



RENTAL PROPERTY EVICTIONS  
YESTERDAY, TODAY AND TOMORROW

Judge Bradley S Knoll

September 23, 2021

# Eviction Procedures in District Court

- The **SUMMARY PROCEEDINGS ACT** – MCL 600.5701 was enacted in 1971
  - The Act gives the District Court exclusive jurisdiction to handle cases brought to evict tenants from residential or commercial properties.
  - The procedures vary depending upon the factual basis for seeking an order of eviction.
    - Non-Payment of Rent
    - Damage to Rental Property or Causing a Continuing Health Hazard
    - Drug Activity
    - Assaultive Activity
    - Violation of other lease provisions like too many occupants, unauthorized pets, loud parties.
    - Expiration of the Lease

# Eviction Procedures in District Court

- Before an eviction can occur, the landlord must establish its right to a JUDGMENT OF POSSESSION.

The Judgment of Possession will order the tenant to leave the property by a certain date or order the tenant to leave the property by a certain date **IF** he/she has not cured the default by fixing the property or paying past due rent or damages.

- Whether or not the tenant has the opportunity to cure the default depends upon whether the landlord has sought to TERMINATE THE TENANCY or sought possession only if the tenant doesn't pay what the court determines is due.
- The tenant normally has ten days to vacate the property or pay what is owed after a judgment of possession has entered for non-payment of rent.
- A money judgment for the amounts owed may also enter at that time.

# Eviction Procedures in District Court

- The Tenant has the right to a trial (including a trial by jury) before a Judgment of Possession may enter.
  - The tenant has the right to hire a lawyer, but not a right to a court appointed lawyer.
  - Legal Aid lawyers may agree to represent a tenant at no cost, but the court can't order them to.
  - At the first court appearance the tenant may ask for a one week adjournment to consult with a lawyer or attempt to hire one.
  - The landlord has the burden of proving that it is entitled to a judgment of possession.
  - If the tenant has failed to pay what is owed within the time set (usually ten days), the landlord can apply for an **ORDER OF EVICTION** without further court proceedings.
  - The Order of Eviction directs an assigned Court Officer to remove the tenants and their personal property from the premises.

# Eviction in the Time of COVID-19

- Beginning in March of 2020, the federal government, governor of the State of Michigan, Michigan Legislature and Michigan Supreme Court. Providing for **MORATORIUMS** on filing new complaints, entering judgments of eviction or issuing orders of eviction.
- The only moratorium currently in place prohibits the court from issuing orders of eviction for 30 days where there is a pending application for CERA benefits.
- In 2020 the **EDP** (Eviction Diversion Program) provided rental assistance. That program has been replaced in 2021 by the **CERA** (Covid Emergency Relief Act) program. The CERA provides greater benefits than the EDP did.
  - Both programs provided for assistance applications to a local **HARA** (Housing Assessment & Resource Agency) which would determine eligibility for assistance payments made directly to landlords.

# Eviction in the Time of COVID-19

- The relief available through the EDP and the CERA is in addition to assistance that might be available from other sources.
  - Michigan Dept. of Health and Human Services (MDHHS) has had assistance programs in place to assist renters for several years,
    - Primarily the SER emergency program. Low-income households may apply for emergency assistance in cases of temporary financial hardship.
- Non-Profit Agencies and Churches are also a potential source of emergency funds or loans.
  - The Salvation Army provides one time assistance up to \$500.

# Eviction in the Time of COVID-19

- Rental Assistance is available only where eviction is sought by the landlord based upon non-payment of rent. It is not available where eviction is sought based upon termination of the lease for other breaches of the lease agreement by the tenant.
- Under the CERA assistance may be available where the tenant is moving to another apartment to pay past due rent at the former apartment and future rent at the new apartment.
- CERA assistance will also cover unpaid utilities and at least a portion of the court costs if the case is brought to court.
- The landlord does not have to participate in the program for the tenant to receive assistance. Most landlords are participating.

