Office of Legislative Research

Research Report

August 11, 2016

2016-R-0142

SMALL CLAIMS AND LANDLORD-TENANT CASES

By: James Orlando, Senior Legislative Attorney

ISSUE

Summarize how Connecticut handles small claims or landlord-tenant cases, such as the use of mediation or other alternative dispute resolution (ADR), and a sampling of practices from other states.

SUMMARY

In Connecticut, most small claims cases are decided by magistrates appointed by the chief court administrator. Magistrates must be attorneys who have been licensed to practice law in Connecticut for at least five years. Magistrates are paid $200 for each day they are engaged as such (CGS § 51-193l et seq.).

The law also allows attorneys to serve as small claims commissioners to hear small claims cases on a volunteer basis. These attorneys must have been licensed in the state for at least two years, and are appointed as commissioners by the chief court administrator. The parties to the case must agree to have their case heard by a small claims commissioner (CGS § 52-549a et seq.). In addition, the law authorizes retired judges acting as state referees to hear small claims matters, at locations determined by the chief court administrator (CGS § 51-50h).

According to the Judicial Branch, there is currently no ADR being used in small claims cases. The Judicial Branch previously had an agreement with UConn Law School to mediate certain small claims cases through the school's mediation clinic.

Landlord-tenant cases in Connecticut are handled either in special Housing Sessions or as part of the regular civil dockets. Thus, these cases may be heard by judges, senior judges, or certain state referees. The primary form of ADR for such cases is mediation by housing mediators employed by the Judicial Branch.

Phone (860) 240-8400
http://www.cga.ct.gov/olr
olr@cga.ct.gov

Connecticut General Assembly
Office of Legislative Research
Stephanie A. D'Ambrose, Director

Room 5300
Legislative Office Building
Hartford, CT 06106-1591

By law, housing mediators are responsible for the initial screening and evaluation of all contested housing matters eligible for placement on the housing docket (CGS § 47a-69). The law sets the general qualifications and duties of housing mediators (see below).

According to the Judicial Branch, in rare cases, parties in landlord-tenant disputes will hire an outside mediator or seek judicial mediation (i.e., they will seek to have a judge who is not involved in the case mediate the dispute).

Many states have mediation and other ADR programs available for small claims and landlord-tenant cases. In many such programs, mediators are trained volunteers. Laws or court rules in at least a few states require mediation for small claims actions before the case goes to court. Below are examples of other states' use of mediation in small claims and landlord-tenant cases.

HOUSING MEDIATORS IN CONNECTICUT

By law, the judges of the Superior Court, or an authorized committee of the judges, must appoint at least two housing mediators for each of the Hartford, New Haven, and Fairfield judicial districts. (These mediators must assist the courts in other specified districts.) The judges or a committee must appoint at least three housing mediators for all other judicial districts.

Housing mediators are responsible for the initial screening and evaluation of all contested housing matters eligible for placement on the housing docket. They may (1) conduct investigations of these matters, including interviewing the parties, and (2) recommend settlements.

Housing mediators must be knowledgeable in the maintenance, repair, and rehabilitation of dwelling units and related laws. They also must have knowledge necessary to advise parties about the type of funds and services available to assist owners, landlords, and tenants in financing resolutions to housing problems. They must (1) make inspections and conduct investigations at the court's request, (2) advise parties in finding possible sources of financial assistance needed to comply with court orders, and (3) exercise such other powers and perform other duties as the judge may prescribe (CGS § 47a-69).

EXAMPLES OF SMALL CLAIMS AND LANDLORD-TENANT MEDIATION IN OTHER STATES

Small Claims

New Hampshire. In New Hampshire, if the amount in dispute in a small claims case exceeds $5,000 and the defendant has not requested a jury trial, the parties must participate in a mediation program approved by the state's office of mediation and arbitration. (The limit for small claims cases in the state is $10,000.) If mediation does not resolve the case, it is presented to the judge (N.H. Rev. Stat. § 503:1). Mediation is voluntary for small claims cases involving claims of $5,000 or less.

