawyers frequently appeared on trial dates without their clients and without a reliable means to reach their clients. This has made settlement negotiations challenging, unless tenants agree to the landlord's unilateral, pre-

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[3] *See, e.g.*, Carroll Seron et al., *The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City's Housing Court: Results of a Randomized Experiment*, 35 L. & Soc'y Rev. 419 (2001) (randomized study showing that "only 22% of represented tenants had final judgments against them, compared with 51% of tenants without legal representation); D. James Greiner et al., *The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future*, 126 Harv. L. Rev. 901 (2013) (randomized study showing that two-thirds of tenants who received full legal assistance retained possession of their units, compared to only one-third of tenant who received limited advice).

determined terms. We therefore urge the Court to insist that in this context, as in settlement conferences in general, parties with settlement authority must be present or reliably available.

3. ***Read settlement terms aloud and confirm each party's understanding of, and agreement to, those terms.***

When settlement conferences are virtual, and the parties are participating by cell phone or other device without the ability to read a clear copy of the settlement before they agree to its terms, we strongly recommend that the LTLS or other trained settlor read each operative term aloud and confirm the parties' understanding of and consent to the term before moving on to the next term. This should be a mandatory part of placing settlements on the record "as a substitute for obtaining the signatures of parties on a written document." Rep. at 19. Otherwise, parties (especially those without lawyers) may not understand the terms they are agreeing to, with the result that they may fail to comply and face an eviction that might have been avoided. In certain cases, tenants may later move to undo their agreements, thus straining the same judicial resources that settlement conferences were in part intended to preserve. We believe it is well worth the time it will take to read terms aloud to ensure that parties proceeding virtually understand the agreement before it is filed. As stated in the Report, the final written settlement agreement should also be promptly provided to the parties, so that each party can ensure the accuracy of the terms. Rep. at 19.

Recommendation 9:

Appendix XI-V "Consent to Enter Judgment (Tenant Remains)" should be revised to allow for selection by the parties of one of two options: (1) immediate entry of judgment for possession; or, alternatively, (2) entry of the judgment only after receipt of the landlord's certification of breach of the settlement, along with a date for automatic dismissal of the case if the landlord does not certify to such a breach.

Overview: The coalition ***opposes*** the proposed form as written. In particular, we urge the Court to remove the option of an immediate entry of a judgment for possession.

Further Amendments:

1. ***Remove the option of immediate entry of a judgment for possession, as shown in Exhibit D.***

As the Court's Report and other Recommendations make clear, entry of a judgment for possession causes harm to tenants, both in the immediate term and going forward. The existence of a judgment on a tenant's rental record can impede the tenant's ability to find a new rental should they be required to move in the future, not just due to an eviction judgment, but also because of uninhabitable apartment conditions, the need for more space to accommodate expanding family size, the desire to seek a job opportunity, or other personal reasons. While the coalition applauds the added safety measure of setting a date by which such judgments would automatically be vacated, a judgment for possession will remain publicly accessible to landlords and data collectors at least for as long as the settlement remains active, *even if the tenant is in compliance with the agreement*. The repayment period under a settlement frequently lasts for

months and sometimes even for years, and settlement agreements in cases other than nonpayment of rent may require compliance with conditions for lengthy periods of time, or even for the duration of the rental.[4] Furthermore, even after the judgment is formally vacated, it may still appear on an outdated or otherwise incorrect report from a tenant-screening agency. While a tenant can request that the report be corrected, the process for doing so is byzantine, decentralized, and time-consuming. By the time the report is corrected, a prospective future landlord may have already rented the apartment to someone else. *See generally*, Lauren Kirchner, *What Can You Do if Your Tenant Background Report Is Wrong?*, The Markup, May 28, 2020.

In sum, the impact on a tenant of agreeing to the immediate entry of a judgment for possession is long-lasting and detrimental. In our experience, no tenant who fully understood the consequences of this option would voluntarily agree to it instead of a settlement that involves entry of a judgment only after a breach.

Conversely, there is no significant advantage to landlords warranting the option of an entry of a judgment for possession at settlement. At most, the delay between a certification of breach of a settlement and entry of a judgment for possession will postpone issuance of a warrant of removal by a matter of days. The possibility of shortening the eviction timeline by a few days does not outweigh the substantial and ongoing harm to the tenant if immediate judgment is entered. The Court should not include a settlement option in standard court forms that poses significant harm to one party without significant benefit to the other.

The coalition also notes that the practice of entering a judgment for possession contemporaneously with settlement is unique to landlord-tenant proceedings. In other civil matters, when parties settle a case, the matter is dismissed. If there is a breach, the non-breaching party is free to reopen the matter, or it can file an action to enforce the settlement.

2. ***Conduct on-the-record allocution of settlement terms for all settlements involving unrepresented parties that include a term for the immediate entry of a judgment for possession, whether the tenant is remaining in the property or vacating it.***

The parties are, as always, free to enter into a different settlement agreement, drafted without reliance on the Court's form. In that case, if the parties agree to the immediate entry of a judgment for possession, the settlement will be reviewed by the court, as outlined in Recommendations 8 and 10. However, in light of the serious and significant impact of immediate entry of a judgment, the coalition strongly encourages the Court to require that judicial review of such settlements—at least for unrepresented parties—include an on-the-record allocution of the settlement terms, ensuring that unrepresented tenants fully understand the terms to which they are agreeing. The coalition offers more on this in response to Recommendation 10.

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[4] We also have concerns about how the courts will process the vacating of judgments after their completion, in light of: (1) the volume of such settlements; and (2) the varying duration of settlement agreements.

Recommendation 10:

Rule 6:6-4 should be amended to clarify that a settlement agreement that provides for entry of judgment for possession against an unrepresented, residential tenant must be written, signed by the parties, and reviewed and approved by the court.

Overview: The coalition ***supports*** amending Rule 6:6-4 to apply only to unrepresented litigants, recognizing that the rights of the parties are appropriately protected when represented by counsel. As noted in response to Recommendation 9, however, the coalition does not support the view that only those settlements in which an unrepresented tenant agrees to both pay and vacate ("pay and go") warrant review in open court. Instead, the coalition urges the Court to require review in open court of all settlement agreements involving an unrepresented litigant that include a provision for the immediate entry of a judgment for possession.

Further Amendments:

1. ***Amend the Rule to require judicial review in open court of all settlements that call for the immediate entry of a judgment for possession against an unrepresented tenant, as shown in Exhibit E.***

The coalition proposes the following additional amendments to Rule 6:6-4:

6:6-4. Consent Judgments for Possession and Stipulations of Settlement, Residential Cases

(a) Entry by the Court. A stipulation of settlement or another agreement that provides for the immediate entry of a judgment for possession against an unrepresented tenant must be written, signed by the parties, and reviewed in open court, approved and signed by a judge on the day of the court proceeding., ~~but if it requires the unrepresented tenant to both pay rent and vacate the premises, the judge shall also review it in open court.~~ It must also be accompanied by the affidavit of the landlord and the certification of the landlord's attorney required by *R.* 6:6-3(b).

(b) Entry by the Clerk. When the tenant is represented by an attorney and the attorney has signed the agreement, the clerk may enter judgment for possession upon receipt of the signed consent of the parties and the affidavit of the landlord and the certification of the landlord's attorney specified in *R.* 6:6-3(b).

As discussed above, all judgments for possession pose negative consequences for tenants, potentially destabilizing the tenant's housing for years. As such, the Court has a responsibility to ensure that unrepresented tenants understand the full scope and potential consequences of these agreements.

The judiciary's responsibility to ensure fairness for unrepresented litigants has long been recognized,[5] including and especially when reviewing settlements.[6] Such a review is not only essential for ensuring agreements are just, it is ultimately a benefit to the entire system. Parties are less likely to comply with agreements they do not understand. The careful review of these agreements to ensure informed consent is likely to decrease the number of tenants who return to court later seeking relief from a settlement.

Recommendation 11:

After the conclusion of the moratorium on residential evictions and the resumption of all landlord tenant trials, trials should be conducted virtually whenever possible. Required settlement conferences should be scheduled on the trial date.

- **As in other high-volume dockets, trials should be scheduled in a remote format. The Judiciary should emphasize and encourage remote proceedings to the extent possible.**

- **As necessary, including to support individuals who require reasonable accommodations pursuant to the Americans with Disabilities Act, trials also could be conducted in a hybrid or in-person format.**

- **Required settlement conferences would be conducted by neutral settlors on the day of trial.**

Overview: The coalition ***supports*** the resumption of trials virtually with several reservations and a hope that as public health improves, the opportunities for in-person hearings will expand.

The coalition acknowledges the many benefits virtual proceedings can provide to landlords and tenants, that the proposal will generally lead to greater participation by all parties, and that the Judiciary's "remote first" strategy is best in the short-term as we continue through what we hope to be the last stages of the COVID-19 pandemic. Nevertheless, we are concerned that the Judiciary may be replacing crowded in-person "calendar calls" with virtual ones where access to and familiarity with technology will be crucial for the parties to participate effectively. The existence of technology rooms will help many parties, but some will not be familiar or comfortable enough to use technology even if it is available.

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[5] Rule 3.7 of the New Jersey Code of Judicial Conduct states, "A judge shall accord to every person who is legally interested in a proceeding, or to that person's lawyer, the right to be heard according to law or court rule." And the Comment to this Rule provides: "A judge may make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard."

[6] "When a settlement results in an order by the court, a judge should ensure that the settlement is not unduly one-sided before signing it. No reasonable questions can be raised about a judge's impartiality when the judge tries to ensure that any court order is not memorializing and implementing an injustice." Cynthia Gray, *Reaching out or Overreaching: Judicial Ethics and Self-Represented Litigants*, 27 J. Nat'l Ass'n Admin. L. Judiciary Iss. 1 (2007).

Further Amendments:

1. ***Limit virtual calendar calls to 25 cases or fewer.***

Our recommendation of 25 or fewer cases comes from hundreds of hours of observing the long waits associated with ongoing virtual proceedings. Observations of the ongoing landlord-tenant voluntary settlement conferences show that even with increased court staff and multiple settlors available, parties still must wait substantial periods, sometimes up to several hours, for their settlement conference to be conducted. Low-income tenants often use their cell phones—typically their only available device—and may rely on costly data plans and limited monthly minutes. These lengthy wait-times persist even though many landlords' attorneys are still meeting with unrepresented tenants outside of the formal settlement conference, without settlors; under the procedures outlined in the Report, this practice would rightly be limited in the future.

