

REPORT TO THE LEGISLATURE  
FROM THE JUDGE OF THE HOUSING DIVISION OF  
THE SUPERIOR COURT  
FOR THE FAIRFIELD JUDICIAL DISTRICT AND NORWALK/STAMFORD DISTRICT  
OCTOBER 1, 1982 to NOVEMBER 1, 1983

MARGARET C. DRISCOLL, JUDGE



The Housing Session of the Housing Division of the Superior Court for the Fairfield Judicial District began on October 1st, 1982, and that for the Stamford/Norwalk Judicial District began officially on the same date.

The Norwalk Court sessions were late in starting because there was a delay in the appointment of the Clerk for the Court until the second week of October.

There was also a delay in the appointment of a prosecutor for both districts until December of 1982.

The designation of the Court as a part of the J.D., while its location was in the G.A. building in both districts, caused initial confusion and delay in the filing of writs. This seems to have abated.

The following is a report on the staff, the facilities and the operation of the court for the year beginning October 1982 to November 1, 1983, with recommendations for legislative changes.

#### STAFF

The staff of the Court, like the other "Housing Courts" consists of an assistant clerk for each Judicial District, who must be a lawyer and who, in effect, supervises the operation of the office in each district. The staff also includes two housing specialists who have expertise in the

area of codes, but who also have an ability to mediate disputes between the parties coming before the court. Their efforts in settling matters have been extremely successful.

In addition, in the Fairfield Judicial District there is a clerical assistant and an administrative aide, while in the Norwalk Judicial District there is only one clerical assistant.

At both offices there is need for additional personnel. In the Bridgeport Office the administrative aide is also a union steward and had to spend a large amount of time out of the office on union business this year. There was no provision for any substitute and there should be. In the Norwalk Office we have had a series of clerical assistants who left for one reason or another and it is apparent from the number of cases handled by the Norwalk Court, compared with the New Britain Court that the addition of at least a part-time clerical assistant is needed.

#### FACILITIES

The Court for the Fairfield Judicial District is located in the former Superior Court Building on Golden Hill Street on the third floor. There is ample space for the staff, including the prosecutor. The only problem is the

acoustics in the courtroom which make it almost impossible to hear a witness on the witness stand. Perhaps some kind of electronic amplification would solve this problem.

The facilities in Norwalk, however, except for the chambers and the courtroom, are unsatisfactory. In the first place, the offices of the clerk and the housing specialists are two small offices formerly used as conference rooms for lawyers and are located at one end of the building while the courtroom and judge's chambers are at the other end of the building. The clerk's office for the filing of the papers and the reception of the public is next to the courtroom. It is a small office which has been divided into two parts to enable the clerk to have some privacy in the rear of that office while the clerical assistant is receiving members of the public in the front.

There is no office for the prosecutor. Originally it was suggested that the prosecutor use a desk outside the office of the clerk of the G.A. but that is inappropriate in view of the nature of the prosecutor's job which requires her to consult with people being charged with crimes and also with attorneys representing them. There is also a problem with the use of the phone by the prosecutor.

Actually, one of the problems is that while the

legislature established the housing division as a part of the J. D., in both Bridgeport and Norwalk the Court is housed in a G. A. building. This means that there is no J. D. State's Attorney's office which might have been appropriate for the prosecutor. In Bridgeport we are able to provide her with a private office as a part of the Housing Court facility. However, in Norwalk nothing has been provided either by the Housing Court or by the Prosecutor's Office except for the desk outside of the office of the Chief Clerk of the G. A. which has no privacy at all.

I understand that a search is on for additional quarters for the Housing Court but separate from the other court buildings. This could well present a problem when sheriffs are needed, for example, for criminal business. However, it is apparent that the space provided in Norwalk is neither adequate nor satisfactory.

#### STATISTICS

The operations of the Court are reflected to some extent in the statistics which are as follows:

STATISTICS

FAIRFIELD AND NORWALK/STAMFORD JUDICIAL DISTRICTS

OCTOBER 1982 - OCTOBER 1983

	<u>FAIRFIELD J/D</u>	<u>NORWALK/ STAMFORD J/D</u>	<u>TOTAL BOTH DISTRICTS</u>
Filed	2724	1665	4389
Disposed	2221	1122	3343
Summary Process	2271	1282	
Criminal	22	17	

There are a number of comments to be made about these statistics. In the first place, the Fairfield Judicial District started about two to three weeks before the Norwalk district because of the absence of a clerk in the Norwalk-Stamford District. In addition, both districts were handicapped by the delay in appointing a Deputy Assistant State's Attorney as a prosecutor for the Housing Division in these districts. Further, in Norwalk we are also handicapped by an unusually high turnover in the clerical staff, alluded to under STAFF.

In Bridgeport, we have also had the difficulty pointed out in the section concerning STAFF, with respect to

the work of the administrative aide who is also a union steward.