For cases involving mandatory mediation, court rules provide that if a party fails to appear for mediation, the court may render judgment in favor of the other party. If neither party appears for a mandatory mediation session, the case is dismissed (N.H. District Courts Rule 4.12).

According to the state's Judicial Branch, the District Court small claims mediation program was developed in 2005. Mediators must be approved by the state court system. The small claims mediation program is funded by a $5 surcharge on the filing fee for cases with claims of $5,000 or less and a $60 surcharge on cases with claims exceeding $5,000 (N.H. Rev. Stat. § 503:4).

Oregon. According to the Oregon Judicial Department, many courts in the state offer mediation for small claims matters. Mediators are volunteers. The local court rules in some counties require all small claims actions to enter mediation; some counties' rules specify that the court may waive this requirement for good cause.

For example, the local court rules in Multnomah County (which includes Portland) provide that all small claims actions must go to mediation orientation before going to trial. If the parties reach an agreement through mediation, that agreement represents a complete settlement of all claims and counterclaims raised in the proceeding and the case is dismissed. If a party fails to comply with the mediated agreement, the dismissal is set aside and the court may enter a judgment against that party without further hearing (Multnomah County (Oregon) Local Rules, Rule 12.035).

Oregon's Judicial Department has adopted rules establishing qualifications and obligations for court-connected mediators. The qualifications vary depending on the type of case approval sought. To be approved as a general civil mediator for small claims cases only, an individual generally must:

1. complete 30 hours of a basic mediation curriculum;

2. complete six hours of court system training;

3. observe three mediations; and

4. participate as a mediator or co-mediator in at least three cases observed by a person qualified as a general civil mediation supervisor, and performed to the supervisor's satisfaction.

Among other ongoing requirements, mediators must complete continuing education.

Landlord-Tenant

California. According to the California Department of Consumer Affairs, some local housing agencies in the state refer landlord-tenant disputes to local dispute resolution centers or mediation services.

For example, Santa Barbara operates a Rental Housing Mediation Program. Among other services, the program offers voluntary mediation services in landlord-tenant disputes and certain other disputes involving residential rental housing. The program includes staff as well as a board of 15 trained community volunteers (five homeowners, five landlords, and five tenants) appointed by the city council. Both the staff and volunteer mediators conduct mediations. Mediations may occur in person or by telephone.

Palo Alto has a similar mediation program for landlord-tenant disputes and various other types of cases. There are 20 volunteer mediators, appointed by the city council. The program handles about 150 cases annually.

As part of the Palo Alto mediation program, a city ordinance requires parties to most landlord-tenant disputes to engage in a dispute resolution process (Palo Alto Municipal Code Chapter 9.72). This is referred to as the Mandatory Response Program. The program generally applies to properties where the landlord owns or operates two or more rental units in the city. Under the program, a tenant or landlord may request mandatory discussion of a housing dispute. The parties are first offered telephone conciliation. If this does not resolve the dispute, the parties must attend a meeting that explains the mediation process. The parties are not required to complete the mediation or to resolve the dispute through this process.

Washington. Washington's Residential Landlord-Tenant Act specifically allows landlords and tenants to agree in writing to submit to mediation any dispute arising under the act or their rental agreement. The parties may agree to submit any dispute to mediation before exercising their right to arbitration under the act (Wash. Rev. Code § 59.18.315).

The act allows landlords and tenants to agree in writing to submit to arbitration most disputes arising under the act. The parties cannot agree to submit the dispute to arbitration if (1) the dispute relates to certain defects in the property's condition or (2) either party has initiated a court action to enforce rights under the act and the action substantially affects the controversy (id. § 59.18.320). The act also prohibits a rental agreement from providing that the landlord and tenant have agreed to a particular arbitrator at the time they entered into the agreement (id. § 59.18.230).

As authorized by state law, dispute resolution centers offer conflict resolution services, primarily mediation (id. § 7.75.010 et seq.). The centers are private, nonprofit organizations or operated by local government. The centers offer services for many types of cases, including landlord-tenant and small claims. The law authorizes county legislative authorities to impose a surcharge of up to $10 on each civil filing fee in district court and up to $15 dollars on each filing fee for small claims actions to fund these centers.

JO:bs