2. ***Shield from negative consequences those parties who try in good faith to connect to virtual conferences but cannot do so successfully.***

Coalition members who have observed virtual mediation sessions report that parties regularly login but still cannot participate effectively. Some are unable to connect to audio, turn on their camera, change their usernames to identify themselves, maintain a strong enough internet connection to use their audio and video simultaneously, or access a functioning microphone. Court staff in at least one vicinage have resorted to using white boards to communicate with litigants who cannot hear them and have usernames that do not permit the staff to identify them. In these cases, the court staff, if they get the parties' attention, have them call the court and the case is either rescheduled or the parties are asked to connect directly so that they can talk outside of court. If these types of situations arise in virtual case management conferences, parties with technological limitations or difficulties should not face negative consequences. Instead, the conference should be rescheduled as soon as possible, with serious consideration given to permitting the party with difficulties to appear in person.

3. ***Staff court technology rooms with personnel who are familiar with the technology and can assist litigants who are not familiar with it. These staff members should also be able to communicate with court staff at the trial if technological issues are affecting a party's ability to participate.***

The vicinage "technology rooms" are a welcome step towards narrowing the digital divide. But the digital divide is not simply a matter of access to technology but also of comfort levels in using technology. In order to be heard, both literally and figuratively, a litigant needs some knowledge of and comfort with the format in which the conference is taking place. Our low-income clients without tech knowledge—who disproportionately come from disadvantaged populations, such as seniors, people with certain disabilities, and populations with limited English proficiency—are often nervous and unsure about whether they are doing it right or being heard. Having technologically knowledgeable staff available in the tech rooms would allow all litigants, regardless of tech literacy, a fair opportunity to present their case. These staff could

also signal staff involved in the trial when tech issues in the courthouse are interfering with effective participation and assist litigants in requesting in-person appearances when appropriate.

4. ***Expand the option for in-person trials (and other appearances) when public health guidelines permit.***

Requests for in-person appearances should be increasingly accommodated as the public health improves.

5. ***Conduct settlement conferences with a neutral settlor unless both parties are represented and request to proceed independently.***

As described in the comments to Recommendation 5, above, the coalition strongly recommends that the Court require the presence of neutral settlors at settlement conferences when either party is unrepresented, and permit represented parties to proceed independently only when both agree to do so.

Recommendation 12:

The *Harris* Announcement should be improved. It should provide specific instructions about the trial and post-judgment process in plain language. The *Harris* announcement also should be updated to reflect virtual operations and recent legislative enactments.

Overview: The coalition ***supports*** the Committee's proposal to improve and update the *Harris* announcement to reflect the increased use of virtual operations and recent legislative changes. We urge the Judiciary to continue to seek innovative ways to deliver the *Harris* announcement on trial dates, make the statement more accessible and user-friendly on the court's website, and expand access to the *Harris* announcement for people with disabilities and/or limited English proficiency.

The coalition notes that the Court Rules prescribe multiple methods of delivery of the *Harris* announcement. Rule 6:5-2 provides:

> At the beginning of the calendar call and again at the end of the calendar call for latecomers, the judge presiding at the call shall provide instructions substantially conforming with the announcement contained in Appendix XI-S to these rules. Written copies of that announcement also shall be available to litigants in the courtroom. A videotape, prepared either by the Administrative Office of the Courts or by the vicinage, may be used for the second reading when the judge deems its use necessary. In those counties having a significant Spanish-speaking population, the announcement also shall be given in Spanish both orally and in writing; the oral presentation may be given by videotape or other audio-visual device or by the judge presiding at the call.

While we agree with the Special Committee that the court should use "appropriate discretion in how the *Harris* announcement is shared on the trial date," Rep. at 23, we read the Rule above to

ensure multiple delivery methods, including spoken and written, with due attention to language access.

Further Amendments:

1. ***The Harris video*** should be recorded on a virtual platform that offers spoken translations and subtitles in multiple languages to maximize language access. All video recordings should include an ASL (American Sign Language) Interpreter. The video should include functions that allow viewers to go back and replay sections or to stop and restart.

2. ***Links to the video and print versions*** of the *Harris* announcement should be easy to find on all Judiciary platforms. The Court should provide hard copies of the *Harris* announcement in multiple languages and in accessible formats, such as large font.

3. ***The Harris Announcement Form*** is appended as Exhibit F and includes further suggestions.

Recommendation 13:

The Judiciary should develop and promulgate a comprehensive "Landlord Tenant Procedures" document to advise parties of the new landlord tenant process. Using plain language, the new document should explain processes from filing through post judgment and provide information about rental assistance and legal resources.

Overview: The coalition ***supports*** the development and promulgation of a "Landlord Tenant Procedures" document and the use of plain language to ensure that the document is more accessible to unrepresented litigants.

Further Amendments:

In keeping with these goals, the coalition offers a number of suggestions in the Procedures Form, attached as Exhibit G. These suggestions aim to advance three goals: (1) to reflect in the text changes we recommend in these comments, (2) to clarify terms, and (3) to ensure that links lead to the most useful possible information.

Recommendation 14:

Rule 6:3-4 should be amended to set forth a standard for the posting of a deposit where a tenant seeks an adjournment of the trial in order to raise and advance a Marini (habitability) defense.

- **The rule should establish a presumption that a tenant would be required to post with the court a deposit of fifty percent (50%) of the base rent in order to obtain an adjournment.**

- **Either party could rebut that 50% presumption based on the facts presented to the court.**

- **In all cases, the court should retain discretion to adjust the amount and deadline for depositing funds.**

- **The court should be required to place on the record the amount due; the deadline for payment; and the basis for its determination.**

Overview: The coalition ***supports*** Recommendation 14, and also recommends that Rule 6:3-4 be further amended to clarify that a court retains the authority to adjourn a matter without a deposit on consent or for other good cause, such as a medical emergency.

It has been more than fifty years since the Court first recognized that a tenant may raise the implied warranty of habitability as an equitable defense to a summary eviction proceeding. *Marini v. Ireland*, 56 N.J. 130 (1970). Yet today, tenants—particularly low-income tenants of color—continue to reside in squalid housing conditions throughout this state. *See, e.g.*, Karen Rouse, *Why Tenants Lose When They Go Up Against Landlords in Newark*, WNYC, Mar. 6, 2017, Shannon Mullen, *Mold plagues NJ renters who have nowhere to turn*, Asbury Park Press, Apr. 5, 2018; Terrence T. McDonald, *Families left homeless after Jersey City exposes alleged slumlord*, The Jersey Journal, Apr. 11, 2019.

Paradoxically, the *Marini* defense is rarely invoked: the AOC reports that Essex County courts heard just 80 habitability claims out of over 40,000 cases filed in 2016. Paula A. Franzese, Abbott Gorin, & David J. Guzik, *The Implied Warranty of Habitability Lives: Making Real the Promise of Landlord-Tenant Reform*, 69 Rutgers U. L. Rev. 1, 5 (2016). The lack of *Marini* cases results, at least in substantial part, from the requirement, imposed in most vicinages, that a tenant post the full amount of base rent owed on the initial court date, before the court will even hear testimony regarding the habitability defense at a future court appearance. *See id.* at 13-19 (describing the evolution of the mandatory rent deposit requirement); *Daoud v. Mohammad*, 402 N.J. Super. 57, 58 (App. Div. 2008) ("A tenant may raise lack of habitability claims in such proceedings, however, and obtain a *Marini* hearing, provided the tenant deposits the rent with the Clerk of the Court.").

Marini itself recognized that a tenant "*may* be required to deposit the full amount of unpaid rent in order to protect the landlord if he prevails." *Marini*, 56 N.J. at 147 (emphasis added). But the purpose of the rent posting requirement was only to prevent a tenant from "obstruct[ing] the recovery of possession by a landlord legitimately entitled thereto." *Id.* In current practice, however, the posting requirement has become routine and mandatory in the vicinages where we practice, without any inquiry into the merits of the case and the landlord's (or tenant's) likelihood of success on the merits.

The proposed revision to Rule 6:3-4(e)(i) ameliorates these concerns in several ways. First, it provides that a deposit of rent is required only where a residential tenant seeks an adjournment, and not for matters that are adjourned at the request of the landlord or due to the court's calendar. Second, the revised Rule provides for the court, prior to setting the deposit amount, to consider

the potential proofs in fixing a particular deposit amount, subject to a rebuttable presumption of a 50% deposit. The Rule also requires the court to set forth its reasons on the record, which is particularly important to facilitate a party's ability to seek interlocutory appellate review of the trial court's decision, if such an appeal is warranted.

Additionally, as the Report notes, the revised landlord-tenant process will limit the need for trial date adjournments of *Marini* matters, as is common now. For example, the Case Management Conference Information Sheet, which will explain that the tenant intends to raise a *Marini* defense, can be used to arrange for *Marini* cases to be noticed for trial on a date that the court will have sufficient time to try the matter to completion, unlike the current crowded "calendar calls." The case management conference also offers the LTLS the opportunity to advise the tenant, and landlord, of the process and procedures for a *Marini* trial so that the parties are prepared to proceed on the trial date.

Further Amendments:

For these reasons, we support new Rule 6:3-4(e)(i) as proposed by the Report. However, we are concerned that the Rule does not recognize situations in which tenants may legitimately request an adjournment because they are unavailable on the trial date for reasons beyond their control, such as medical or mental health emergencies. Given that the Special Committee process and Report were prompted in part by the COVID-19 crisis, an exception for health emergencies seems especially necessary. Other good cause may arise from unexpected logistical issues such as power outages that interfere with remote access or transportation stoppages that prevent in-person appearances. Attorneys may also have unanticipated scheduling conflicts. Additionally, landlords and tenants may consent to adjournments for mutually beneficial reasons, such as to facilitate settlement discussions, accommodate scheduling issues, or for the completion of paperwork for the tenant to receive rental assistance. It would be unfair to require tenants to post the rent owed if an adjournment is requested under these circumstances. Indeed, the Special Civil Part Rules already permit adjournments in certain circumstances, including upon good cause or with consent of an adversary, without requiring a deposit from a residential tenant. *See R.* 6:4-7(a); *R.* 6:5-2(b).

We therefore recommend the following addition of a new Rule 6:3-4(e)(iii), to clarify a court's authority to permit an adjournment without requiring a deposit of rent. This revision is also reflected in attached Exhibit H.

> (iii) Notwithstanding the court's authority to require a tenant to deposit rent with the court as a condition of an adjournment, the court may adjourn the matter without requiring a deposit for good cause shown (including, but not limited to, a party's medical emergency or other good cause), or upon consent of the parties to the action.

Recommendation 15:

Rule 6:3-4 should be amended to set forth a standard for posting with the court a deposit of the unpaid base rent when the tenant seeks to obtain a trial adjournment for reasons other than to raise and advance a Marini defense. The standard should be discretionary with the court, but the amount of the deposit should be at least the amount of undisputed base rent (excluding fees).

Overview: The coalition ***opposes*** Recommendation 15. Our experience is that outside the *Marini* context, courts have not required deposits to obtain an adjournment, and we see no significant justification for introducing this requirement.

