

Challenge of the Recent Amendments to the Landlord/Tenant Act
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Recently, we became aware of an appeal that was filed in the Court of Common Pleas from a judgment of a district justice in which the recent amendments to the Landlord/Tenant Act are being challenged. This case involves Section 8 tenants who had allegedly failed to make their rent payments to the landlord. The landlord filed a complaint before a district justice and obtained an award for possession of the property and an award for rent in the amount of \$678.00. The monthly rent listed on the Notice of Judgment/Transcript was \$406.00 which represented the total rent that was due under the lease although pursuant to their lease the tenants were only required to pay the amount of \$42.00 per month and the remaining rent was to be paid by the Allegheny County Housing Authority. When the tenants filed their appeal, they were told by the Prothonotary's office that pursuant to the new Landlord Tenant Rules, they would have to pay into court the amount of \$678.00. In addition, they were told that they would have to pay rent in the amount of \$406.00 per month to retain possession of the property because the amount listed as the monthly rent on the district justice's judgment was \$406.00.

Neighborhood Legal Services began representing the tenants and named Michael F. Coyne, the Prothonotary of Allegheny County as a defendant in the action. The tenants subsequently filed a petition and were successful in having a supersedeas established requiring them to pay rent in the amount of only \$42.00 per month, since the Housing Authority had already paid the rest of the rent.

The tenants have made a constitutional challenge to the Landlord/Tenant Act Amendments arguing that the reduced ten-day period in which to file an appeal from a judgment for possession from a district justice and the requirement that in order to remain in possession of the property on appeal

tenants have to pay the judgment and ongoing rent violate the Equal Protection Clause and the Privileges and Immunities Clause of the Pennsylvania Constitution. These claims are on the basis that the tenants do not have the opportunity to dispute or challenge the amount necessary to establish a supersedeas and because the same provisions do not apply to commercial tenants.

The problem with this litigation is that while Neighborhood Legal Services has a great interest in striking down the new law in a single case with an unfair result to tenants, only a single landlord is left to support the law. The Prothonotary doesn't want to argue in favor of the law. His office just wants to know what they are allowed to do. Even the Pennsylvania Attorney General's office has not decided whether to intervene in support of the law and landlords' rights. Because of this one sided challenge, with the support of several local landlords' groups and individual landlords, I have obtained permission from Judge Wettick's chambers to file a Motion to Intervene on behalf of Concerned Landlords. An organization known as the Metropolitan Tenants Organization of Pittsburgh and Allegheny County, Inc. has already intervened in the action on behalf of tenants. In addition, it appears that 2 other actions with similar circumstances are being consolidated with this action. Judge Wettick has forwarded a letter to Attorney General Michael Fisher advising him of the nature of the cases filed and the potential constitutional challenge to the Amendments to the Landlord/Tenant Act and seeking his participation in the case. A final arbitration hearing is scheduled on the original complaint for May 21, 1997. We will report the result of that hearing.

Lead Based Paint Litigation:

Since the last update on Pittsburgh's Lead Based Paint case, several of the tenant Plaintiffs

who filed the original complaint against the Allegheny County Housing Authority have apparently decided to withdraw from the case. Fortunately, one of these tenants was our client's tenant. Once this tenant has formally withdrawn from the case, our client will be dismissed from the action. Although this is good news for our client, he has not escaped liability in this matter. He will still be subject to a potential claim by the minor child who resided in his property until the child turns 18, and for two years after that. Additionally, if a class action is certified, the tenant child may be a member of that class even if the mother is not a named plaintiff.

This potential long term liability to a child reinforces the recommendations that you should not hold your rental properties, especially government supported properties, in your own name. We don't think this is the end of tenant lead paint litigation in Western Pennsylvania, merely a delay. Depositions of Housing Authority personnel are being taken and the case is continuing. We will provide continuing updates.