

Southern Nevada Eviction Services

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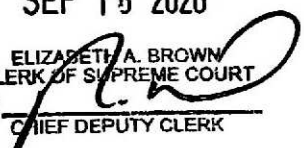
September 10, 2020

VIA E-MAIL ONLY

Elizabeth A. Brown
Clerk of the Supreme Court
201 South Carson St.
Carson, City, NV 89701
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FILED

SEP 15 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

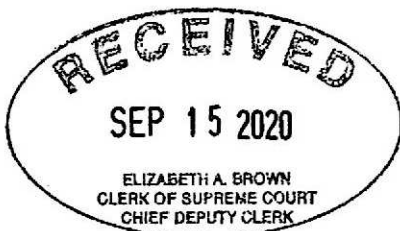
RE: ADKT 0567 – In the Matter of Residential Summary Eviction Actions and Notices During Covid-19

Dear Ms. Brown:

My name is Edward D. Kania and I am the President of Southern Nevada Eviction Services and a Nevada licensed attorney. I am submitting my comments regarding the Supreme Court's proposed rules relating to mediation of summary residential evictions. As detailed below, I urge the Supreme Court to narrowly tailor any new rules to minimize the delays which landlords have already faced in attempting to evict their problem tenants. Landlords have continually been promised during this crisis that "tenants are still responsible for payment of rent." The Supreme Court should not further impede the removal of those tenants that do not wish to be responsible for such rent payments.

General Comments

Southern Nevada Evictions Services represents all strata of landlords: from large apartment complexes to property management companies to individual "mom and pop" landlords. All of these landlords have suffered greatly in not being able to charge rent during the pandemic. While other segments of the business community which have been open during the pandemic such as pharmacies, grocery stores and departments have been able to charge for their goods and services (including the court system which has continued to charge filing fees), landlords have not. Moreover, landlords have been required to continue to maintain their properties during this time and many have been forced to pay utility liens due to tenant's failure to pay utilities. When landlords have attempted to pursue permitted forms of eviction such as for extreme nuisance or lease violations for legitimate reasons, they have been subjected to Attorney General investigations. In addition, they have been subjected to repeated extensions of the eviction moratorium, the last of which occurred hours before the previous moratorium was set to expire. Now, landlords must jump through a new hurdle of having to go through a mediation process.



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As a member of the Nevada bar, I certainly appreciate the benefits of mediation and attempting to settle matters without the need for litigation. Many of my clients have attempted to do so once the crisis began. They have proposed plans to tenants, offered to waive back-rent balances in exchange for current rent payments or promises to vacate. While some tenants have agreed to sit down to discuss solutions, many more tenants have refused to negotiate. They have told my clients that they are living for free for as long as possible. My clients have repeatedly heard the phrase "rent holiday" during the last few months. These tenants do not see mediation as a means for resolving their delinquencies; they see mediation as a way to live for free for a longer time.

I participated in the comments portion of the Senate's consideration of SB1 in August and the overwhelming comments that I heard from those organizations supporting SB1 was that it would allow tenants additional time in their properties without being evicted. There was little mention of mediation as a means to coming to a mutually-agreeable resolution of their rent dispute; the comments were primarily focused on using mediation as a means to delay the eviction process. If the purpose of establishing a mediation program is simply to delay the execution of an Order for Summary Eviction, the Courts can simply extend the period of a stay request. In that way, the landlord does not have to incur the expense of attending a meaningless mediation session.

Specific Issues

1. Mediation Should be Voluntary and, if Made Mandatory, Should be Applicable Only to Unpaid Rent Matters

As currently written, the proposed rules would require mediation should either party request it. Mediation should only occur if both parties request it. Mediation is basically requiring landlords to compromise on the amount owed/timing of payment. Throughout the series of eviction moratoria extensions, the Governor has repeatedly stated that tenants are still responsible for the full payment of rent. Some landlords may be willing to voluntarily relinquish part of the rental obligation or may be willing to accept payment of rental arrears over a longer period of time. However, that decision should be the landlord's decision. If a landlord wishes to enforce the terms of his lawful rental contract, he should be allowed to do so and move forward with the eviction process. He should not be required to participate in a mediation to compromise on rent which the Governor has repeatedly said must be paid in full.