If the Court decides to follow the Committee's Recommendation, however, we suggest that Rule 6:3-4 be further amended to make clear that a deposit is not required upon good cause shown. The proposed new Rule 6:3-4(e)(ii) already provides that the court "may" (not "must") require a deposit, and that the court state the reason for its decision. As noted above in connection with Recommendation 14, adjournments that result from a tenant's unavailability due to circumstances beyond their control, or upon consent of the parties, should not be conditioned on a deposit of rent. Therefore, as stated above, we propose the addition of a new Rule 6:3-4(e)(iii) to clarify the court's authority to adjourn a matter, for good cause or on consent, without conditioning the adjournment on the deposit of rent.

Recommendation 16:

New Judgment of Possession forms should be developed and tailored for use in three situations: (1) at the conclusion of trial; (2) in instances of default judgment; and (3) upon settlement by consent or after breach of a settlement agreement. Those forms should provide plain language information to tenants as to options and next steps following entry of judgment.

Overview: The coalition ***supports*** Recommendation 16, with the caveat that, as explained above in connection with Recommendation 9, we object to the inclusion in any court form of the option of immediate entry of a consent judgment prior to breach of the terms of a settlement. We recommend that the form judgments make clear that any arrearages specified are solely for the purpose of avoiding eviction, and we suggest that all judgments for possession be served on tenants.

Further Amendments:

1. ***Amend the form judgment based on settlement to omit reference to the immediate entry of a judgment for possession.***

In Exhibit K, we propose a revision to the form for judgment based on settlement to make reference to entry of a judgment only "after breach," and not "on consent."

2. Clarify that any rental arrearages enumerated in the form judgments are for the purpose of avoiding eviction and not for the purpose of debt collection.

The landlord-tenant court, which adjudicates cases in a summary manner without answers, counterclaims, or discovery, is a court of limited jurisdiction; it may only enter judgments for possession of the premises. *C. F. Seabrook Co. v. Beck*, 174 N.J. Super. 577, 589–90 (App. Div. 1980) ("[S]ummary dispossess actions are not like other lawsuits. The sole purpose of such an action is to enable the landlord to obtain speedy recovery of the premises."). More specifically, a landlord-tenant court cannot enter a money judgment. *Hous. Auth. of Morristown v. Little*, 135 N.J. 274, 280 (1994) ("The only remedy that can be granted in a summary-dispossess proceeding is possession; no money damages may be awarded."). Because possession is the sole issue in an eviction proceeding, rental arrears may be enumerated only for the purpose of specifying what amount is due to avoid eviction. A tenant who is prepared to surrender possession may choose not to contest the amount claimed, even if it is incorrect, because a surrender of possession ends the case. For this and other reasons, "[m]atters determined in summary dispossess actions are not res judicata in subsequent actions between landlord and tenant, even over the same subject matter." *C. F. Seabrook Co.*, 174 N.J. Super. at 590. Therefore, the amount of rent specified as due and owing in a judgment for possession cannot be the basis for a subsequent debt-collection judgment. The draft judgments should make this limitation clear, as reflected in Exhibits I, J, and K.

3. Serve judgments on tenants.

Currently, no standardized form of judgment exists for a landlord-tenant matter, and as the Report notes, "courts historically and currently have not provided a written judgment to parties and attorneys." Rep. at 28. This means that tenants often receive no immediate notice of a judgment against them—either in cases of default or upon breach of a settlement that did not itself contain a judgment. Instead, the tenant's first notice regarding entry of a judgment may be through receiving the warrant of removal on their door, providing only three days' notice of an imminent lockout.

Therefore, in addition to creating the form judgments for possession, the Judiciary should ensure their service upon tenants after entry. In cases for which the judgment is entered in a party's absence, such as through default or by the filing of a certification of breach, the corresponding judgment should be mailed to the tenant and served upon the tenant's attorney, if any, via eCourts.

4. Make further amendments as shown in Exhibits I, J, and K.

Notice of the judgment will facilitate tenants' ability to take actions to prevent their eviction or, if unable to do so, to make arrangements for a safe transition to alternate housing. In particular, judgments that state the amount of rent due to avoid eviction will inform tenants what they must pay to have the matter dismissed. *See* N.J.S.A. 2A:42-10.16a(a) (permitting tenant to satisfy judgment up to three business days after execution of lockout). The notice might also allow a tenant to raise additional defenses in the form of a post-judgment motion under Rule 4:50-1.

To that end, we particularly support the inclusion on the form judgments of language from the revised *Harris* Instructions explaining options to prevent eviction after a judgment for possession. To facilitate a tenant's ability to exercise their legal rights, we have also suggested additional language on the forms that refer tenants to legal service providers who may be able to assist tenants in obtaining appropriate post-judgment relief. Although we recognize that tenants are referred to legal service providers at other stages of the landlord-tenant process, it is our experience that tenants with meritorious defenses to eviction frequently need legal help to seek post-judgment relief. It is therefore critical, and not at all burdensome, to include this additional information on the judgment forms. We have suggested a proposed change to the end of each form in Exhibits I, J, and K.

Recommendation 17:

A Request for Warrant of Removal form should be created. The use of the form would help standardize the request procedure, so as to support case management efficiency. It also would require the plaintiff-landlord to certify as to compliance with the requirement, established by the federal CARES Act, of 30 days' notice to vacate provided for covered properties.

Overview: The coalition ***supports*** this Recommendation of creating a standard Request for Warrant of Removal form. In these comments and earlier communications, we have advocated that the Judiciary take steps to ensure compliance with the federal CARES Act, and we support those continued efforts, including through the certification required on the Request for Warrant of Removal form. (Because we suggest no revisions to the form, we attached no Exhibit L.)

Recommendation 18:

The Warrant of Removal (Appendix XI-G) should be amended for clarity. Separate forms should be created for residential tenancies as follows (1) Notice; and (2) Return of Service. Separate forms should be created for residential and commercial tenancies.

Overview: The coalition ***supports*** these "plain language" changes to the Warrant of Removal forms. In particular, the revised Warrant of Removal form advises tenants of their right to seek further relief from the Special Civil Part Court by post-judgment motion or, in a nonpayment case, payment of the rent and costs that are legally due and owing. Finally, as before, the Warrant of Removal form includes referrals to the welfare agency, the local bar referral service, and the appropriate regional Legal Services program. These referrals assist tenants in asserting their legal rights to post-judgment relief. In Exhibit M, we recommend links and phone numbers to be used for legal referrals, although allowing the vicinages to supply local numbers also makes good sense.

CONCLUSION

Again, the coalition thanks the Judiciary for inviting our feedback on these important Recommendations and looks forward to a continuing collaboration as the Court adopts and implements final rules and procedures.

Side 1

New Jersey Judiciary
Civil Practice Division

Landlord Case Information Statement (LCIS)

Caption	County of Venue

Name of Plaintiff/Landlord

Email Address	Home/Office Phone	Cell Phone

Attorney Name and Firm (if applicable)	Email Address

Email Address	Office Phone	Cell Phone

Attorney/Plaintiff Mailing Address

Name of Defendant/Tenant(s)

Email Address (if known)	Office Phone	Cell Phone

Rental Property Address	Municipal Code (*)

Type of Tenancy (select only one)	Cause of Action (select all that apply)	Holdover Cause of Action (select from list on side 2)
☐ Residential ☐ Commercial	☐ Non-Payment ☐ Other (Holdover/For Cause)	

Select all that apply:

☐ Public Housing.
Type: ☐ Public Housing ☐ Section 8 Voucher ☐ Section 8 HAP Contract ☐ Other Subsidy Program _____

☐ Notice(s) that are required for Holdover, Public Housing and/or Subsidized Housing are attached to the complaint.

☐ Rental property is not a covered property under the Federal CARES Act, 15 U.S.C.S. § 9058(a). CARES Act Certification is attached.

☐ The tenancy subject to municipal rent control ordinance.

☐ Plaintiff/Landlord has applied for and received temporary emergency rental assistance funding pursuant to any private, federal, state, or local ***COVID-19 related*** program for rent claimed due and owing

Name of program: (if known) _____

☐ Plaintiff/Landlord has-applied for and received temporary emergency rental assistance funding pursuant to any private, federal, state, or local ***non- COVID-19 related*** program for rent claimed due and owing in this action.

Name of program: (if known) _____

☐ Plaintiff/Landlord has not received request from tenant to use security deposit toward rent under Executive Order 128.

The amount due and owing by the tenant in this case is: $_____

I certify that confidential personal identifiers have been redacted from documents now submitted to the court and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Attorney/Plaintiff Signature	Print Attorney/Plaintiff Name	Date
s/		

Municipality Codes can be found at https://www.njcourts.gov/forms/11343_municodes.pdf

Side 2

Landlord
Civil Case Information Statement
(LCIS)

Holdover Causes of Action (Enter number(s) in appropriate space on side 1.)

Residential Tenancy		
1	Disorderly Tenant	N.J.S.A. 2A:18-61.1(b)
2	Willful or Gross Negligent Damage to Premises	N.J.S.A. 2A:18-61.1(c)
3	Violation of Rules and Regulations	N.J.S.A. 2A:18-61.1(d)
4	Violation of the Lease Covenants	N.J.S.A. 2A:18-61.1(e)
5	Violation of the Lease Covenants Under the Control of a Public Housing Authority or Redevelopment Agency	N.J.S.A. 2A:18-61.1(e)
6	Failure to Pay Rent After Increase	N.J.S.A. 2A:18-61.1(f)
7	Demolish/Board Up Premises	N.J.S.A. 2A:18-61.1(g)
8	Permanently Retiring Residential Building/Mobile Home Park from Residential Use	N.J.S.A. 2A:18-61.1(h)
9	Reasonable Changes to Lease at End of Lease Term that Tenant Refuses to Accept	N.J.S.A. 2A:18-61.1(i)
10	Habitual Late Payment of Rent	N.J.S.A. 2A:18-61.1(j)
11	Converting Property to Condominium or Cooperative Ownership	N.J.S.A. 2A:18-61.1(k)
12	Personal Occupancy by Owner or Purchaser of Unit (property converted to condo/cooperative or fee simple ownership)	N.J.S.A. 2A:18-61.1(l)(1)
13	Personal Occupancy by Owner or Purchaser of Unit (owner of a building with 3 or fewer condo/cooperative units	N.J.S.A. 2A:18-61.1(l)(2)
14	Personal Occupancy by Owner or Purchaser of Unit (building with 3 or fewer residential units)	N.J.S.A. 2A:18-61.1(l)(3)
15	Rental is Conditioned on Tenant's Employment by Landlord	N.J.S.A. 2A:18-61.1(m)
16	Convicted or Pleaded Guilty to Offenses under the 1987 Comprehensive Drug Reform Act, or Harbors such Person	N.J.S.A. 2A:18-61.1(n)
17	Convicted or Pleaded Guilty to Assault/Threats against Landlord, Landlord's Family or Employee, or Harbors such Person	N.J.S.A. 2A:18-61.1(o)
18	Tenant or Tenant Harbors such Person previously found Liable in a Civil Action for Certain Criminal Acts on the Rental Premises	N.J.S.A. 2A:18-61.1(p)
19	Tenant or Tenant Harbors Such Person who pleaded or was convicted of theft of property from the Landlord, the Rental Premises, or Other Tenants	N.J.S.A. 2A:18-61.1(q)
20	Tenant or Tenant Harbors such Person previously found Liable in a Civil Action for Human Trafficking on the Rental Premises	N.J.S.A. 2A:18-61.1(r)
21	Residents at Residential Health Care Facilities (non-payment or holdover)	N.J.S.A. 30:11A-1 *et. seq.*

Commercial Tenancy; Owner-Occupied Premises with Two or Less Residential Units; Rental Unit Held in Trust on behalf of Immediate Family Member Who Permanently Occupies the Unit (not Developmentally Disabled)		
22	Tenant Stays after Expiration of Lease Term	N.J.S.A. 2A:18-53
23	Tenant Disorderly as to Destroy Peace and Quiet	N.J.S.A. 2A:18-53
24	Tenant Willfully Destroys, Damages or Injures the Premises	N.J.S.A. 2A:18-53
25	Tenant Constantly Violates Landlord's Written Rules and Regulations	N.J.S.A. 2A:18-53
26	Tenant Breaches/Violates any Agreement in Lease that Provides for Right of Reentry	N.J.S.A. 2A:18-53
27	Violation of Alcoholic Beverages Laws by Commercial Tenant	N.J.S.A. 33:1-54

Alternative Draft Tenant Case Information Statement (TCIS)

[Include text seeking contact information.]

