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NIKKI BOTNEN

SUPERIOR COURT OF WASHINGTON  
COUNTY OF CLALLAM

STANDING ORDER – )  
EVICITION RESOLUTION )  
PILOT PROGRAM )  
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21-2-00001-05  
ADMINISTRATIVE ORDER

THE COURT HEREBY FINDS AS FOLLOWS:

- A. In response to the COVID-19 public health and economic emergency, Governor Inslee issued Proclamation No. 20-19 on March 18, 2020, imposing a moratorium on most residential evictions in Washington State. This Proclamation was renewed and the eviction moratorium was extended on multiple occasions. The most recent extension (Proclamation 20-19.6) expired June 30, 2021.
- B. Anticipating significant numbers of unlawful detainer filings upon expiration of the Governor’s eviction moratorium, the Superior Court Judges’ Association (“SCJA”) asked its Unlawful Detainer Work Group to develop a means of diverting nonpayment of rent cases away from the courts and into a collaborative resolution process that brings together landlords and their attorneys, tenants, legal aid and housing justice projects, administrators of state and local rent assistance programs, and trained eviction resolution specialists employed by community-based dispute resolution centers. Eviction Resolution Pilot Programs (“ERPPs”) and related operating protocols were established in King, Snohomish, Pierce, Thurston, Clark, and Spokane Counties, and conciliation/mediation services commenced in November 2020.
- C. On April 22, 2021, Governor Inslee signed into law Engrossed Second Substitute Senate Bill 5160, Chapter 115, Laws of 2021 (“Senate Bill 5160” or “Ch. 115, Laws of 2021”). This legislation substantially changes the law governing

landlord-tenant relations, generally prevents eviction for failure to pay unpaid rents accrued during the Governor's eviction moratorium, changes unlawful detainer practice and procedure, provides statewide authorization and support for court-established Eviction Resolution Pilot Programs (ERPPs) beyond the initial six pilot programs established by the SCJA, and establishes a right to counsel for indigent tenants in unlawful detainer proceedings involving nonpayment of rent.

- D. State and local rent-assistance programs offer the opportunity for immediate assistance in addressing rent arrearages (or portions thereof) and avoiding the need to seek recourse through the unlawful detainer process. Even in unlawful detainer cases that are filed, it is in this court's interest in managing its docket, facilitating just outcomes, and wisely utilizing scarce judicial resources and capacity, to divert cases away from the contested unlawful detainer process when a reasonable likelihood of a just resolution exists.
- E. In those jurisdictions where an ERPP is established under authority of a standing judicial order, Section 7(2) of Senate Bill 5160 requires landlords to use that program before filing an unlawful detainer action for nonpayment of rent. Additionally, Section 7(3) requires the landlord to provide to the tenant, prior to filing an unlawful detainer action, an ERPP-approved notice of the eviction resolution program. A form of notice has been developed by the Administrative Office of the Courts in collaboration with the Office of the Attorney General.
- F. As required by Senate Bill 5160 and as interpreted by the Attorney General of Washington pursuant to a letter issued on July 9, 2021, indigent tenants in all unlawful detainer actions, including but not limited to those involving nonpayment of rent, have a right to counsel notwithstanding that the right-to-counsel plan mandated under Senate Bill 5160, Section 8 has not yet been implemented in Clallam County by the Office of Civil Legal Aid ("OCLA"). Accordingly, unlawful detainer actions involving indigent tenants who have requested counsel will be delayed until OCLA

certifies that the conditions precedent to operationalizing the right-to-counsel plan have been met and such certification has been transmitted to this court. PROVIDED, however, that, to the extent Clallam County has a Housing Justice Project (“HJP”) provider or other volunteer lawyer program provider, the court shall determine whether the tenant is indigent and, upon finding that the tenant is indigent, shall continue the case to allow the tenant to access HJP or other *pro bono* services which may include but not be limited to appearance by a HJP or other *pro bono* attorney on behalf of the tenant in the pending case.

- G. It is understood that the Peninsula Dispute Resolution Center (“PDRC”) and local legal aid program(s) are prepared to assist tenants who are facing eviction attempt to resolve the issues related to their tenancy through non-judicial processes including the ERPP.
- H. This court has determined it is appropriate to issue this standing order to establish an eviction resolution pilot program to divert unlawful detainer cases from the docket and facilitate both pre-filing and post-filing resolution of cases where the principle issue is nonpayment of rent. The court designates JUDGE SIMON BARNHART to serve as the procedural point person to work with relevant stakeholders on the implementation and ongoing administration of the ERPP and such designation has been provided to the Administrative Office of the Courts.

