ASSEMBLY, No. 3109

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 24, 2020

Sponsored by:
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District 27 (Essex and Morris)
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District 27 (Essex and Morris)
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District 33 (Hudson)

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SYNOPSIS

Establishes confidentiality of landlord-tenant court records; addresses adverse actions on rental applications.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 12/7/2020)

AN ACT concerning the confidentiality of court records of landlord-tenant actions, adverse actions on rental applications, and supplementing Title 2A of the New Jersey Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. The Legislature finds and declares that:

a. New Jersey remains in the grip of a critical shortage of decent, affordable rental housing, a situation first formally acknowledged more than 40 years ago and which prevails today. The New Jersey Legislature and the courts have on many occasions recognized the severity of this crisis, especially for households of lower-income, and have taken action to protect tenants from unnecessary, unjust, and debilitating treatment or hardship.

b. New Jersey's rental housing shortage makes it difficult for people to find and retain decent, safe, and affordable rental units. Landlords and private tenant rating agencies, have developed a system for disseminating tenant screening reports which exhibit screening criteria, such as credit history and criminal history, to assist landlords in evaluating prospective tenants. Unfortunately, such screening tools are often used pretextually, or are arbitrarily formulated and applied without reference to common, agreed upon sets of standards.

c. One such screening mechanism involves the collection of court filing data. Landlord-tenant court actions are among the most commonly filed civil cases in the State of New Jersey, and often involve situations in which the tenants in question have valid legal or equitable defenses. Additionally, a large number of such cases are dismissed or settled on terms favorable to the tenants involved.

d. At present, all landlord-tenant court filing records are available to the public. These court records are routinely mined by tenant rating agencies, which then sell tenant-specific reports incorporating them to interested landlords. In most instances the data provided is limited to the single fact that a filing occurred, without reference to, or investigation of, the facts and circumstances surrounding the inception and resolution of the litigation.

e. The mere filing of a court proceeding by or against a tenant, without regard to, or interest in, the ultimate results of the proceeding, has in many cases been used by prospective landlords and tenant screening agencies as the sole or primary reason for denying an application for a residential tenancy, or the preparation of a report which views the tenant unfavorably. The result is that otherwise worthy applicants are being denied access to critically-needed housing, often severely limiting their housing options and subjecting them to possible homelessness. This can occur even if the actions which triggered the case filing were based upon long-

recognized common law or statutory remedies, such as rent withholding in the case of serious, even life-threatening deficiencies in the living conditions of the rented dwelling.

f. As a result, tenants who assert and rely upon valid legal defenses or established legal rights, or who otherwise prevail through litigation, settlement or dismissal, can nevertheless find their ability to move to and obtain another rental unit seriously compromised. This "blacklisting" of prospective tenants based solely upon bare-bones court filing data can cause serious difficulty for individuals and families applying for rental housing, and in some circumstances can result in homelessness. The use of court-filing screening also has a serious "chilling effect" on tenants' assertion and exercise of their statutory and common law rights. This result is contrary to public policy the intent of the courts, the Legislature, and the administrative bodies which established these rights.

g. It is, therefore, in the public interest of the State of New Jersey to protect tenants from unjust, unfair, or discriminatory screening practices by limiting access to filing information in court actions involving landlord-tenant matters for a reasonable period of time, and permanently denying access to such information with regard to matters in which the tenants prevailed or achieved a favorable settlement, or which have been affected by the passage of time.

2. a. The court record of a landlord-tenant action shall remain confidential and unavailable to the public for the first 60 days after and including the date the action was filed.

b. The court record of a landlord-tenant action shall remain confidential and unavailable to the public indefinitely unless the action results in a judgment for possession.

c. The court record of a landlord-tenant action that results in an unconditional judgment for possession shall become public the later of the 61st day after the date the action was filed or within 45 days after the date the matter is completely resolved, however, if the matter is appealed by either party, the court record shall remain confidential and unavailable to the public until the conclusion of the appeal, and only be made available to the public if the landlord prevails.

d. The court record of a landlord-tenant action shall remain confidential and unavailable to the public, although a judgment for possession has been entered, if the judgment is subject to conditions that, if met by the tenant, may result in the judgment being vacated and the matter dismissed. However, if the court finds, after notice to the tenant and an opportunity to be heard, that the conditions have not been met, the court record shall be made available to the public at the conclusion of an appeal or an opportunity to appeal the judgment.

e. The court record of a landlord-tenant action shall remain confidential and unavailable to the public, although a judgment for possession has been entered, if the tenant files a timely order to show cause seeking to vacate the judgment prior to being physically locked out of the housing unit. The court record shall remain confidential and unavailable to the public until the order to show cause is resolved, and shall remain confidential and unavailable to the public if the tenant prevails.

f. The court records of any cause of action brought by a tenant asserting a legal right against a landlord shall remain confidential and unavailable to the public indefinitely, regardless of whether the tenant prevails, unless the tenant voluntarily consents to making the court record available to the public.

3. As used in this act:

"Court record" means any record containing information regarding a past or current landlord-tenant action, and any record of the filing of a landlord-tenant action, including but not limited to:

a. any information maintained by a court in any form in connection with a case or judicial proceeding, including but not limited to pleadings, motions, briefs and their respective attachments, evidentiary exhibits, indices, calendars, and dockets;

b. any order, judgment, opinion, or decree related to a judicial proceeding;

c. any official transcript or recording of a public judicial proceeding, in any form;

d. any information in a computerized case management system created or prepared by the court in connection with a case or judicial proceeding; and

e. any record made or maintained by a judicial officer.

"Landlord-tenant action" means any action brought by or against a landlord or tenant in the Special Civil part of the New Jersey Superior Court.