The number of criminal cases which have been filed and disposed of appears to be relatively small. However, it must be remembered, that the prosecutor proceeds on the basis of applications for warrants received from code enforcement officials. At the beginning of the prosecutor assuming the job, meetings were held with the code enforcement officials in both Judicial districts. Both the judge and the prosecutor attended these meetings and an attempt was made to encourage the code enforcement officials to bring their complaints to the court. In addition, procedures were explained to them and these meetings were followed up by written materials sent to them by the prosecutor.

Further meetings were held by the prosecutor and she has been in frequent touch with the code enforcement officials. However, it was immediately clear in the Bridgeport area that the code enforcement officers in one area, to wit, Housing, were not filing any complaints. That situation has been changed but the number of complaints is still quite small.

In every case the effort is made to be sure that the condition complained of is rectified before sentence is passed. The Court has assigned cases for jury trial in criminal



matters and has stood ready to proceed with such trials in an effort to eliminate the requests for jury trials as vehicles for delay. In each case when a jury trial was requested and a jury made available, a plea was entered.

Nevertheless, the criminal route is not the most effective one for achieving compliance. The problems include the reluctance of tenants to complain, the discretion of the code enforcement offices to determine which violations will be prosecuted and the lack of sufficient manpower in most of the code enforcement offices to do a regular city-wide or town-wide inspection. Moreover, the penalties may be limited to fines.

An additional weapon for enforcing the codes is through the use of an injunction and this process has been discussed with the City Attorneys in the major municipalities.

In addition, in the summary process area, a substantial number of code violations have come to light as defenses and they have been corrected as a part of the summary process disposition, usually by stipulated judgment.

#### HOUSING COUNCIL

The court has been assisted in its role by the activities of the Housing Council for the two judicial districts, headed by Attorney Douglas Mintz and Reginald Walker. Open houses were held in each court location

and the Council has also met the judge and the court staff on other occasions as well. Their suggestions of signs in Spanish and forms in Spanish were agreed to by the judge and request made to the Judicial Department to supply them. In Bridgeport we were able to obtain signs provided through the good offices of Judge Buzaid when the State signs did not readily appear.

Forms were requested from Carl Testo on September 27th and that request, I have been informed, as of November 28th, was turned over to the appropriate authorities. There is some problem in providing a place to post the signs in the Norwalk Courthouse because the city owns the courthouse and the custodian has forbidden the posting of signs on the walls. The Council also expressed concern over the lack of a Spanish-speaking person on the staff.

The District Council has now been supplanted by a State-wide Council which has yet to meet and which has not been provided with any funds for its expenses. The Legislature might want to take a look at this in terms of how effective the Council will be on a State-wide basis without the provision of funds for its operations.

I believe the Housing Councils do have important functions to perform in this area, both in terms of providing

the public with information as to the operations of the court and also calling attention to the needs of the court and to areas to which either the municipalities involved or the State should direct their attention.

#### LEGISLATION

The interpretations of the summary process statutes since the establishment of the "Housing Division" have been numerous and, in some instances, contradictory. To clarify the law and provide more uniformity in its application, I would suggest that 47A-23a be amended to read as follows:

"When the owner or lessor of any land or building or of any apartment in any building, or of any dwelling unit, or any trailer, or any land upon which a trailer is used or stands, whether in writing or by parole, or his legal representative or his attorney at law or in fact, desires to obtain possession of said land, building, apartment, dwelling unit, trailer or land upon which a trailer is used or stands, which is occupied under a rental agreement or otherwise, he may evict the occupant of the premises for the following reasons only:

- (1) That the term of the lease or rental agreement has ended by lapse of time.
- (2) That the agreed upon rent has not been paid on time.
- (3) That there has been a violation of

asons  
Eviction

an expressed stipulation in the lease or rental agreement.

- (4) That there has been a violation of Section 47a-11 or 47a-15 and the required notice given.
- (5) That the possessor or occupier has no right to occupy the premises.
- (6) That the possessor had a right or privilege to occupy the premises but such right or privilege terminated.

Said owner or lessor shall give notice to the lessee or occupant to quit possession of such land, building, apartment, dwelling unit, trailer or land upon which a trailer is used or stands at least eight days before the termination of the rental agreement or lease, if any, or before the time specified in the notice to the lessee or occupant to quit possession or occupancy; except that where the tenancy or right to possession is on a week-to-week basis then the lessor or owner shall give the notice to the lessee or occupant to quit possession of such land, building, apartment, or dwelling unit at least three days prior to the termination of the rental agreement or lease, if any, or before the time specified in the notice for the lessee or occupant to quit possession or occupancy."

Notice  
Requirements

Service

Problems have also arisen with respect to the service of notices on commercial property where the business which had occupied the premises has vacated. It would appear that there ought to be some substitute service provided and/or permitted under 47A-23(c).

sance

Section 47A-32 defines nuisance for "any action of summary process." However, in the reasons given in 47A-23, which the lessor or owner may use to evict a tenant, nuisance is not included. This also should be clarified, especially since 47A-36 provides for a stay of execution of twenty days, except in judgments for "nuisance committed or permitted by the defendant." It seems to this writer that the definition of nuisance is not helpful and that the provisions of 47A-11 and 47A-15 sufficiently define the kinds of conditions which might have been included in nuisance.