Notice to Tenants: **The checklist below is not a complete list of possible defenses to eviction. Other defenses may be available.** You may want to consult an attorney. Free legal help for low-income tenants may be available at Legal Services of New Jersey (call 1-888-576-5529 or apply online here), Volunteer Lawyers for Justice (call 973-943-4754 or check here), and other local legal services organizations. Tenants who are able to pay an attorney can seek a referral from their county bar association. A list of numbers is here.

Please check the boxes below if the statement made is true in your case. If the statement made is not true in your case, please do not check the box. If you don't know, please write a question mark in or beside the box. Please use the Optional Tenant Statement at the end of the document to explain further, as needed.

☐ The amount of rent my landlord demands in the complaint is not correct. *Please explain below in the Optional Tenant Statement.*

☐ The government helps pay my rent through the following program:

- ☐ Section 8 Voucher Program
- ☐ Other Section 8 Program
- ☐ Public Housing
- ☐ State Rental Assistance Program (SRAP)
- ☐ Homelessness Prevention Program (HPP)
- ☐ Emergency Assistance (EA)
- ☐ COVID-19 Emergency Rental Assistance Program (CVERAP)
- ☐ Other _____

☐ The government helps pay my rent, and the rent my landlord says I owe is not my portion of the rent. It is the portion owed by one of the programs listed above.

☐ The government helps pay my rent, and I did *not* receive notice from my landlord about the eviction before I got the eviction complaint.

☐ The complaint the landlord filed against me asks for attorney fees, late fees, or other fees (besides court costs, which I realize I must cover), and I believe I do not owe these fees because:

- ☐ I have no written lease.
- ☐ I have a written lease, but it does not say these fees are "additional rent."

☐ If there is a written lease, I don't think it's valid.

☐ The government pays part of my rent and decides what amount I owe, and the landlord cannot collect fees above that amount in an eviction action.

☐ I believe my residence is covered by rent control, and the fees would increase my rent above what I believe rent control allows.

☐ The complaint asks for fees that are related to my nonpayment of rent between March 27 and July 24, 2020, and if my landlord is covered by the CARES Act (which I don't know), my landlord cannot collect these fees. (CARES Act, 15 U.S.C. § 9058(b)(2).)

☐ The complaint asks for fees that are related to my nonpayment of rent after March 27, 2020. If my landlord is covered by the CARES Act (which I don't know), my landlord cannot collect these fees during any period when the landlord received or was repaying mortgage forbearance from a federal lender. (CARES Act, 15 U.S.C. § 9057(d)(2); HUD Notice H 20-07 at 4; Federal Housing Finance Agency, *FHFA Extends COVID-19 Multifamily Forbearance through June 30, 2021* (March 4, 2021).)

☐ I believe my residence is covered by rent control, and I believe my landlord is charging me more in monthly rent than rent control allows.

☐ I do not think I should have to pay the rent increase my landlord asked for because the landlord did not give me proper notice or the increase is so large that it is unreasonable. (N.J.S.A. 2A:18-61.1(f).)

☐ I paid rent for some or all of the months listed in the complaint, but the landlord did not give me a receipt. (N.J.S.A. 46:8-49.2.)

☐ My home is in such bad condition that it is very difficult to live there. *Please describe below in the Optional Tenant Statement.*

☐ My landlord has not given me a copy of a document called a "Certificate of Registration," showing that the property where I live is registered with either my municipality or the state. (Landlord Identity Law, N.J.S.A. 46:8-29.)

☐ My landlord has not given me notices informing me of the name of the financial institution where my security deposit is kept, the type of account where it is kept, the current rate of interest for that account, and the amount of the deposit. I am therefore entitled to apply my security deposit, which is $_____, plus 7% annual interest, to my rent. (Rent Security Deposit Act, N.J.S.A. 46:8-19.)

☐ I have asked my landlord to use my security deposit toward rent under Executive Order 128.

☐ My apartment is illegal. For this reason, my landlord cannot collect rent, and my landlord owes me relocation assistance. (N.J.S.A. 2A:18-61.1(g)(3), -61.1g, -61.1h.) *Please explain below in the Optional Tenant Statement why you believe your apartment is illegal.*

☐ My landlord is trying to evict me for a reason *other than* nonpayment of rent, *and*

☐ I did not get proper notice from my landlord about the eviction before I got the eviction complaint. (N.J.S.A. 2A:18-61.2.)

☐ I did get notice from my landlord about the eviction before I got the complaint, but the reason for the eviction stated in the complaint is not the same as the one stated in the notice(s) I received.

☐ My landlord has waived the right to evict me because the landlord has known for _____ months/years that I was *not* complying with a certain term in my lease, and the landlord has continued to accept my rent anyway. *Please explain the lease term below in the Optional Tenant Statement.*

☐ I believe my landlord filed this eviction complaint to retaliate against me. *Please explain below in the Optional Tenant Statement why you think your landlord is retaliating against you.*

☐ My building has more than three units, OR ☐ my building has three or fewer units, but the owner does not live in one of them.

☐ I do not believe the plaintiff is the current owner or an agent of the current owner of the property.

OPTIONAL TENANT STATEMENT:

_____
_____
_____
_____
_____
_____
_____
_____
_____

Case Management Conference Information Sheet

DATE:_____ RESIDENTAL ☐ COMMERCIAL ☐

CASE CAPTION: _____ DOCKET NUMBER: _____

Plaintiff Attorney: _____ Defendant(s) Attorney: _____

Prior Settlement Efforts: _____

FACTUAL BACKGROUND:

_____

_____

_____

_____

LEASE ATTACHED: ☐ REVIEWED: ☐ ; REGISTRATION ATTACHED: ☐ REVIEWED; NOTICES ATTACHED: ☐ REVIEWED: ☐

MONTHLY BASE RENT:_____ ADD'L RENT: _____

LATE FEES: _____ PENALTIES: _____

LEASE TERM: _____ ATTY FEES:_____

CLAIMED TOTAL DUE (Landlord):_____(Tenant): _____

RENTAL ASSISTANCE PROGRAMS:

Landlord applied [yes, no], status [pending, received/amount, denied]

Tenant applied [yes, no], status [pending, received/amount, denied]

Referred to _____ rental assistance program

DEFENSES: Tenant has stated the following:_____

_____

_____

Based upon my review of the file and discussion with the parties, the tenant has raised the following defense(s):

☐ **Home is not Habitable or Safe (Breach of the Implied Covenant of Habitability) -** The following describes what tenant alleges is wrong with the rental property (state what the defect(s) are, how it may impact tenant safety and when tenant asked the landlord to make repairs):_____

_____

☐ **Landlord is Retaliating Against Tenant (Reprisal or Retaliation** (*N.J.S.A.* 2A:42-10.10)) because:

_____

_____.

☐ **Landlord does not have an Attorney** - Landlord is a business such as a corporation, LLC, Inc. or limited partnership and is required to be represented by an attorney per *Rules* 1:5-6, 1:21-1(c) and 6:10.

☐ **Waiver** - Landlord is trying to enforce a lease provision even though landlord has long known tenant was not in compliance.

☐ **Deficient Notice(s)/Improper Service (Holdover)** - Landlord is trying to evict tenant for reasons other than non-payment of rent but tenant was not given the required notices under the law. The landlord failed to serve the notice(s) on the tenant prior to filing the complaint, failed to serve the notice(s) on the tenant timely and/or failed to attach the notice(s) to their complaint when it was filed with the court in violation of *Rules* 6:2-2(a) and 6:3-4(d).

☐ **Deficient Notice(s)/Improper Service (Subsidized Tenant)** – Landlord did not provide the notice required, or did not provide notice in the manner required, by the program or housing authority that subsidizes tenant.

☐The rental premises is subsidized housing pursuant to the following program:

☐ Subsidized Housing. (☐Public Housing; ☐ §8 Voucher; ☐§8 HAP Contract; ☐ Other Subsidy Program)

Other program, if known:

☐ State Rental Assistance Program (SRAP)

☐ Homelessness Prevention Program (HPP)

☐ Emergency Assistance (EA)

☐ COVID-19 Emergency Rental Assistance Program (CVERAP)

☐ Other _____

☐The property is covered by **rent control**, and:

☐ landlord is charging me more than rent control allows.

☐ The eviction complaint filed against me asks for fees, such as attorney fees or late fees, that would increase my rent above what I believe rent control allows.

☐ **Landlord Failed to Properly Register the Rental Property** - Landlord has failed to satisfy their registration requirements for this rental property per *N.J.S.A.* 46:8-33.

