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H.B. 6621 -- Occupancy limits

Judiciary Committee public hearing -- March 25, 2011

Testimony of Raphael L. Podolsky

Recommended Committee action: NO ACTION ON THE BILL

This bill amends a fairly obscure part of the eviction laws to deny to the court the discretion to stay execution on a summary process if the eviction is for a violation "concerning the occupancy limit for the dwelling unit." This puts such an eviction in the same extraordinary category as drug-dealing and prostitution, nuisance, and trespassing. At best, it is unclear what this phrase is supposed to mean. In any event, this change is unnecessary, will unreasonably restrict the ability of the court and the housing mediators to resolve cases, and will result in serious hardship in circumstances that I suspect are not anticipated by the bill's proponents.

- There is no need to change the existing law. The issuance of a stay beyond the statutory five days is not a right for the tenant but a matter of court discretion. Stays beyond that time limit are set either by stipulated judgment, to which the landlord must agree, or by the court based on a consideration of all factors. There is no need to strip the court of its discretion in this sort of eviction. This bill is primarily about taking discretion away from the judge.
- The loss of the ability to apply for a stay can be catastrophic for the tenant and the household, who may be having a very difficult time finding other housing. It is not in anyone's interest to force the tenant into homelessness if more time would produce a more palatable outcome. The court can (and will) impose conditions to protect the landlord.
- The bill apparently denies the opportunity to seek a stay in a wide variety of routine circumstances related to the vacating of an apartment. The meaning of "occupancy limit" is uncertain. Does the bill mean that the court cannot stay execution if any person lives in the apartment other than the one whose name is on the lease or if someone has moved in since the initial leasing? Spouses, girlfriends or boyfriends, and roommates can all fit that description. In most cases, an extra occupant is a family member. Indeed, we are aware of cases -- probably violations of the Fair Housing Act -- in which a tenant family was being evicted because they had a baby. While these situations may justify an eviction, they should not affect the ability to ask the court for a temporary stay.
- The statute already addresses circumstances that involve serious misconduct. An "occupancy limit" violation that involves trespassing or the creation of a nuisance is already covered by the statute.

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- When an apartment is leased, it is the tenant, not the landlord, who controls who can be admitted to the apartment, although a tenant can be evicted if he admits people in violation of the lease. Thus, a person admitted by the tenant is never a "trespasser," regardless of the terms of the lease. Leases often do not name all occupants, and landlords often do not ask all occupants to sign a written lease. Oral month-to-month leases, which are very common in the low-income community, have no written provisions at all. Some written leases may have specific provisions about who, or how many, may occupy; and breaches of such provisions do sometimes occur. A breach may justify an eviction but does not imply a serious situation that would justify a special rule or limitation on a court's discretion to consider a stay of execution.

For all of these reasons, we believe that the bill is unnecessary, potentially harmful, and ill-advised. We urge the Committee to take no further action on it.