

Recent Administrative Orders Impacting Housing Court

In light of the recent ruling by the United States Supreme Court that found the failure to allow a landlord to challenge a hardship declaration filed by a tenant is unconstitutional, the State's Chief Administrative Judge has recently issued several Administrative Orders setting forth the protocol for housing court cases moving forward. These orders, which are effective immediately, are summarized below.

Notice of Emergency Rental Relief Application to Be Submitted by Landlords

In pending housing court cases, Landlords are required to inform the court if the Emergency Rental Assistance Program ("ERAP") assistance has been applied for or received, the amount received, and the time period the payment covered.

The court has provided a form to be completed which can be found [here](#). After completion, this form should be returned to our office for submission to the court.

Resumption of Residential Eviction Matters

All residential eviction proceedings may now proceed in the ordinary course, meaning there is no longer a requirement to serve hardship declarations on tenants and any stay previously imposed when a hardship declaration was filed has now been vacated.

The housing court has been directed to restore all stayed proceedings to the calendar, subject to any existing state or federal moratoriums and/or the stay imposed by the filing of an ERAP application. Cases where tenants are not represented by counsel will be restored to a general calendar part by the court for assignment of counsel. The housing court has also been directed to expeditiously handle all motions seeking restoration of a proceeding to the court's calendar.

Pre-Pandemic Cases

Cases commenced prior to March 17, 2020 require a settlement conference, upon motion, before the court in order for the case to proceed.

In those cases where judgments of possession were issued prior to March 17, 2020, all requests for issuance of a warrant of eviction must be made via motion. In those cases where warrants were issued prior to March 17, 2020, execution can only be sought by motion to the court.

Warrants & Default Judgments

Where the court has issued an order staying the execution of a warrant of eviction through August 31, 2021 based upon the filing of a hardship declaration, we can now move to vacate the stay.

The requirement that the court must conduct a hearing upon motion before issuing a default judgment in a residential proceeding or authorizing the enforcement of an eviction pursuant to a default judgment has been rescinded. Thus, based upon our interpretation of the above, we are now able to proceed with requisition of default judgments and warrants based upon the tenant's failure to timely interpose an answer.

Remaining Tenant Protections

It is important to note that there is still legislation and/or mechanisms that can result in a stay of a housing court proceeding or affect the ability to evict a tenant:

- a. The Tenant Safe Harbor Act is still in effect and allows a tenant to raise, as a defense in a non-payment proceeding, that they suffered a COVID related hardship. If proven, a landlord would only be entitled to a money judgment for rent which accrued during the "covered period" which is defined as March 7, 2020 through June 24, 2021, when the Governor ended the state of emergency.
- b. The CDC eviction moratorium remains in effect through October 3, 2021, if applicable.
- c. If a tenant files an application through ERAP, the proceeding is stayed until a final determination is made by the State Office of Temporary and Disability Assistance ("OTDA").

Should you have any questions about any of the information contained herein, please contact Philp Rosen, Esq., at prosen@hwrpc.com or 516-535-1700.