NOW THEREFORE, based upon the foregoing, it is HEREBY ORDERED:

1. Landlord/Landlord Counsel’s Obligations Regarding Eviction Resolution. Prior to serving and/or filing a summons and complaint for nonpayment of rent, the landlord or landlord’s counsel shall (i) strictly comply with the notice, service, and certification requirements of Sections 7(3), (4), and (5) of Chapter 115, Laws of 2021, and, as applicable, Governor Inslee’s Bridge Proclamation 21-09 issued on June 29, 2021 (the “Bridge Proclamation”); (ii) meet and confer with PDRC and the tenant and tenant’s

attorney to facilitate the resolution of the issue of nonpayment of rent; and (iii) file the ERPP DRC Certification Form at the time of filing a summons and complaint with the court.

2. Tenant's Obligations Regarding Eviction Resolution. Tenants must respond to landlords regarding establishing reasonable repayment plans and must participate in eviction resolution programs in accordance with the timelines established in Senate Bill 5160.
3. PDRC Scheduling and Certification of ERPP.
  - i. During the effective period of the Bridge Proclamation, PDRC shall schedule the required conference (the "meet and confer") for the landlord and the tenant (and their respective counsel) to occur within 28 days after PDRC's receipt of the ERPP notice;
  - ii. Upon the expiration of the Bridge Proclamation, PDRC shall schedule the meet and confer for the landlord and tenant (and their respective counsel) to occur within 21 days after PDRC's receipt of the ERPP notice;
  - iii. During and after the expiration of the Bridge Proclamation, the parties may agree to extend the timeframe for scheduling the meet and confer;
  - iv. PDRC shall implement processes to schedule and hold the meet and confer in the timeframes set forth herein;
  - v. During the effective time period of the Bridge Proclamation, should a tenant not engage within the first 28 days after PDRC has received the ERPP notice and, subsequently, the 14-day notice to pay or vacate, PDRC shall issue its certification that the landlord has satisfied the requirements of Senate Bill 5160, Section 7;
  - vi. After the Bridge Proclamation has expired, should a tenant not engage within the first 14 days after PDRC has received the ERPP notice and the 14-day notice to


pay or vacate, PDRC shall issue its certification that the landlord has satisfied the requirements of Senate Bill 5160, Section 7; and

- vii. If a landlord files a nonpayment of rent unlawful detainer case without PDRC certification, the court may address whether the landlord complied with the ERPP and all conditions precedent to suit. Should the court find that the landlord was entitled to PDRC certification notwithstanding PDRC's failure to certify, the court may proceed with the show cause hearing or trial.
4. DRC Certification of ERPP. PDRC may add relevant language to a certificate of ERPP participation prior to its issuance to a landlord that details whether rent assistance was available at the time of the engagement (for example, did the tenant qualify for rent assistance and was rent assistance available in the relevant locality at this time), the date PDRC received the notice and the date on the notice, whether the tenant participated in ERPP efforts, whether the tenant had counsel during the ERPP process, whether PDRC was able to conduct conciliation efforts, and any other relevant information to help the court determine whether the matter is ripe for adjudication.
  5. PDRC Reporting Obligations. On a quarterly basis, PDRC shall provide to the Court Administrator the ERPP data/information required by Ch. 115, Laws of 2021, Sec. 7 (b)-(f) in a usable and readable format.
  6. Initial Hearing Procedures for Unlawful Detainer Cases.
    - i. At the first hearing, the court will advise the tenant of their right to appointed counsel if indigent, pursuant to Sections 8 and 9 of Ch. 115, Laws of 2021, and inquire whether they wish to assert that right. If so, the court shall refer the tenant to the county-specific entity designated by the Office of Civil Legal Aid ("OCLA") for eligibility screening and/or appointment of counsel (for example, Eviction Defense Hotline or legal aid program) by sharing the name and contact number for said entity, unless counsel has previously been appointed for the

tenant prior to filing of the case with the court. If a tenant is referred for appointment of counsel, the court will continue the initial hearing as appropriate to allow the litigant to receive assistance from assigned counsel within appropriate timeframes as allowed by law and/or court rule.

- ii. At the first hearing, the court shall determine: (a) whether the landlord has complied with the notice, service, participation, and certification filing requirements of Sec. 7 of Chapter 115, laws of 2021, and (b) whether the landlord and tenant met and conferred with PDRC for purposes of resolving the issue of nonpayment of rent. Sanctions available for the landlord's noncompliance with notice, service, or certification filing requirements include but are not limited to awarding attorney's fees and costs, granting a continuance, redirecting the parties back to PDRC for attempted resolution, and any other relief as allowed by law and/or court rule;
  - iii. In non-payment of rent cases where a PDRC Certification was issued along with an agreement between the parties, the court reserves its ability to enforce such agreements, including matters addressed in the agreement beyond nonpayment of rent.
7. Effective Date; Rescission. This order is effective September 1, 2021, through June 30, 2023. PROVIDED, however, that this order may be rescinded by the court at any time, without prior notice.

DATED this 26 day of August, 2021.

  
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Brent Basden  
Presiding Judge