# Eviction Procedures in the District Court

- Basic eviction procedures have remained largely unchanged since the COVID pandemic began.
  - A tenant receives written notification from the landlord that the landlord intends to evict. These are called either Demands for Possession or Notice to Quit depending on the reason that the landlord seeks to evict. The notice must be mailed or handed to the tenant and must state the reason for the eviction and the date by which the tenant must leave. If the tenant does not leave by the time stated in the notice, the landlord may file an action in the district court to obtain a court-ordered eviction. A copy of the notice and proof of service must be filed with the court when the case is started. If the lease has simply expired, the notice need not be served and the landlord may immediately file the court case.
  - The case filed in the court seeks a Judgment of Possession. The landlord may also request that a money judgment enter for any amounts claimed due.
  - The tenant must be “served” with a copy of the **summons** (the notice telling the tenant when to appear in court) and the **complaint** (a statement of the legal reason for seeking the eviction). Service may occur by the tenant being handed a copy of the summons and complaint, a responsible member of the household being handed a copy, or, if the court officer has been unable to make contact with the tenant or household member, by attaching a copy of the summons and complaint to the main entrance of the apartment unit. A copy of the summons and complaint is also mailed to the defendant by the court.

# Eviction Procedures in the District Court

- The summons directs the tenant to appear at the court at a certain time. The failure of the tenant to appear will usually result in a **default** and **default judgment** entering against the tenant.
- As a result of the COVID pandemic the courts made extensive use of ZOOM and other technologies to allow parties to “appear” in court remotely. This will remain an option available to parties going forward.
- The tenant who appears either in person or remotely is advised by the judge of his or her procedural rights, including:
  - The right to a trial either before the judge or a jury where the landlord has the burden of proving that the allegations in the complaint are true.
  - The right to be represented by a lawyer. Court-appointed attorneys are only available in criminal proceedings so the tenant would not be offered a court-appointed attorney. The tenant is told however, that the Legal Aid attorneys might appear as the tenant's attorney at low or no cost. Additionally, the tenant is told that the court will adjourn the trial for one week to give the tenant a chance to speak with an attorney.
  - After the advice of rights is given, the tenant has the opportunity to answer the complaint by admitting or denying the landlord's allegations.
  - The court determines whether the case should be set for **trial** or whether a **consent judgment** will enter.
  - These procedures have been in place for several years. Orders entered by the Michigan Supreme Court and other branches of government during the pandemic have made significant changes to those procedures.

# COVID EVICTION PROCEDURES

- Orders entered by state and federal authorities during the pandemic changes the court eviction procedures by:
  - Providing additional notices to tenants before a default judgment could enter.
  - Requiring that tenants be informed of available rental assistance under EDP, CERA and other assistance programs
  - Giving tenants the opportunity to apply for assistance and forbidding the courts from entering orders of eviction for 30 days while the application process is pending.
  - Having Legal Aid attorneys present at the court to advise the tenants.
  - Encouraging the use of Conditional Dismissal Orders rather than consent judgments so that the case will be dismissed and remain closed so long as the assistance funds are paid and the tenant complies with the conditions of that order. This is very advantageous to the tenant as a judgment of possession, even if paid by the tenant, would have an adverse effect on his or her credit rating and make it more difficult to obtain rental housing in the future.

# Eligibility Under the CERA Program

- Tenants whose income is less than or equal to 80% of area median income (AMI) are eligible for the program.
- Along with being income eligible, someone in the household needs to have experienced hardship due to COVID-19. Examples of COVID-19 hardships are:
  - At least one household member has qualified for unemployment since March 13, 2020
  - At least one household member experienced a reduction in income since March 13, 2020
  - At least one household member incurred costs related (directly or indirectly) to COVID-19 since March 13, 2020
  - At least one household member experienced other financial hardship since March 13, 2020
- The household must also be one of the following:
  - At risk of homelessness or housing instability, which may include being behind on rent or utilities
  - Homeless
  - Doubled up with another household
  - Has a signed Writ of Restitution/Order of Eviction

# The Future of Eviction Diversion

- There is currently no set date for the end of the CERA Program.
- The COVID pandemic's threat may diminish however, so that fewer tenants would be able to meet the "COVID Hardship" eligibility requirements.
- The end of the pandemic does not mean the end of chronic tenant housing issues caused by the high cost of rental properties in the area.
  
- Ottawa County is moving forward with a goal of development of its own Eviction Diversion Program.
  - That program is still in the research and planning stages. It is hoped that a local eviction diversion program, perhaps in partnership with municipal governments, community foundations and local business, can be implemented in the near future in anticipation of the expiration of CERA funding.