

The Jerome N. Frank Legal Services Organization

YALE LAW SCHOOL

Testimony Against

H.B. 5978, Concerning Eviction of a Tenant Due to Nonpayment of Rent

Testimony of Jonathan Cochran¹

To the Committee on Housing

February 17, 2009

Distinguished members of the Housing Committee,

I am testifying today on behalf of the Jerome Frank Legal Services Organization at Yale Law School. I am a student in the organization's Landlord Tenant Clinic, and as part of my education I represent tenants who are being evicted from their homes.

The Landlord Tenant Clinic has been representing our clients in the New Haven Housing Court for almost 25 years. Our students and supervising attorneys have seen hundreds of cases through the summary process system.

Proposed Bills No. 5978 and 5979 concerning summary process actions alleging non-payment of rent raise serious questions of constitutionality and fairness.

Article 1, Section 10 of the Connecticut State Constitution says, "All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay." A state statute that denies a litigant the right to be heard in court on his defenses raises serious questions as to violation of this section. Similarly, the Fifth and Fourteenth Amendments to the U.S. Constitution require that no citizen may be deprived of life, liberty, or property without *due process of law*.

The proposal that a defendant pay money as a condition of making a defense should cause us immediately to question whether such a law would violate principles of fundamental fairness. Imagine a law that said that people accused of robbery cannot defend themselves unless they post a bond for the amount allegedly stolen. Such a rule would be clearly unfair and almost certainly unconstitutional. While, a person's interest in protecting a lease and maintaining a stable home is arguably less important than a criminal prosecution, leases are understood to be

¹ This testimony was prepared through the Yale Law School Landlord Tenant Advocacy Clinic under the supervision of J.L. Pottenger, Jr., Esq.

property that qualifies for due process protection.² We worry that Proposed Bill 5978 fails to perform this constitutionally required recognition of the due process right of tenants to present their defense in court.

The Experience of Other States with Similar Laws and Rules

Courts in a number of states confronted by laws similar to Proposed Bill 5978 have found due process problems. Courts in New York and Illinois have found rules that require defendants to pay into escrow before they defend an eviction action unconstitutional as a violation of due process.³ Commenting on a rule, like that in Proposed Bill 5978, limiting tenants' ability to defend themselves unless they paid into escrow, an Illinois Appellate Court noted that "at the very least" the defendant was entitled to a hearing on the merits of the case.⁴

Similarly, just last year, the Supreme Court of Hawai'i held that a rent trust act would not be constitutional unless because it gave every defendant an opportunity to present every defense available.⁵ H.B. 5978 would clearly fail that test because it says that defendants are only can raise special defenses only if they pay into escrow. This is particularly problematic because the special defenses under Connecticut law are defenses that no payment is due.⁶

The rulings of the state courts mentioned above suggest that it is likely that provisions such as those in Proposed Bill 5978 would be struck down as unconstitutional. There is no doubt that summary process rules have to protect certain basic rights of defendants in order to be constitutional.⁷ We believe that Proposed Bill 5978 does not protect those rights adequately.

Setting constitutional issues aside, the state of Connecticut should recognize as a matter of simple fairness that tenants have serious and legitimate concerns at stake in how the summary process system works. The current economic situation hurts not only landlords but tenants as well, and we hope that in this hour of stress the State of Connecticut will look for solutions that serve everyone and will stand by one of the foundations of our democracy: the right to defend oneself in court.

² See, e.g., *Lopez v. Henry Phipps Plaza South*, 498 F.2d 937, 946 (1974) (acknowledging that "[the] concept of due process inevitably entails some delay between the conduct claimed by the landlord to warrant termination of a tenancy and the decision whether termination is justified").

³ Civil Court of the City of New York, *Parkway Co. v. Washington*, 97 Misc. 2d 881; *Circle Management, LLC v. Olivier*, 387 Ill. App. 3d 601 (2007); *Rotheimer v. Arana*, 384 Ill. App. 3d 569 (2008).

⁴ *Circle Management, LLC v. Olivier*, 387 Ill. App. 3d 601.

⁵ *KNG Corp. v. Kim*, 107 Haw. 73 (2008). See also *American Surety Co. v. Baldwin*, 287 U.S. 156, 168 (1932) ("Due process requires that there be an opportunity to present every available defense").

⁶ Conn. Gen. Stat. 10-50 categorizes as "special defenses" a number of arguments that would demonstrate that no payment is due even though a landlord has alleged nonpayment of rent. Among these are fraud, illegality of the lease, and even payment (even though nonpayment is alleged by the plaintiff).

⁷ See, e.g., *Lopez v. Henry Phipps Plaza South*, 498 F.2d 937, 946 (1974); *Circle Management, LLC v. Olivier*, 387 Ill. App. 3d 601 (2007).