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## High court weighs making pandemic rules for renter evictions permanent in Michigan



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*Lansing* — The Michigan Supreme Court is weighing whether to extend some pandemic-era landlord-tenant rules over late rent payments indefinitely amid a furor of opposition from landlord groups and district court judges.

The high court took more than two hours of public comment at a recent hearing on the proposed permanent extension of rules that, by and large, give tenants more time to secure money for late payments and obtain legal representation for court.

But landlord attorneys and district courts have countered that the pandemic-era ruleset has dragged out eviction processes for months, snarling district court dockets, stressing rental operations and allowing bad-actor tenants to stay in place for weeks on end.

They also argued the state Supreme Court was overstepping its authority by seeking to make the rules permanent, effectively taking up the legislative mantle to dictate the landlord-tenant process.

"It seems to me the goal of all commenters is the same," said Peter Ruddell, a Honigman attorney representing the Apartment Association of Michigan. "It's to

keep the residents in their home. It's just the manner in which we achieve that in which the differences occur.”

Tenants and advocates, on the other hand, told justices that the rules have finally brought some fairness and balance to an eviction process that was previously tilted in the favor of landlords.

"The tradeoff for efficiency should not be a denial of a just and fair process," said Angela Tripp, director of Michigan Legal Help, an organization that helps individuals navigate civil litigation without a lawyer.

In the coming weeks, the State Court Administrative Office will tweak some of the rules based on feedback from the Nov. 16 hearing and put together a work group to make further comments and suggestions, State Court Administrator Thomas Boyd said. But the final decision will be up to the Michigan Supreme Court.

The GOP-led Michigan House Judiciary Committee will begin taking testimony Dec. 6 on a bill that would block some of the delays allowed under the high court rules while also ensuring tenants are advised of available legal aid and rental assistance funds.

"This massive proposed change has already caused chaos in Michigan courts and has made unequal, inconsistent access to justice across this state," the bill's sponsor, Rep. Graham Filler, R-DeWitt, wrote on Twitter. "I believe that the order would make Michigan a less competitive state and exacerbate our housing crisis."

## **Emergency rules extension**

The landlord-tenant emergency rules put into place during the pandemic would, under the current proposal, require a judge to give a renter a 14-day extension to pay their rent if the individual applies for rental assistance and another 16 days if they show they've been approved for rental assistance.

The rules also would require a judge at pretrial to inform a tenant of his or her rights as well as a range of rental assistance and representation options. The rules would block a judge from issuing a default judgment in a nonpayment case if the tenant failed to appear in court and was not personally served the summons.

The rules also would presume the use of video conferencing for landlord-tenant pretrial hearings, and require that a summons include information on the availability of rental or housing assistance.

The permanent adoption of the rules would continue a roughly decade-long trend in an eviction diversion movement in Michigan that seeks to have landlords paid and tenants remain in their homes, said Boyd, a former Ingham County judge.

The comments earlier this month on the rules illustrate that "change is hard," said Boyd, but they don't dampen the shifting focus on creating a better balance between tenants and landlords in court disputes.

The job of the court, he said, "is not to pick winners and losers."

"Our job is to provide a fair forum for a fair fight," Boyd said.

The changes discussed earlier this month, when compared to other civil litigation, still present a relatively efficient process while balancing the rights of landlords and tenants, he added.

"It is still lightning fast," Boyd said. "It is still making the adjudication on someone's real defensible property interest in less than 30 days."

## **An 'alarming experience'**

Opponents of the rules have said landlord-tenant proceedings during the pandemic have led to months-long delays and have resulted in tenants getting so far behind on rent that the total owed is insurmountable.

If landlords can take prompt action on late rent, tenants stand a better chance of being able to pay off the lower amount. But the rule changes during the pandemic, combined with a months-long eviction moratorium, have led to "massive, massive balances" of up to \$25,000 for tenants who have fallen behind, said Matthew Miller, a Southfield attorney who's handled landlord-tenant cases for more than 25 years.

"The more there is a delay, the worse it is for residents," Miller told the justices at the Nov. 16 hearing.

Some argued at the hearing earlier this month that the rules run afoul of summary proceeding laws issued by the Legislature that allow landlord-tenant cases to proceed through the courts more quickly than in other cases.

Others argued the allowance for delays in the process had snarled court schedules for months across the state, but particularly in urban areas where rentals are more common. In some cases, the delay is due to wait times for Zoom hearings and, in other cases, judges grant more than the month-long delay to allow social service organizations more time to review and grant rental assistance applications.

Matthew Paletz, of the landlord advocacy firm Paletz Law in Troy, described the backup at Detroit's 36th District Court as "abysmal" and said it amounted to an administrative "moratorium" on evictions.

"The district court simply cannot adhere to these time frames," Paletz said.

Midland County District Judge Mike Carpenter also spoke out in opposition to the rules on behalf of the Michigan District Judges Association at the recent hearing before the state Supreme Court. The rules reduce the discretion of judges, who know "their communities and their needs best," Carpenter said.

"The proposed changes will have a significant impact on the workloads of district courts and their staff," Carpenter told the justices.

Kristin Lortie, an Upper Peninsula landlord who rents out single-family homes, said she was able to negotiate with tenants throughout the pandemic and didn't experience the full effect of the new rules until September, when Lortie moved to evict a tenant who'd breached the terms of a lease.

She called her first brush with the new rules in court an "alarming experience" that effectively prohibited her from managing her business.

"While waiting for the numerous court dates and delays, I am prohibited from regaining possession of my property and from providing housing to a suitable tenant that will follow the lease," Lortie told justices. "Additionally, due to the current hostility with the tenant, my property incurs more risk of adverse impact."

Justices Richard Bernstein and David Viviano at the hearing earlier this month repeatedly questioned the unintended consequences of the rules over the past couple of years and speculated on the effect of the rules on Michigan's housing market.

"There's already a crisis in affordable housing," Viviano said. "What you're also doing even for the large landlords is you're making it so they have to increase rents for all the other people who are paying."

## **'Rebalances the power'**

But tenants and tenant advocates argued strongly for the continuation of the rules, noting there's been a sharp uptick in tenant participation in the process that speaks positively of the increasing accessibility of Michigan courts.

"These opportunities for tenants to impact the outcome of their cases slightly rebalances the power disparity that has long ruled the eviction process," said Tripp, of Michigan Legal Help.

"I think the housing market has been impossible for poor people for a very long time."

Kim Cramer, a staff attorney for the Michigan Legal Help program, argued the delays allowed tenants more time to understand their situation, their aid options, and potentially seek out legal help.

"An additional 14 days, to the extent it could help someone get money to the landlord, does not seem to be the straw that is breaking the camel's back" when it comes to the cause of most court delays, Cramer said.

The current system speeding along landlord-tenant cases has for too long weighed in favor of the landlord, said Mira Edmonds, a clinical assistant professor at the University of Michigan Law School. The proposed rule changes, she said, are "modest, but important."

Judge Demetria Brue, of Detroit's 36th District Court, spoke out in favor of the rules. She noted the court's four judges before the pandemic were handling roughly 7,500 landlord-tenant cases a year and, during the pandemic, about 5,500 a year.

Without the ability to delay a renter's payment deadline, Brue said, the courts would return to "assembly line justice."

"Our congestive case load necessitates our judges to ask this court for discretion and for time beyond that which is set forth in the proposed amendment," Brue said.

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