☐ **Tenant Does Not Owe the Amount Landlord Claims Is Due** – Tenant states that:

☐ Base rent is incorrect and should be $_____

☐ Arrears are incorrect and should be $_____

☐ Fees are not due or are incorrect and should be $_____

☐ Rent increase is improper under governing rent control ordinance in (municipality) _____

☐ Landlord accepted lower rent over many months than is now claimed due and so has waived the right to collect higher rent

☐ The amount claimed due is the portion to be paid by a subsidy program and not by the tenant, who has paid the correct portion

☐ Tenant did not receive proper notice under the Rent Security Deposit Act, N.J.S.A. 46:8-19, and is therefore entitled to apply the security deposit of $_____, plus 7% annual interest of $____, to cover rent arrears

☐ **Occupancy Is Illegal** – Tenant states that occupancy is illegal. *See* N.J.S.A. 2A:18-61.1(g)(3), -61.1g, -61.1h. On this ground, tenant claims that landlord may not collect rent and must provide relocation assistance equal to six months' rent before an eviction can proceed. Tenant bases this statement on the following:

_____

_____

☐ **Other** :_____

Based upon my review of the file and discussion with the parties, the landlord has asserted the following response to defenses:

(Narrative):_____

_____

_____

EXHIBITS FOR
TRIAL:_____

_____

WITNESSES: For Plaintiff _____For Defendant_____

HEARING OFFICER STATEMENT:
(Narrative):_____

_____

_____

_____

_____

_____

TIME TO TRY: _____

REFERRED FOR SETTLEMENT CONFERENCE:_____

An Interpreter ☐ Yes ☐ No Indicate Language: _____

An accommodation for a disability ☐ Yes ☐ No Requested accommodation: _____

Matter can proceed virtually: Yes ☐ No ☐ Other items related to remote proceedings:_____

_____

Appendix XI-V. Settlement Agreement (Tenant Remains)

_____
Plaintiff

v.

_____
Defendant

Superior Court of New Jersey
Law Division, Special Civil Part
_____ County
Landlord Tenant Division
Docket Number LT- _____

Settlement Agreement

(Tenant to Stay in Premises)

The tenant and landlord hereby agree:

1. ~~[Select **One** of the Following]:~~

a. _____ ~~**to the immediate entry of a Judgment for Possession.** The parties understand that a Warrant of Removal will not be issued and an eviction will not take place at this time. However, if the tenant breaches this agreement, the landlord may file a certification of breach with the court, on notice to the tenant. The Court may then issue a Warrant of Removal which starts the eviction process.~~

~~OR~~

b. _____ **no Judgment for Possession is entered unless and until there is a breach.** The parties understand that if the tenant breaches this agreement, the landlord may file a certification of breach with the court, on notice to the Tenant. The court may then enter a Judgment for Possession and a Warrant of Removal may issue.

2. The tenant shall pay to the landlord a total of $_____ which the tenant admits is now due and owing. The Tenant shall pay this amount as follows:
   a. $_____, immediately, which the landlord admits receiving; and
   b. $_____ each month until all the back rent due under this agreement is paid, which is no later than [DATE].
3. Tenant is also required to continue to pay $ _____ each month as required by the rental agreement during the duration of the payment plan set forth in paragraph 2.
4. All payments made by the tenant, as set forth in paragraph 2, shall first be applied by the landlord to the tenant(s)' monthly rental obligation as required under the rental agreement and then shall be applied to pay the balance of the back rent as stated in paragraph 2. **If the tenant fails to make any payment that is required in paragraph 2 of this agreement, the tenant may be evicted as permitted by law after the service of the Warrant of Removal.**
5. This agreement shall end when the tenant has paid the full amount of back rent as stated in paragraph 2. Once paid in full, the judgment, if any, shall be vacated and the complaint shall be dismissed. The Landlord shall advise the Office of the Special Civil Part in writing within 30 days of any alleged breach by the tenant. If the landlord does not notify the court, the case shall be dismissed automatically [**insert date**].

Date: _____

_____
Landlord's Attorney

_____
Tenant's Attorney

_____
Landlord

_____
Tenant

_____

J.S.C.

Note: The Certification by Landlord and the Certification of Landlord's Attorney (if the Landlord has an attorney) are attached hereto. Judgment for possession cannot be entered without the required certification(s).

[Note: Appendix XI-V adopted July 18, 2001 to be effective November 1, 2001, Revised April 1, 2004; amended July 31, 2020 to be effective September 1, 2020; amended 2021 to be effective 2021]

6:6-4. Consent Judgments for Possession and Stipulations of Settlement, Residential Cases

(a) Entry by the Court. A stipulation of settlement or another agreement that provides for entry of a judgment for possession against an unrepresented tenant must be written, signed by the parties, and reviewed, approved and signed by a judge on the day of the court proceeding, but if it requires the unrepresented tenant to both pay rent and vacate the premises, the judge shall also review it in open court. It must also be accompanied by the affidavit of the landlord and the certification of the landlord's attorney required by *R.* 6:6-3(b).

(b) Entry by the Clerk. When the tenant is represented by an attorney and the attorney has signed the agreement, the clerk may enter judgment for possession upon receipt of the signed consent of the parties and the affidavit of the landlord and the certification of the landlord's attorney specified in R. 6:6- 3(b).

Note: Adopted July 18, 2001 to be effective November 1, 2001; paragraph (a) amended July 31, 2020 to be effective September 1, 2020; paragraphs (a) and (b) amended XX/XX/XXXX to be effective XX/XX/XXXX.

New Jersey Courts
www.njcourts.gov
Independence • Integrity
Fairness • Quality Service

New Jersey Judiciary
Superior Court of New Jersey Law Division, Special Civil Part
Landlord Tenant Trial Information

The following information is a **brief** overview of landlord tenant court procedures. Please read these instructions carefully. This information is not intended to take the place of legal advice, but it will provide you with a general understanding of the process. If a party needs an interpreter, they should contact the court by phone or email.

A landlord has filed a lawsuit against a tenant to regain possession of their property, meaning a landlord wants to evict (also known as "lockout"), a tenant. In order to evict a tenant, the landlord must first get a judgment for possession. Before that can happen, tenants have a right to a trial. If a trial occurs, a judge will decide whether a judgment for possession should be entered. A judgment for possession allows a landlord to request a warrant of removal from the court. If a judgment is entered, the court will provide a written document to the landlord and tenant that explains the basis for the court's decision and what will happen next. The warrant of removal allows a Special Civil Part Officer to proceed with a tenant's eviction from the property.

Illegal Evictions: A landlord cannot evict tenants from a rental property, only a Special Civil Part Officer can perform an eviction. In order to have a Special Civil Part Officer evict a tenant, a landlord must first get a judgment for possession and then a warrant of removal from the court. It is illegal for the landlord to force a tenant out by changing the locks, padlocking the doors or by shutting off gas, water or electricity. Landlords can only remove a tenant's belongings after an eviction as permitted by the Abandoned Tenant Property Act N.J.S.A. 2A:18-72 (unless otherwise provided for in a non-residential lease).

Tenants who have been locked out of their homes illegally should call police. The New Jersey Office of the Attorney General has released guidance on illegal lockouts and the role of law enforcement agencies in preventing them. More information is available at the following link: https://www.nj.gov/oag/dcj/agguide/directives/ag-Directive-2021-2_Illegal_Evictions.pdf

Tenants who have been locked out of their rental property illegally can also file a civil complaint at the county courthouse. For more information on illegal evictions (lockouts) go to www.njcourts.gov.

Available Resources: Court staff can give the parties a list of agencies that may be able to assist with rent, temporary shelter, or legal services. Information about rental assistance programs – including those related to the COVID-19 pandemic – is available online at www.njcourts.gov. Information about legal resources also is posted online: https://www.njcourts.gov/selfhelp/selfhelp_landlordtenant.html#tenants.

1. **Appearing on Your Trial Date**
   Trials may be conducted virtually, by video, or in person if the parties are unable to participate virtually. On the scheduled trial date, a list of cases will be scheduled to be heard. If both the landlord and the tenant are present, the case will be marked READY for trial. If the tenant is not present, the case may be marked "DEFAULT." If the landlord is not present or if both parties do not appear, the case may be "DISMISSED." You will have a chance to ask questions of court staff.

2. **Settlements**
   Settlement conferences will be offered before the trial, as well as on the trial date. Those conferences generally will be conducted virtually (by video). Parties will have the opportunity to meet with court staff for these conferences.

   The parties should talk to each other to try to settle their case. Neutral court staff will help the parties try to settle their case. Parties are not required to settle their case and have the right to a trial.

   You should settle only if you understand the terms of the agreement and they are acceptable to you. If you are a tenant and do not comply with the settlement agreement, you can be evicted. If the parties agree on a settlement, parties can complete a settlement agreement form which can be completed virtually or in person. A copy of any settlement agreement will be sent to the parties. You are not limited to the contents of the settlement forms. Note, any settlement involving an unrepresented residential tenant that seeks to enter a consent judgment for possession must be approved by the court.

3. **Right to a Trial**
   If you are a tenant and you disagree with what your landlord claims, such as the amount of the rent that is owed, you have the right to explain your position, before and at trial.

4. **Waiting for Trial**
   If you do not settle, a judge will hear your case. Most trials will be conducted virtually, by video. Parties can use courthouse technology rooms to participate, if necessary. In some cases, the trial may be conducted in person. The court expects to reach all cases on the scheduled trial date; however, if your case cannot be reached that day, you will have your case rescheduled and have to appear either virtually or in person another day. If you are a tenant and you request to adjourn (postpone) the trial date, the judge may first require you to deposit some or all of the rent due with the court. If a deposit is required, it can be paid in cash, money order or bank cashier's check made payable to the Treasurer, State of New Jersey. If the rent is not deposited as directed, a default will be entered in favor of the landlord. That means the landlord will be able to take steps to have you evicted.

5. **Non-Payment of Rent Cases**
   The following information applies in cases where a landlord claims the tenant owes rent:

A. **Dismissal of Case Upon Payment or Deposit.** If you are a tenant, the case against you will be dismissed if you pay all of the rent that is due plus court costs to the landlord or to the court on or before the date a judge enters a judgment for possession. If your case is tried remotely, the court will delay entry of the judgment until the following business day. Note: The tenant may still make payments after a judgment for possession is entered.

B. **Fees or Other Charges as Additional Rent.** Attorney's fees, late fees and/or other charges are only allowed if there is a lease that calls these items "additional rent." Even if the lease does say that, the amount due as rent may be limited by rent control, or if there is public assistance, the rent may be limited by local, state, or federal law. For example, if a tenant receives Section 8 assistance, the landlord cannot include a late charge in the amount that the tenant owes.

6. **Holdover Cases**
If the eviction case is for a reason other than nonpayment of rent, the landlord should have served the tenant with written notice(s) before filing the complaint for eviction and attached these notice(s) to the complaint when filed.

7. **Limitation on Court's Powers**
A judge cannot force the parties to settle. A settlement is entirely voluntary. For example, a tenant may want more time to pay rent owed or to pay in installments. Unless the landlord agrees to such terms, the court must enter a judgment for possession, which then allows the landlord to take steps to gain possession of the property and evict the tenant.

8. **Eviction Procedures/Steps**
Step 1 - Entry of Judgment for Possession. When the court enters a judgment for possession, the court is granting the landlord the legal right to possession of the premises. This may happen if the landlord can prove their case on the day of trial, if the tenant fails to appear and the case is marked as "Default," or if the landlord and tenant agree to the entry of a judgment for possession.

