

58th District Court

Landlord Tenant Procedures in a Time of Pandemic

A Report to the Ottawa County Housing Commission

December 18, 2020

Hon Bradley S. Knoll

Chief Judge, 58th District Court

INTRODUCTION

The following report has been prepared by the 58th District Court at the request of Commissioner Zylstra for the purposes of summarizing the court activity during the COVID 19 pandemic as it relates to eviction proceedings. The State of Michigan, by statute, vests the state's district courts with exclusive jurisdiction of eviction procedures under the Summary Proceedings Act. (MCL 600.5701 et. seq.) Operating from its three locations in Holland, Grand Haven and Hudsonville, the 58th District Court conducts hearings and, where appropriate, issues judgments for possession and orders of eviction for cases brought in Ottawa County. The district court located in Holland also hears cases involving rental properties located in Allegan County that are within the city limits.

Since March of 2020 the operations of the district courts under the Summary Proceedings Act have been impacted by legislation and administrative orders issued by Federal, state and local authorities. This report provides a brief chronological survey of those orders. Its focus will be on the Eviction Diversion Program as that has had the greatest impact on the court and community response to eviction-related issues caused by the COVID pandemic.

Recognizing that community rental housing problems will not end when the current public health crisis does, the report concludes with evaluation and recommendations for the near- and long-term future regarding these housing issues.

IMPACT OF COVID 19 ON COURT OPERATIONS

The owner of rental property may seek the assistance of the courts to evict a tenant under a variety of circumstances. In addition to the non-payment of rent, eviction may be sought where there is ongoing damage to the property, a public health threat exists, ongoing criminal and drug activity or physical threats to landlords or tenants occurring or simply because the lease has expired. Self-help repossession such as changing locks or disconnecting utilities in most cases is unlawful under Michigan's Anti-Lockout Statute and law enforcement generally defers to civil proceedings where there is a claim of trespass by a person who

earlier had permission to live at the property. Thus, the source for almost all forms of legal eviction is the district court.

As the pandemic began to unfold in March, the 58th District Court entered an order closing the public service windows in the three court locations. This unilateral local action was quickly followed by orders issued by Governor Whitmer and the Michigan Supreme Court.

Subsequently, several orders were issued at the federal, state and local level which resulted in restrictions in public access to the courts and court activities in general. Additionally, orders were entered providing a moratorium on eviction proceedings, except in cases involving ongoing damage to rental property or health hazards on the premises was also entered. The most notable of these orders are identified below.

Executive Order 2020-19 – Issued shortly after her Declaration of Emergency, this order by Governor Whitmer expressly prohibited actions being taken to dispossess a person from their home or mobile home unless that person posed a substantial risk to another person or an imminent and severe risk to property. This order put a virtual halt to court proceedings to obtain and serve judgments of possession or orders of eviction. Cases already filed were held in abeyance.

Cares Act - The federal Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), Public Law No. 116-136, imposed a moratorium, until July 25, 2020, on the filing of summary proceeding actions for “covered property.” Covered property was broadly defined as not only rental property supported by Federal housing laws like Section 8 vouchers, but also properties that were subject to a federally insured mortgage. That moratorium has since expired.

State Court Administrative File ADM 2020-08 – Over the spring and summer a series of orders were issued by the Michigan Supreme Court’s State Court Administrator’s Office (SCAO) serving to limit public access while promoting remote access to the courts. The courts, like other businesses and governmental agencies were able to conduct their business remotely using technologies like the

ZOOM app and also provided public access to the court proceedings by live-streaming their activities on You Tube.

The types of matters the courts could hear were also restricted by SCAO. The practical effect of these orders and the CARES Act was to cease nearly all eviction activity in the district courts for several months. As the landlords' anxiety increased during this period of time, they were kept informed of developments by the court, but there was little that could be done as the number of residential leases in default grew.

As the COVID pandemic appeared to wane in the late summer, further orders were entered directing the trial courts to prepare for a return to full operations. The SCAO orders set out a phased approach to a resumption of normal court operations. The resumption of activity by each county's courts would be guided by SCAO-approved local administrative orders which would provide for safety of court staff and court users. The movement through the phases would be dictated by local public health data relating to the county's hospital capacity, total infections and the percentage of conducted COVID tests that were positive.

The SCAO orders also provided for a prioritization of the landlord-tenant scheduling docket based upon the age of the case, the type of eviction and, in non-payment of rent cases, the number of months the tenants were in arrears.

Executive Order 2020-134 (Eviction Diversion Program) – The most significant response to the COVID housing crisis is the Eviction Diversion Program created under Governor Whitmer's emergency authority. The Michigan State Housing Development Authority administers this program through its network of nonprofit homeless service providers, known as Housing Assessment and Resource Agencies (HARAs). The HARA for Ottawa County is the Good Samaritan Ministries while Allegan County's is Allegan County Community Mental Health's Homeless Assistance Program.