In addition, should the Court decide to make mediation mandatory, it should only do so for rent-related evictions. Often, landlords must commence evictions for matters which impose an imminent danger/injury to their property. This could include damage to the property and the tenant incurring homeowner association fines. Where the tenant is potentially causing imminent danger, the landlord should not be required to go through the long process of mediation. A tenant causing damage to the property needs to be removed from the property on an expedited basis which will not occur if the parties must go through mandatory mediation.

2. The Court Should Adopt Section (d)(1) of the Alternative Rules Contained in Exhibit B and Require a Statement Regarding Hardship and Prior Attempts to Engage in Negotiations

Pursuant to Paragraph (d)(1) of the alternate rules, the tenant, when seeking mediation, would need to certify that they are unable to fulfill their rental obligation, that they have attempted to engage in discussions with the landlord and that they have applied for governmental rental assistance. The court should adopt this rule as it will ensure that only those tenants who have suffered an economic hardship (rather than simply refusing to pay rent), who have reached out to their landlord to try to develop a repayment plan and who have attempted to obtain rental assistance are afforded mediation. Employed individuals who are simply attempting to “game” the system and those individuals who have not tried to obtain housing assistance should not be afforded the right to delay the eviction process through mediation.

In the same vein, landlords should be given the right to challenge the accuracy of the above representations. Section (i) of the alternate rules allows for the landlord to file an opposition to mediation. As part of that opposition, a landlord should be permitted to challenge the representations. Having practiced landlord/tenant law for over fifteen years, I often see tenant literally check every box on the court’s answer form. Tenants will likely make the representations without even understanding what they are signing just so that they can get a delay. Landlords should therefore be able to challenge these representations.

3. If the Tenant Fails to Attend the Mediation, the Tenant’s Answer Should be Stricken and the Summary Eviction Allowed to Proceed

In perhaps the most lopsided proposal, the Court proposes very different treatment of the parties if they fail to attend mediation. Under paragraph (j) of the proposed rules, if the tenant fails to attend the mediation, the Court simply proceeds to the hearing. However, if the landlord fails to attend the mediation, the entire underlying eviction is dismissed! In other words, if the tenant fails to attend a mediation session which is primarily in his benefit and is designed to let him remain in the rental property, there is no penalty. However, if a landlord misses a mediation, they suffer the ultimate penalty: dismissal of their case. This disparate treatment is simply improper.

Instead, should the tenant fail to appear at the mediation (which again is mostly for their benefit), the tenant’s answer should be struck and the eviction granted. The tenant should not be rewarded for requesting a mediation, delaying the eviction process and then not even attending the mediation. If the Court feels that the appropriate punishment for a landlord missing mediation is dismissal of his complaint, the Court should also impose the same punishment on the tenant: dismissal of their answer. Tenants must know that requesting mediation is not simply a tactic to delay their eviction. Failure to participate in the process should result in the tenant losing their right to contest the eviction.

4. If the Tenant Breaches the Agreement, the Tenant Should Not Be Allowed to Argue Issues Outside of Whether the Tenant Breached the Agreement

If the tenant and landlord are able to enter into a mediation agreement, and the tenant subsequently breaches the agreement, the Court should only address whether the agreement has been breached. The tenant should not be allowed to litigate those matters contained in their answer. By agreeing to enter into mediation and sign an agreement, the parties are mutually agreeing to waive their

underlying arguments. Tenants should not get two “bites” at the apple: delaying the initial eviction and then, if they breach the agreement, being allowed to re-litigate the entire matter. If the tenant wishes to litigate the underlying issues raised in his answer, he should not sign an agreement.

In the same vein, tenants who breach their mediation agreements should not be allowed to seek a stay of eviction or to appeal the matter. Once again, if the tenant voluntarily agrees to resolve the matter through mediation, they should not be allowed to violate the agreement and still make their underlying arguments about the merits of the case.

Landlords have been made to be the villains of the pandemic. Since March 17, they have been told that they have no right to say who may live in their real property. They have been required to fully comply with every aspect of their lease agreement while the tenant has been required to comply with none. It is somewhat ironic that the Nevada Access to Justice Commission is spearheading a project which blocks landlords’ access to justice. The parties have had more than enough time to negotiate a settlement. Landlords should be allowed access to justice and given the ability to remove those tenants who have violated their lease agreements. Any mediation program developed should be minimally intrusive and allow landlords, after eight months, to enforce their lease agreements on an expedited basis.

Sincerely,

Edward D. Kania, Esq.