4. a. Any New Jersey public entity that maintains a written or automated record or file of court records of landlord-tenant actions shall take appropriate actions to ensure that court records of all landlord-tenant actions that did not result in a judgment for possession are kept confidential and unavailable to the public.

b. A tenant involved in a landlord-tenant action that resulted in a judgment of possession may apply to the Administrative Office of the Courts and request that the court records of any action resulting in a judgment of possession more than three years prior thereto be purged.

c. The Supreme Court of New Jersey may adopt rules, and the Administrative Director of the Courts may issue directives and guidelines, to implement the purposes of this act.

5. When evaluating a prospective tenant, a landlord shall not consider:

a. a landlord-tenant action brought by or against a tenant which did not result in a judgment for possession, or which did result in a judgment for possession but was then dismissed or reversed; or

b. a judgment for possession that was entered and executed against the prospective or existing tenant three or more years prior to the tenant's application for tenancy.

6. If a landlord rejects an application from a prospective tenant, approves an application with conditions that exceed reasonable conditions routinely imposed upon a prospective tenant, or takes any other adverse action on a rental application, the landlord shall provide a written notice of the adverse action to the prospective tenant that states the reasons for the adverse action. The adverse action notice shall disclose any screening information about the prospective tenant accessed by the landlord, and shall append any screening report about the prospective tenant that was accessed by the landlord. The adverse action notice shall be provided in a substantially similar format as set forth in this section.

ADVERSE ACTION NOTICE

Name
Address
City/State/Zip Code

This notice is to inform you that your application has been:

..... Rejected
..... Approved, subject to the following conditions:
_____

Adverse action on your application was based, in part, on the following:

..... Information contained in a consumer report (The prospective landlord must include the name, address, and phone number of the consumer reporting agency that furnished the consumer report that contributed to the adverse action.)
..... Information received from previous rental history or reference
..... Information received in a criminal record
..... Information received in a court filing or other court record
..... Information received from an employment verification
..... Other
The following is (are) the name(s), address(es), and phone number(s) of each of the consumer reporting agencies, or other

agencies or entities, that furnished the reports or information referred to above:

_____

Your application was not accepted, or was approved with the additional conditions described above, for the following reasons:

_____

Dated this ..... day of ....., ...(year)
Agent/Owner Signature"

7. Any person who violates section 5 or 6 of this act shall, in addition to any other penalty provided by law, be liable for a penalty of not less than $1,000 for the first offense, and not less than $5,000 for the second and each subsequent offense, plus reasonable attorney fees. This penalty shall be exclusive of, and in addition to, any moneys or property ordered to be paid or restored to any person in interest.

8. This act shall take effect immediately and shall apply retroactively to court records of all landlord-tenant actions.

STATEMENT

This bill would preserve the confidentiality of the court records of landlord-tenant actions under certain circumstances. The bill defines the term “court records” expansively to include any record containing information regarding a past or current landlord-tenant action, and any record of the filing of a landlord-tenant action. The bill defines the term “landlord-tenant action” as any action brought by or against a landlord or tenant in the Special Civil part of the New Jersey Superior Court.

The bill specifically provides that the court record of a landlord-tenant action will remain confidential and unavailable to the public for the first 60 days after and including the date the action is filed. Under the bill, the court record of a landlord-tenant action will remain confidential and unavailable to the public indefinitely unless the action results in a judgment for possession.

The bill provides that if a landlord-tenant action results in an unconditional judgment for possession, the court record of the action will become public on the later of the 61st day after the date the action was filed or within 45 days after the date the matter is completely resolved. However, if the matter is appealed by either party, the court record remains confidential and unavailable to the public until the conclusion of the appeal, and will only be made available to the public if the landlord prevails.

The bill also provides that the court record of a landlord-tenant action will remain confidential and unavailable to the public although a judgment for possession has been entered, if the judgment is subject to conditions that, if met by the tenant, may result in the judgment being vacated and the matter dismissed. However, if the court finds, after notice to the tenant and an opportunity to be heard, that the conditions have not been met, the court record shall be made available to the public at the conclusion of an appeal or an opportunity to appeal the judgment.

Under the bill, the court record of a landlord-tenant action will remain confidential and unavailable to the public after entry of a judgment for possession if the tenant files a timely order to show cause seeking to vacate the judgment prior to being physically locked out of the housing unit. In this circumstance, the court record will remain confidential and unavailable to the public until the order to show cause is resolved, and will remain confidential and unavailable to the public if the tenant prevails.

The bill provides that the court record of any cause of action brought by a tenant asserting a legal right against a landlord will remain confidential and unavailable to the public indefinitely, regardless of whether the tenant prevails, unless the tenant voluntarily consents to making the court record available to the public.

The bill also addresses the use of court records by landlords when evaluating prospective tenants. The bill prohibits a landlord, when evaluating a prospective tenant, from considering a landlord-tenant action brought by or against a tenant that did not result in a judgment for possession, or which did result in a judgment for possession but was then dismissed or reversed. The bill also prohibits landlords from considering a judgment for possession that was entered and executed against a prospective or existing tenant three or more years prior to the tenant's application for tenancy.

Additionally, the bill would require a landlord who takes an adverse action on a rental application to provide written notice of the adverse action to the prospective tenant, stating the reasons for the adverse action. The adverse action notice must disclose any screening information about the prospective tenant accessed by the landlord, and must append any screening report about the prospective tenant that was accessed by the landlord.

The bill would authorize imposition of a penalty on a landlord who violates the bill's provisions concerning the improper screening of tenants. Specifically, the bill provides that in addition to any other penalty provided by law, a landlord will be liable for a penalty of not less than $1,000 for a first offense, and not less than $5,000 for a second and each subsequent offense, plus reasonable attorney fees. This penalty would be exclusive of, and in addition to, any moneys or property ordered to be paid or restored to any person in interest.