Step 2 - Issuance of Warrant of Removal. After the judgment for possession is entered, the landlord may ask the court to issue a warrant of removal to a Special Civil Part Officer. The warrant of removal may not be issued until at least three (3) business days after the judgment for possession is entered. A Special Civil Part Officer is the person who serves (delivers) the warrant of removal on the tenant.

Step 3 - Service of the Warrant of Removal. The warrant of removal must be served by the Special Civil Part Officer on the tenant by delivering or posting the warrant of removal on the door of the rental property.

Step 4 –Execution of the Warrant of Removal/ Eviction. Three (3) business days after the warrant of removal is served, a landlord may request that the Special Civil Part Officer return to the residential rental property a second time to execute the warrant of removal by requiring the tenant to vacate the premises and permitting the landlord to change the locks. This is when the eviction (lockout) is completed.

NOTE: Landlords cannot evict tenants themselves Special Civil Part Officers are the only individuals authorized to evict tenants. Tenants cannot be evicted on a weekend or holiday.

Summary - A residential tenant cannot be evicted until the landlord follows the steps above. A residential tenant may not be evicted any earlier than eight (8) calendar days after a judgment for possession has been entered. In non-payment of rent cases, even after an eviction by a Special Civil Part Officer, a residential tenant may be able to return to stay in the rental property if the tenant pays the landlord all rent due plus proper costs up to three (3) business days after the eviction. (See 9.B. Paying all Rent Due and Owing, below)

9. Options After a Judgment for Possession

A. **Agreement.** After a judgment for possession has been entered (Step 1 above), a landlord and tenant can still try to make an agreement to stop an eviction. If the landlord and the tenant agree, the agreement should be in writing and a copy of the agreement should be filed with the court.

B. **Paying all Rent Due and Owing.** By law, a tenant can pay all rent due and owing plus proper costs up to three (3) business days after the eviction (Step 4 above). The landlord must accept this payment and/or cooperate with a rental assistance program or bona fide charitable organization that has committed to pay the rent.

C. **Asking the Court for Relief.**

A tenant can apply for relief to the court even after an eviction. To do so, a tenant must file:

(1) An application for orderly removal requesting up to seven (7) more calendar days to move out if there is a good reason;

(2) A motion requesting dismissal with prejudice of the nonpayment of rent action because the residential tenant paid all rent due and owing plus proper costs, or because the landlord refused to accept the residential tenant's payment, within three (3) business days following the eviction; or an order to show cause because the landlord refused to cooperate with a rental assistance program or bona fide charitable organization that has committed to pay the rent; and/or

(3) An application for a hardship stay which delays the eviction based on the unavailability of other housing accommodations. That delay cannot be for more than six (6) months from entry of the judgment for possession, and the tenant will have to pay all rent and proper costs.

A tenant can also file a motion under Rule 4:50-1 requesting that the judgment for possession be vacated (reversed) and the complaint dismissed, if the tenant can show good reason such as mistake or excusable neglect, fraud, misrepresentation or other misconduct by an adverse party, newly discovered evidence or any other reason justifying relief from the judgment for possession. **Court staff can provide tenants with the forms needed to ask for any of the above types of relief.**

LANDLORD TENANT PROCEDURES

The following contains information on the procedures the parties must follow in cases where a landlord is trying to evict (also known as "lockout") a tenant. Please take the time to read this information and refer to the Judiciary website at www.njcourts.gov for further assistance with landlord tenant rules and procedures. Parties will have a chance to ask questions of court staff at any point during the process, but court staff cannot provide legal advice.

1. **Complaint filed and served.**

   The landlord must file a complaint, summons, and Landlord Case Information Statement (LCIS). Those documents will explain why the landlord is seeking to evict the tenant(s).

   Tenants are strongly encouraged to complete a Tenant Case Information Statement (TCIS). The TCIS will explain the tenant's position. The tenant should file this with the court electronically (or by mail) at least 5 days before the scheduled case management conference.

2. **Mandatory Case Management Conference.** The court will schedule a case management conference either virtually (by video) or in person. Both parties must appear at the case management conference. If a party does not appear at the conference, the court may enter default or dismissal in the case. (See below). Parties can use Judiciary technology rooms to participate, if necessary.

   At the conference, court staff will ask questions to gather information for a judge, and parties will be able to explain their positions. Court staff will then talk to the parties about trying to settle their case.

3. **Settlement Conference.** The parties should talk to each other to try to settle their case. Neutral court staff will help the parties try to settle their case. If the case does not settle prior to trial, the court will schedule a settlement conference to take place on the day of trial. Parties are not required to settle their case and have the right to a trial.

4. **Settlement Agreements.**

   If the parties settle their case, the court or court staff will review the terms of the settlement agreement. Some agreements will require the judge to review and approve the agreement and some will also require the parties to place the terms of the agreement on the record in open court. All final settlement agreements will be written, provided to the parties, and added to the court's electronic file.

   If you settle your case, please note:

   - You should settle only if you agree with the terms. Both parties must agree to a settlement.
   - Court staff can provide the parties with an agreement form which can be completed virtually (by video) or in person. If completed by the parties, the signed agreement should be provided to the court.
   - Court staff can also provide forms for any certification from the landlord and/or the landlord's attorney.

- The terms of the settlement forms can be modified as appropriate.
- Make sure that you understand the words in the settlement because if you do not comply with the terms of the settlement, you can be evicted.
- Any agreement that says a judgment for possession will or can be entered must be approved by a judge if a residential tenant does not have an attorney.

5. **Trial.** If you are a tenant and you disagree with what your landlord claims, such as the amount of the rent that is owed, you have the right to explain your position at trial. Most trials will be conducted virtually, by video. Parties can use Judiciary technology rooms to participate, if necessary. In some cases, trial may be conducted in person. If the tenant does not appear for trial, the case may be marked "DEFAULT." This means the landlord can apply for a judgment against the tenant and move ahead with the eviction. If the landlord does not appear, the case may be "DISMISSED." This means the case will not proceed.

6. **Entry of Judgment for Possession.** At the conclusion of a trial or where a tenant does not appear at trial and the landlord proves their case, the court will enter a judgment for possession. A judgment for possession is a written document that contains the result of the case and explains the basis for the court's decision. The judgment for possession also explains the next steps in the process.

   When the court enters a judgment for possession, the court is granting the landlord the legal right to possession of the premises. This may happen if the landlord can prove their case on the day of trial, if the tenant fails to appear and the case is marked as "Default," or if the landlord and tenant agree to the entry of a judgment for possession.

7. **Application for and Issuance of a Warrant of Removal.** After the judgment for possession is entered, the landlord may ask the court to issue a warrant of removal to a Special Civil Part Officer. The warrant of removal allows the Special Civil Part Officer to proceed with the process of evicting a tenant from the property. The warrant of removal may not be issued until at least three (3) business days after the judgment for possession is entered. A Special Civil Part Officer is the person who serves (delivers) the warrant of removal on the tenant.

8. **Service of the Warrant of Removal.** The warrant of removal must be served by the Special Civil Part Officer on the tenant by delivering or posting the warrant of removal on the door of the rental property.

9. **Execution of the Warrant of Removal/ Eviction**. Three (3) business days after the warrant of removal is served, a landlord may request that the Special Civil Part Officer return to the residential rental property a second time to execute the warrant of removal by requiring the tenant to vacate the premises and permitting the landlord to change the locks. This is when the eviction (lockout) is completed.

   NOTE: Landlords cannot evict tenants by themselves. Special Civil Part Officers are the only individuals authorized to evict tenants. Tenants cannot be evicted on a weekend or holiday.

Illegal Evictions: A landlord cannot evict tenants from a rental property, only a Special Civil Part Officer can perform an eviction. In order to have a Special Civil Part Officer evict a tenant, a landlord must first get a judgment for possession and then a warrant of removal from the court. It is illegal for the landlord to force a tenant out by changing the locks, padlocking the doors or by shutting off gas, water or electricity. Landlords can only remove a tenant's belongings after an eviction as permitted by the Abandoned Tenant Property Act N.J.S.A. 2A:18-72 (unless otherwise provided for in a non-residential lease).

Tenants who have been locked out of their homes illegally should call the police. The New Jersey Office of the Attorney General has released guidance on illegal lockouts and the role of law enforcement agencies in preventing them. More information is available at the following link: https://www.nj.gov/oag/dcj/agguide/directives/ag-Directive-2021-2_Illegal_Evictions.pdf.

Tenants who have been locked out of their rental property illegally can also file a civil complaint at the county courthouse. For more information on illegal evictions (lockouts) go to www.njcourts.gov.

Other Options After a Judgment for Possession is Entered are as Follows:

1. **Agreement.** After a judgment for possession has been entered, a landlord and tenant can still try to make an agreement to stop an eviction. If the landlord and the tenant agree, the agreement should be in writing and a copy of the agreement should be filed with the court
2. **Paying all Rent Due and Owing.** By law, a residential tenant can pay all rent due and owing plus proper costs up to three (3) business days after the eviction. The landlord must accept this payment and/or cooperate with a rental assistance program or bona fide charitable organization that has committed to pay the rent.
3. **Asking the Court for Relief.** A tenant can apply for relief to the court. To do so, a tenant must file:

   (a) An application for orderly removal requesting up to seven (7) more calendar days to move out if there is a good reason;

   (b) A motion requesting dismissal with prejudice of the nonpayment of rent action because the residential tenant paid all rent due and owing plus proper costs, or because the landlord refused to accept the residential tenant's payment, within three (3) business days following the eviction; or an order to show cause because the landlord refused to cooperate with a rental assistance program or bona fide charitable organization that has committed to pay the rent; and/or

   (c) An application for a hardship stay which delays the eviction based on the unavailability of other housing accommodations. That delay cannot be for more than six (6) months from entry of the judgment for possession, and the tenant will have to pay all rent and proper costs.

   A tenant can also file a motion under Rule 4:50-1 requesting that the judgment for possession be vacated (reversed) and the complaint dismissed, if the tenant can show good reason such as mistake or excusable neglect, fraud, misrepresentation or other misconduct by an adverse party, newly discovered evidence or any other reason justifying relief from the judgment for possession.

AVAILABLE RESOURCES

Court staff can give the parties a list of agencies that may be able to assist with rent, temporary shelter, or legal services. Information about rental assistance programs – including those related to the COVID-19 pandemic – is available online at www.njcourts.gov. Information about legal resources also is posted online: https://www.njcourts.gov/selfhelp/selfhelp_landlordtenant.html#tenants.

- **Housing and Rental Assistance.** Visit the Judiciary website for a list of state, county and municipal programs and resources that may be able to provide assistance: https://www.njcourts.gov/selfhelp/covid19_rentalassistance.html

- The Ombudsman in your county may be able to provide information regarding organizations and resources that may be available in your county: **https://www.njcourts.gov/public/ombudsdir.html?lang=eng**.