The Eviction Diversion Program provides means-tested rental assistance paid directly to the landlord pursuant to a three-tier eligibility formula based on household income as a percentage less than 100% of area median income (AMI).

Assistance includes both past due rent and also future rent for the lowest income tier. Assistance is capped at between \$3000 and \$3500 for past due rent that has both a look back period of no more than four months and also up to \$1200 in future rental assistance. Participating landlords agree to forgive approximately 10% of past due rent as well as any late fees. The landlord and tenant must agree to a repayment schedule for the tenant's share of past due rent which can be up to twelve months. These agreements are reflected in Settlement Agreements if the eviction has not yet gone to court and a Conditional Dismissal Order if it has. A conditionally dismissed case will be reinstated and eviction ordered if the tenant has failed to comply with the terms of the conditional dismissal order.

CDC Moratorium Order – The Center for Disease Control entered its order pursuant to the Public Health Service Act which imposed a further moratorium on evictions for non-payment of rent from September 4 through December 31, 2020. Unlike previous moratoriums, the order is directed exclusively to landlords and not the courts. It provides criminal penalties for landlords who seek to evict a tenant who has provided that landlord with a “declaration” stating that the tenant has made best efforts to pay rent or seek government assistance and that an eviction would likely render the tenant homeless.

The order provides no means for court review of the accuracy of the declaration other than criminal penalties for false statements. Although the order does not directly compel the courts to halt evictions, the response has been to avoid complicity with the landlord who seeks to illegally evict by requiring any landlord seeking eviction to disclose whether the declaration has been received. The courts have further determined that the order does not prevent an adjudication of the right to possession, but only an order directing a court officer to dispossess the tenant.

SUMMARY

The Eviction Diversion Program appears to be a great success. As of November 25, 2020, Good Samaritan Ministries reports assistance to 220 households with another 90 in process and 136 applications to be processed. Allegan County's Homeless Assistance Program administered by Allegan CMH reports \$15,000 approved and \$11,000 pending for 58th District Court tenants.

The Holland District Court is unique among district courts because its jurisdiction for summary proceedings extends into Allegan County. Tenants at apartment complexes located in the Allegan County portion of City of Holland are referred to the Allegan County HARA for assistance while tenants in Ottawa County, including the City of Holland's portion are referred to Good Samaritan Ministries.

The program has been successful because of the extraordinary efforts of court staff, HARA administrators and especially the attorneys with Legal Aid of Western Michigan. The judge's role in the process is more-or-less that of a messenger, facilitator and quality control supervisor. The cooperation of the landlords and their attorneys has also been critical to the success of the program. Originally skeptical, the landlords have almost unanimously agreed to participate in the program.

The spike in the virus infection rate has necessitated a return to Phase 1 COVID restrictions at the court. It prevents the HARA representatives and legal aid attorneys from meeting with the landlords and tenants at the court as had been the practice earlier in the fall. Since then, Legal Aid has been especially helpful in coordinating the application, HARA authorization and entry of Conditional Dismissal Orders with the court from remote locations.

As successful as eviction diversion has been, the COVID and resultant housing issues remain a critical problem and that problem is approaching a crisis stage as deadlines approach for the filing and processing of applications for relief. The Eviction Diversion Program, unless extended with new funding will expire on December 31, 2020.

The CDC Moratorium is also scheduled to expire on December 31. There is a concern among many in the judiciary that an unintended result of that moratorium was that a significant number of tenants may have filed the declaration without taking any action to obtain financial assistance from the eviction diversion or other resources. The CDC moratorium is simply a moratorium which only delayed the payment of rent. All past due rent must be paid or the landlords will be free to seek eviction beginning on January 1, 2021.

Just how all of these issues will play out in 2021 remains to be seen. The COVID pandemic will likely be brought under control in the first half of the year

with an anticipated resurgence of economic activity to follow. This process will naturally result in a diminished housing crisis, but the inherent problems in the community involving the lack of low-cost housing will persist. With the expiration of eviction diversion funding, traditional sources of relief such as emergency relief available through MDHHS (SER) or more informally through local churches and non-profit organizations will still be available.

Ottawa County residents would be well-served however, by a permanent eviction diversion program. Such programs have been successfully implemented in Kalamazoo and similar-sized communities. The sources of funding for these programs vary from governmental funding, including a housing millage, foundation grants or contributions by local industry.

Persons with secure housing are better able to maintain employment and provide for the care of their families. The homeless population is a source of a disproportionate share of law enforcement and mental health crisis response. The recent emergency demonstrated the viability of a cooperative eviction diversion program which can form the model for a similar program for people whose housing issues are not related to a community-wide emergency.