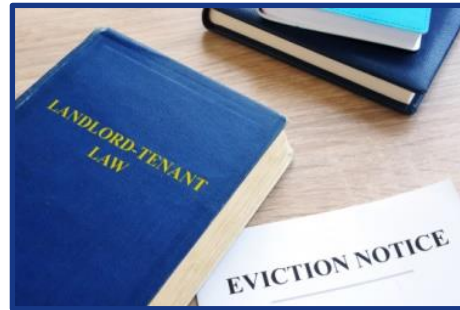


UPDATE ON LANDLORD/TENANT CASES

Recently the Michigan Supreme Court issued a new Administrative Order (2020-17), which provides for a phased-in resumption of hearings in eviction actions. The District Courts are now allowed to accept new filings and begin scheduling hearings on a priority basis. The Court described the priority system as follows:



1st priority -- 24 hour drug evictions and complaints alleging "extensive and continuing physical injury to the premises". Interestingly, the Court did not mention health hazard cases, so it is unclear what will happen to those cases.

2nd priority -- complaints alleging nonpayment of rent for 120 days or more.

3rd priority -- complaints alleging nonpayment of rent for 90 days or more.

4th priority -- complaints alleging nonpayment of rent for 60 days or more.

5th priority -- complaints alleging nonpayment of rent for 30 days or more and complaints for termination of tenancy (typical 30 day cases, trespassing cases and eviction following mortgage foreclosure).

Courts can only proceed to the next level of priority once all cases in the higher priority have been scheduled for hearing. Additionally, instead of having a large docket of cases at one hearing time, as is typically done, each case must be scheduled for a particular date and time. The Courts are encouraged to utilize remote hearings (such as Zoom hearings) as much as possible.

If the defendant is personally served with the summons and complaint for a remote hearing and fails to appear, a default may enter, as has always been the case. If there is no personal service (in other words, service by attachment instead), the court cannot enter a default, but instead must reschedule the hearing as an in-person proceeding upon 24 hours' notice. If the hearing converts to an in-person proceeding for the tenant, the landlord may still proceed remotely.

Another major change is that the first hearing is to be treated as a pretrial hearing rather than the final hearing if the tenant appears. At the pretrial hearing, the court must inform the parties that Defendant has a right to counsel, that there are programs that can help, that tenants do not need a judgment to receive assistance from the Department of Health and Human Services or the local Coordinated Entry Agency, the availability of a community dispute resolution program and the possibility of a conditional dismissal. All cases must be adjourned for seven days after the pretrial hearing is conducted. Finally, if the tenant wants a jury trial, it must be demanded within seven days of the first response, rather than at the time of the first response as is now the case.

All in all, this is a major change in the way eviction actions will be handled for the foreseeable future. The oldest delinquencies should be filed as soon as possible so landlords can take

advantage of the higher priority. Keep in mind, however, that the eviction moratorium of the federal CARES Act (which applies to apartment complexes with federally-backed mortgages and/or subsidized housing programs) continues until July 25, 2020, and at that time affected landlords can only send out a 30 day demand for possession for nonpayment of rent, not a 7 day demand.

In other news, Governor Whitmer signed Executive Order 2020-118 on June 11, which further extends the duration of protections for tenants and mobile home owners from being evicted from their home until June 30 and continues to prohibit the issuance of a demand for possession when making a demand for rent. In other words, the typical 7 day demand for possession for nonpayment of rent cannot be issued in Michigan until after June 30.

This memo is intended only as a summary and general overview. If you have any questions or would like legal advice regarding the above or any landlord/tenant issue, please contact [Phillip Neuman](#).