- LSNJ's Tenants' Rights Manual may be of assistance and is available at: **https://www.lsnjlaw.org/Pages/default.aspx**

If you have additional questions or issues regarding the information above, please send an email to [EMAIL ADDRESS] or call the Special Civil Part Office at [PHONE NUMBER], extension [EXT]. Please note that Judiciary staff cannot provide legal advice.

6:3-4. Summary Actions Between Landlord and Tenant

(e) Deposits Due on or Before Trial Date.

(i) Deposits on Non-Payment of Rent Cases – Habitability Defenses. Where a residential tenant seeks a trial adjournment to raise a habitability defense, the tenant will presumptively be required to deposit with the court fifty percent (50%) of the unpaid base rent in order to obtain the adjournment. Either party may rebut the presumption based on the facts presented to the court. The court shall have the discretion to determine the amount of the deposit. The court in making that determination will consider factors including but not limited to the following: monies expended by the tenant for repairs, documented evidence of habitability issues at the property, and any existing housing code violations. The court shall place on the record the amount of rent to be deposited, the deadline for the deposit, and the basis for the required deposit. The presumption shall not apply to commercial cases.

(ii) Deposits on Non-Payment of Rent Cases – Other Grounds. Where a tenant seeks a trial adjournment for reasons other than to raise a habitability defense, the court may require a tenant to deposit the undisputed amount of base rent with the court. The court shall place on the record the amount of rent to be deposited, the deadline for the deposit, and the basis for the required deposit.

Note: Source — R.R. 7:5-12. Caption and text amended July 14, 1992 to be effective September 1, 1992; amended July 27, 2006 to be effective September 1, 2006; caption amended, former text allocated into paragraphs (a) and (b), captions to paragraphs (a) and (b) adopted, and new paragraphs (c) and (d) added July 9, 2008 to be effective September 1, 2008; paragraph (a) amended July 19, 2012 to be effective September 4, 2012; new paragraph (e) added XX/XX/XXXX to be effective XX/XX/XXXX.

ORDER PREPARED BY THE COURT

_____	SUPERIOR COURT OF NEW JERSEY CIVIL LAW DIVISION
Plaintiff,	XXXXXXXXX COUNTY
v.	DOCKET No. ___-LT- RESIDENTIAL
	CIVIL ACTION
Defendant (s)	**JUDGMENT FOR POSSESSION AFTER TRIAL**
_____	

This matter having been brought before the court by a complaint by the Plaintiff/ Landlord _____ [represented by [attorney name] if applicable] in an action for possession of the premises for: ☐Non-payment of Rent ☐Other _____(statutory basis), against Defendant/Tenant(s) _____ [represented by [attorney name] if applicable], and

The Court having conducted a trial on the issues raised in the complaint and ☐defenses of ☐Habitability ☐Unregistered Rental Property ☐ Illegal Tenancy ☐Abatement ☐Federal CARES Act ☐ Attorney Required for Landlord ☐Notices Required/Deficient ☐Payment of Rent Legally Due ☐ Other _____, ☐ None raised by the tenant; and the Court having found that the defendant ☐ has ☐ has not established the defense of: ☐Habitability ☐ Unregistered Rental Property ☐ Illegal Tenancy ☐Abatement ☐Federal CARES Act ☐ Attorney Required by Landlord ☐Notices Required/Deficient ☐Payment of Rent Legally Due ☐ Other _____ ☐ None; and

The Landlord having produced and the Court having reviewed a copy of the lease and any required registration statement and found that the Landlord has proven a cause of action for possession on the basis of _____ and there ☐is ☐is not rent due and owing to the Landlord in the amount of _____ [optional: which is to be offset in the amount of $_____ because defendant established the defense of _____,] and a judgment for possession should enter in this case;

IT IS on this _____ day of _____ 20__

ORDERED that a Judgment for Possession is hereby entered for the property at issue in the Complaint.

And it is further ORDERED that this Judgment for Possession entitles Plaintiff/Landlord only to take possession of the property pursuant to a duly executed Warrant of Removal, and does not entitled the Plaintiff/Landlord to any other relief, such as monetary damages.

_____
Judge, JSC

NOTE: Landlords cannot evict tenants themselves; Special Civil Part Officers are the only individuals authorized to evict tenants. Tenants cannot be evicted on a weekend or legal holiday.

If the tenant does not voluntarily leave, the steps required for eviction are as follows:

Step 1 - Entry of Judgment for Possession. When the court enters a judgment for possession, the court is granting the landlord the legal right to possession of the premises. This may happen if the landlord can prove their case on the day of trial, if the tenant fails to appear and the case is marked as "Default," or if the landlord and tenant agree to the entry of a judgment for possession.

Step 2 - Issuance of Warrant of Removal. Three (3) business days after the judgment for possession is entered, the landlord may ask the court to issue a warrant of removal to a Special Civil Part Officer. The warrant of removal may not be issued until at least three (3) business days after the judgment for possession is entered. A Special Civil Part Officer is the person who serves (delivers) the warrant of removal on the tenant.

Step 3 - Service of the Warrant of Removal. The warrant of removal must be served by the Special Civil Part Officer on the tenant by delivering or posting the warrant of removal on the door of the rental property.

Step 4 –Execution of the Warrant of Removal/ Eviction. Three (3) business days after the warrant of removal is served, a landlord may request that the Special Civil Part Officer return to the residential rental property a second time to execute the warrant of removal by requiring the

tenant to vacate the premises and permitting the landlord to change the locks. **This is when the eviction (lockout) is completed.**

Summary - Adding the days above, a residential tenant cannot be evicted any earlier than eight (8) calendar days after a judgment for possession has been entered. In non-payment of rent cases, even after an eviction by a Special Civil Part Officer, a residential tenant may be able to return to stay in the rental property if the tenant pays the landlord all rent due plus proper costs up to three (3) business days after the eviction. (see options below)

Other options After a Judgment for Possession is entered are as follows:

A. **Agreement.** After a judgment for possession has been entered (Step 1 above), a landlord and tenant can still try to make an agreement to stop an eviction. If the landlord and the tenant agree, the agreement should be in writing and a copy of the agreement may be filed with the court.

B. **Paying all Rent Due and Owing.** By law, a tenant can pay all rent due and owing plus proper costs up to three (3) business days after the eviction (Step 4 above). The landlord must accept this payment and/or cooperate with a rental assistance program or bona fide charitable organization that has committed to pay the rent.

C. **Asking the Court for Relief.** A tenant can apply for relief to the court. To do so, a tenant must file:

   (1) An application for orderly removal requesting up to seven (7) more calendar days to move out if there is a good reason;

   (2) A motion requesting dismissal with prejudice of the nonpayment of rent action because the residential tenant paid all rent due and owing plus proper costs, or because the landlord refused to accept the residential tenant's payment, within three (3) business days following the eviction; or an order to show cause because the landlord refused to cooperate with a rental assistance program or bona fide charitable organization that has committed to pay the rent;

   (3) An application for a hardship stay which delays the eviction based on the unavailability of other housing accommodations. That delay cannot be for more than six (6) months from entry of the judgment for possession, and the tenant will have to pay all rent and proper costs.

A tenant can also file a motion under Rule 4:50-1 requesting that the judgment for possession be vacated (reversed) and the complaint dismissed, if the tenant can show good reason such as mistake or excusable neglect, fraud, misrepresentation or other misconduct by an adverse party, newly discovered evidence or any other reason justifying relief from the judgment for possession.

If you do not have an attorney, you may contact the Lawyer Referral Service in your county; contact information is available at https://tcms.njsba.com/PersonifyEbusiness/Default.aspx?TabID=2011. If you cannot afford an attorney, you may contact Legal Services of New Jersey or the regional Legal Services program for your county; contact information is available at https://www.lsnj.org/LegalServicesOffices.aspx.

PREPARED BY THE COURT

_____

Plaintiff,

v.

Defendant (s)

_____

SUPERIOR COURT OF NEW JERSEY
CIVIL LAW DIVISION
XXXXXXXXX COUNTY

DOCKET No. ___-LT-
Residential Tenancy

CIVIL ACTION

JUDGMENT FOR POSSESSION BY DEFAULT

This matter having been brought by verified complaint by the Plaintiff/Landlord _____ in an action for possession of the premises for: ☐Non-payment of Rent ☐Other _____(specify statutory basis), against Defendant/Tenant(s) _____ and the Defendant/Tenant(s) having been noticed of and having failed to appear on the date of trial on [insert trial date] and the Plaintiff/Landlord having submitted the appropriate proofs by way of a Landlord's Certification and a Certification by the Landlord's Attorney, if any, as required by R. 6:6-3(b), that a judgment for possession should be entered by default in this case;

And the landlord having shown that there ☐ is ☐ is not rent due and owing to the Landlord in the amount of _____ and a judgment for possession should enter in this case;

On this _____ day of _____ 20__,

Default Judgment for Possession is hereby entered in favor of the Plaintiff/Landlord for the property at issue in the Complaint; and

this Judgment for Possession entitles Plaintiff/Landlord only to take possession of the property pursuant to a duly executed Warrant of Removal, and does not entitle the Plaintiff/Landlord to any other relief, such as monetary damages; and

A Warrant of Removal allowing the landlord to take possession of the property may be issued after [system will calculate and insert date].

_____
Clerk of the Superior Court

NOTE: Landlords cannot evict tenants themselves; Special Civil Part Officers are the only individuals authorized to evict tenants. Tenants cannot be evicted on a weekend or legal holiday.

If the tenant does not voluntarily leave, the steps required for eviction are as follows:

Step 1 - Entry of Judgment for Possession. When the court enters a judgment for possession, the court is granting the landlord the legal right to possession of the premises. This may happen if the landlord can prove their case on the day of trial, if the tenant fails to appear and the case is marked as "Default," or if the landlord and tenant agree to the entry of a judgment for possession.

Step 2 - Issuance of Warrant of Removal. Three (3) business days after the judgment for possession is entered, the landlord may ask the court to issue a warrant of removal to a Special Civil Part Officer. The warrant of removal may not be issued until at least three (3) business days after the judgment for possession is entered. A Special Civil Part Officer is the person who serves (delivers) the warrant of removal on the tenant.

Step 3 - Service of the Warrant of Removal. The warrant of removal must be served by the Special Civil Part Officer on the tenant by delivering or posting the warrant of removal on the door of the rental property.

Step 4 –Execution of the Warrant of Removal/ Eviction. Three (3) business days after the warrant of removal is served, a landlord may request that the Special Civil Part Officer return to the residential rental property a second time to execute the warrant of removal by requiring the tenant to vacate the premises and permitting the landlord to change the locks. **This is when the eviction (lockout) is completed**.

