CONNECTICUT LEGAL RIGHTS PROJECT

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Testimony of Sally R. Zanger, Staff Attorney April 1, 2013

Connecticut Legal Rights Project Opposes House Bill 6661.

The Connecticut Legal Rights Project (CLRP) is a legal services organization that advocates for low-income individuals in institutions and in the community who have, or are perceived to have, psychiatric disabilities. We promote initiatives that integrate clients into the community. About half of my caseload is housing matters, and about half of that is eviction defense. I represent tenants in Hartford and New Britain and in Bantam, Danbury, Danielson, Rockville and Waterbury.
I urge this committee to reject this bill.

Our summary process statute is a streamlined procedure that balances the rights of the parties: speed for the landlords and due process for the tenants. This proposal takes away the due process and increases the speed even further, skewing the balance in one direction. Because there is a completely adequate procedure in place to protect the landlord's right to a fair income for use and occupancy of the rental unit while an eviction action is pending, there is no need for this proposed change.

The current statute allows a landlord to make a motion for use and occupancy and allows a tenant to either agree with it or object to it. **If it isn't broken, don't fix it.** This proposed bill gives landlords an unfair advantage over poor and disabled defendants by making it impossible to defend the case without posting what amounts to a bond, and by shortening the time limits to do it. In addition, it makes it impossible to open a case where a default enters without posting that "bond."

There is a mechanism in place already in CGS §47a-26b that allows a landlord to make a motion for use and occupancy. Some landlords serve those motions along with the summons and complaint, which gets the issue before the Court quickly and protects the landlord from loss of income while an eviction action is pending. In my practice, these motions are filed only occasionally, and usually granted by agreement.[1] In many other cases, landlords will not accept use and occupancy payments from my clients while a summary process action is pending because their lawyers have advised them not to lest the lease be reinstated if someone calls such a payment "rent."

[1] The only time I might object is when there is a dispute in the case about the condition of the premises.

The rare use of the motion for use and occupancy and the reluctance to even accept use and occupancy when tendered reinforces my impression that this bill is proposed solely to "stack the deck" against my clients, and not to protect the income of landlords. The statement of purpose is "to expedite resolution of summary process matters." The purpose of the motion for use and occupancy is to ensure that the landlord does not lose income during the time it takes for the parties to complete the process. The procedure for requesting use and occupancy payments does not slow down summary process actions. A certain amount of time is required in order to insure that tenants' rights to due process are protected.[2] This proposal is designed to keep many low income or inexperienced tenants out of court—denying all parties the benefit of the excellent housing mediation system and the opportunity to settle the case.

Most of my clients rely on Social Security Disability (SSDI) payments or Supplemental Security Income (SSI) as their sole income. Those checks come once a month, on the 3d of the month. After the tenant has paid his or her rent for that month, there will be no more money until the third of the next month, and it would be impossible for many of my clients to comply with a use and occupancy order as proposed by this bill. **Consider this timetable:** Since a motion for use and occupancy is not limited to a case for nonpayment of rent, a summons, complaint and motion for use and occupancy could be served on a tenant on April 5 after s/he paid the rent on the 3d or 4th of April. Under this proposal, the tenant must either deposit the rent or file an objection in court within five days of the date s/he was served. That would be the 10th of April. My client won't have the money to deposit: s/he paid the rent from her monthly check, and the rest of the money for this month is needed to pay other bills and expenses. (A person whose income is SSI has $710 in monthly income. If s/he doesn't have a subsidy, s/he probably has less than $100 for other expenses for the rest of the month after paying the rent.) S/he will not have money again until May 3. However, under this bill, if the papers were served on April 5th, and an objection filed by the 10th, then the hearing has to be no later than seven days after that: April 17th.[3] The statute seems to say that the order will be made that day and then the payment must be made within five days after the order. That brings the tenant to April 22d, and there is no new money coming in until May 3d—another 12 or 13 days. A default will then be entered under this proposal's paragraph (d).

This proposal is both unfair and unnecessary. Please reject it. Thank you for your time and attention to this matter.

Respectfully submitted,

Sally R. Zanger

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[2] Under the current statute, I believe the average time from the return date to judgment in summary process is less than three weeks.

[3] It seems that this could even be before the return date.