Summary - Adding the days above, a residential tenant cannot be evicted any earlier than eight (8) calendar days after a judgment for possession has been entered. In non-payment of rent cases, even after an eviction by a Special Civil Part Officer, a residential tenant may be able to return to stay in the rental property if the tenant pays the landlord all rent due plus proper costs up to three (3) business days after the eviction. (see options below)

Other options After a Judgment for Possession is entered are as follows:

A. **Agreement.** After a judgment for possession has been entered (Step 1 above), a landlord and tenant can still try to make an agreement to stop an eviction. If the landlord and the tenant agree, the agreement should be in writing and a copy of the agreement may be filed with the court.

B. **Paying all Rent Due and Owing.** By law, a tenant can pay all rent due and owing plus proper costs up to three (3) business days after the eviction (Step 4 above). The landlord

must accept this payment and/or cooperate with a rental assistance program or bona fide charitable organization that has committed to pay the rent.

C. **Asking the Court for Relief**. A tenant can apply for relief to the court. To do so, a tenant must file:

(1) An application for orderly removal requesting up to seven (7) more calendar days to move out if there is a good reason;

(2) A motion requesting dismissal with prejudice of the nonpayment of rent action because the residential tenant paid all rent due and owing plus proper costs, or because the landlord refused to accept the residential tenant's payment, within three (3) business days following the eviction; or an order to show cause because the landlord refused to cooperate with a rental assistance program or bona fide charitable organization that has committed to pay the rent;

(3) An application for a hardship stay which delays the eviction based on the unavailability of other housing accommodations. That delay cannot be for more than six (6) months from entry of the judgment for possession, and the tenant will have to pay all rent and proper costs.

A tenant can also file a motion under Rule 4:50-1 requesting that the judgment for possession be vacated (reversed) and the complaint dismissed, if the tenant can show good reason such as mistake or excusable neglect, fraud, misrepresentation or other misconduct by an adverse party, newly discovered evidence or any other reason justifying relief from the judgment for possession.

If you do not have an attorney, you may contact the Lawyer Referral Service in your county; contact information is available at https://tcms.njsba.com/PersonifyEbusiness/Default.aspx?TabID=2011. If you cannot afford an attorney, you may contact Legal Services of New Jersey or the regional Legal Services program for your county; contact information is available at https://www.lsnj.org/LegalServicesOffices.aspx.

ORDER PREPARED BY THE COURT

	SUPERIOR COURT OF NEW JERSEY CIVIL LAW DIVISION
Plaintiff,	XXXXXXXXX COUNTY
v.	DOCKET No. ___-LT- RESIDENTIAL
	CIVIL ACTION
Defendant (s)	**JUDGMENT FOR POSSESSION ~~[BY CONSENT]~~ [AFTER BREACH]**

This matter having come before the court by way of [complaint] or [request] filed by the Plaintiff/ Landlord _____ [represented by [attorney name] if applicable] for entry of judgment for possession against Defendant/Tenant(s) _____ [represented by [attorney name] if applicable] ~~[based on a settlement agreement reached between the parties for a consent judgment by possession]~~ ~~OR~~ [for failure to comply with the terms of the parties' settlement agreement and the Plaintiff/Landlord having submitted the certification and supporting documents of Plaintiff/Landlord and Landlord's attorney, if any, as required by R. 6:7-1(e),] that a judgment for possession should be entered in this case, [and any opposition having been received], and for other good cause having been shown;

IT IS on this _____ day of _____ 20__

ORDERED that a Judgment for Possession is hereby entered for the property at issue in the Complaint.

and it is further ORDERED that this Judgment for Possession entitles Plaintiff/Landlord only to take possession of the property pursuant to a duly executed Warrant of Removal, and does not entitle the Plaintiff/Landlord to any other relief, such as monetary damages.

[Judge name]

NOTE: Landlords cannot evict tenants themselves; Special Civil Part Officers are the only individuals authorized to evict tenants. Tenants cannot be evicted on a weekend or legal holiday.

If the tenant does not voluntarily leave, the steps required for eviction are as follows:

Step 1 - Entry of Judgment for Possession. When the court enters a judgment for possession, the court is granting the landlord the legal right to possession of the premises. This may happen if the landlord can prove their case on the day of trial, if the tenant fails to appear and the case is marked as "Default," or if the landlord and tenant agree to the entry of a judgment for possession.

Step 2 - Issuance of Warrant of Removal. Three (3) business days after the judgment for possession is entered, the landlord may ask the court to issue a warrant of removal to a Special Civil Part Officer. The warrant of removal may not be issued less than three (3) business days after the judgment for possession is entered. A Special Civil Part Officer is the person who serves (delivers) the warrant of removal on the tenant.

Step 3 - Service of the Warrant of Removal. The warrant of removal must be served by the Special Civil Part Officer on the tenant by delivering or posting the warrant of removal on the door of the rental property.

Step 4 –Execution of the Warrant of Removal/ Eviction. Three (3) business days after the warrant of removal is served, a landlord may request that the Special Civil Part Officer return to the residential rental property a second time to execute the warrant of removal by requiring the tenant to vacate the premises and permitting the landlord to change the locks. **This is when the eviction (lockout) is completed**.

Summary - Adding the days above, a residential tenant cannot be evicted any earlier than eight (8) calendar days after a judgment for possession has been entered. In non-payment of rent cases, even after an eviction by a Special Civil Part Officer, a residential tenant may be able to return to stay in the rental property if the tenant pays the landlord all rent due plus proper costs up to three (3) business days after the eviction. (see options below)

Other options After a Judgment for Possession is entered are as follows:

A. **Agreement.** After a judgment for possession has been entered (Step 1 above), a landlord and tenant can still try to make an agreement to stop an eviction. If the landlord and the tenant agree, the agreement should be in writing and a copy of the agreement may be filed with the court.

B. **Paying all Rent Due and Owing.** By law, a tenant can pay all rent due and owing plus proper costs up to three (3) business days after the eviction (Step 4 above). The landlord must accept this payment and/or cooperate with a rental assistance program or bona fide charitable organization that has committed to pay the rent.

C. **Asking the Court for Relief.** A tenant can apply for relief to the court. To do so, a tenant must file:

(1) An application for orderly removal requesting up to seven (7) more calendar days to move out if there is a good reason;

(2) A motion requesting dismissal with prejudice of the nonpayment of rent action because the residential tenant paid all rent due and owing plus proper costs, or because the landlord refused to accept the residential tenant's payment, within three (3) business days following the eviction; or an order to show cause because the landlord refused to cooperate with a rental assistance program or bona fide charitable organization that has committed to pay the rent;

(3) An application for a hardship stay which delays the eviction based on the unavailability of other housing accommodations. That delay cannot be for more than six (6) months from entry of the judgment for possession, and the tenant will have to pay all rent and proper costs.

A tenant can also file a motion under Rule 4:50-1 requesting that the judgment for possession be vacated (reversed) and the complaint dismissed, if the tenant can show good reason such as mistake or excusable neglect, fraud, misrepresentation or other misconduct by an adverse party, newly discovered evidence or any other reason justifying relief from the judgment for possession.

If you do not have an attorney, you may contact the Lawyer Referral Service in your county; contact information is available at https://tcms.njsba.com/PersonifyEbusiness/Default.aspx?TabID=2011. If you cannot afford an attorney, you may contact Legal Services of New Jersey or the regional Legal Services program for your county; contact information is available at https://www.lsnj.org/LegalServicesOffices.aspx.

RESIDENTIAL WARRANT OF REMOVAL
(Una traducción al español comienza en la página 3)

Docket No.:_____

Plaintiff's Name
Plaintiff(s) - Landlord(s)
- vs -
Defendant's Name
Defendant(s) - Tenant(s)
(Address -- 1st Line)
(Address -- 2nd Line)
City, NJ 00ZIP

Superior Court of New Jersey
Law Division, Special Civil Part
Landlord/Tenant Section Any County
(Court Address -- 1st Line)
(Court Address -- 2nd Line)
City, NJ 00ZIP
Phone No. (XXX) XXX-XXXX

WARRANT OF REMOVAL

To: Name of Defendant
(Tenant(s))

You are to vacate and remove all of your possessions from the above address within three business days after receiving this warrant. Do not count Saturday, Sunday and legal holidays in calculating the three days. If you do not move within three days, a Special Civil Part Court Officer will remove all persons from the property at any time between the hours of 8:30 a.m. and 4:30 p.m. on or after _____ (month) (day), _____ (year), and will require the tenant to vacate the premises and permit the landlord to change the locks. You must leave with your property by 8:30 a.m. on _____ (date) unless you have an order from a judge allowing you to stay longer. Afterward, your possessions may be removed by the landlord, in accordance with N.J.S.A. 2A:18-72 *et seq*.

It is a crime for a tenant to damage or destroy a rental property to retaliate against a landlord. In addition to imposing criminal penalties, the court may require a tenant to pay for any damage.

You may be able to stop this warrant and remain in the property if you apply to the Special Civil Part Court for relief. You may apply for relief by delivering a written request to the Office of the Special Civil Part and to the landlord or landlord's attorney. **Your request must be received by the Office of the Special Civil Part within three days after this warrant was served or you may be locked out.** Before stopping this warrant, the court may include certain conditions, such as the payment of rent.

You can also file a motion under Rule 4:50-1 requesting that the judgment for possession be vacated (reversed) and the complaint dismissed, if you can show good reason such as mistake or excusable neglect, fraud, misrepresentation or other misconduct by an adverse party, newly discovered evidence or any other reason justifying relief from the judgment for possession.

If you were sued for nonpayment of rent only, you may be able to stop this warrant and remain in the property if you pay all rent due and owing plus proper costs up until the third business day following the eviction. The landlord must accept this payment and/or cooperate with a rental assistance program or charitable organization that has committed to pay the rent.

You may be eligible for housing assistance or other social services. To determine your eligibility, you must contact the welfare agency in your county at _____(address)_____, telephone number (XXX) XXX-XXXX.

Only a Special Civil Part Officer can execute this warrant. It is illegal for a landlord to padlock or otherwise block entry to a rental property while a tenant who lives there is still in legal possession. See the attached Notice Regarding Illegal Eviction for further information. If your property has been taken or you have been locked out or denied use of the rental property by anyone other than a Special Civil Part Officer who is executing a warrant of removal, you can contact the Office of the Special Civil Part for help in (a) requesting an emergency order to return your property and/or put you back into your home; and/or (b) filing a lawsuit requesting money damages. Please have this notice with you when you contact the Office of the Special Civil Part and/or file anything with the court related to this matter.

If you do not have an attorney, you may call the Lawyer Referral Service at (XXX) XXX-XXXX. Si usted puede pagar los servicios de un abogado, pero no conoce a ninguno, puede llamar a las oficinas del Servicio de Recomendación de Abogados del Colegio de Abogados de su Condado. Teléfono: (XXX) XXX-XXXX. If you cannot afford an attorney, you may call Legal Services at (XXX) XXX-XXXX. Si usted no puede pagar un abogado, puede llamar a Servicios Legales: (XXX) XXX-XXXX.

Date: _____

_____
(Judge)

_____
Clerk of the Superior Court