Grace Period

Application

Chapter 830

Commercial  
Remedies

The question of grace period in commercial leases and in week-to-week tenancies has not been addressed by the statutes. The grace period applicable to residential premises of nine days after the due date has been held not applicable to commercial premises, in view of the definitions of Chapter 830. Those definitions of "tenant" particularly restrict the application of Chapter 830 to residential premises. This means that 47A-11 and 47A-15 with respect to tenants' obligations and landlords' remedies do not apply to commercial establishments.

grace  
period for  
week-to-  
week  
tenancies

The grace period with respect to week-to-week tenancies has been held to be the same as for month-to-month, although the result is somewhat incongruous. It may be there should be no grace period for week-to-week tenancies and the time to vacate should be as suggested in my proposed amended version of 47A-23a, that is, at least three days.

waiver of  
notice  
to Quit

Another problem concerns the interpretation of 47A-25, which has been interpreted to mean that a notice to quit may not be waived by agreement unless the action is based on lapse of time. The manner in which it is phrased, however, leaves it open to other interpretations.

Fair  
Rent  
Commission

One of the major reasons for legislation establishing the Housing Division was a concern about housing conditions generally and the need to try to maintain an adequate supply of decent, affordable, habitable housing for Connecticut citizens. However, there are inequities in the rights and remedies afforded both landlords and tenants. For example, in the Norwalk/Stamford Judicial District there is a Fair Rent Commission in Stamford for Stamford residents. There is no other Fair Rent Commission in the district, nor is there one in the Fairfield Judicial District. This means that residents of Stamford have an advantage over the residents

of other towns in that district and in the Fairfield district because they do have a forum for the hearing and determination of complaints about the fairness of the rent they are paying.

In the other two districts, only those who come within the definition of 47A-23c, as senior citizens or disabled, etc., have any recourse for what they consider to be an unreasonable rent increase. Where there is no Fair Rent Commission, those eligible under 47A-23c may apply to the Superior Court for a determination of the fairness of the rent increase.

However, other renters throughout the Fairfield Judicial District and throughout the Stamford/Norwalk Judicial District, except for Stamford, have no recourse. It appears to me that this is, in effect, a denial of equal protection and may well come under the doctrine of Horton v. Meskill. In any event it bears investigation by the Legislature and an attempt made to equalize the remedies afforded tenants throughout the State.

In addition, there are two areas where the rehabilitation of rental units, particularly of residential ones, or at least, their maintenance would be encouraged. They are the areas of certificates of occupancy and rent receiverships. Again, not every community either has provision

Certifica-  
tion of  
Occupancy  
and  
Rent  
Receivership

for rent receivership, which the Legislature has enabled them to have, nor does it have provision for a certificate of occupancy. In the Fairfield Judicial District, for example, there are no such requirements or programs. In the Stamford/Norwalk Judicial Districts, there are requirements in Norwalk and Stamford for certificates of occupancy. Stamford has a rent receivership program under the umbrella of the Tenement House Operating Fund.

Certificates of occupancy would mean that for the buildings included within the eligibility requirements, the landlords would be required to maintain the buildings, at least when one tenancy expires and another begins.

The rent receivership program would permit tenants to, in effect, have a means of maintaining buildings, or requiring them to be maintained, in conformance with the codes. I am hopeful that the experimental program that the Legislature has authorized for Hartford will be extended at least to the other two "Housing Courts." However, the certificate of occupancy, so long as that is optional, will probably not become operative without some kind of mandate from the Legislature or some offer the town can't refuse; for example, money to hire staff to enforce the requirements.



security  
deposits

I agree with Judge Maloney's suggestion that the law with respect to security deposits be amended so as to permit the landlord to recover for damages caused him by the tenant, even when he has not complied with the notice requirements of the law. In general, most landlords seem to have little or no knowledge of their obligations under the security deposit law, nor do most tenants, for that matter.

readings

There are two statutes which seem to require amendment to eliminate what appears to be an anomaly or perhaps an inconsistency. They are 47A-26(a) and 47A-26(b).

In 47A-26(a), where a defendant appears but fails to plead, a default judgment may be entered against him if he fails to plead within three days after the motion for default judgment is filed in the clerk's office.

In 47A-26(b), if the defendant appears, the plaintiff may move for use and occupancy payments. After a hearing, scheduled no less than three, no more than seven days after the filing of a motion, the court may order such payments in monthly installments. If the defendant does not pay, then the clerk is to order him to file an answer, and if that is not done in four days from the mailing of such order, judgment is to be ordered forthwith. If he files an

answer, the clerk is to set the matter down for a hearing no less than three, no more than seven days after such answer and reply, if any, are filed.

47A-26(c) provides for three day intervals for the advancement of pleadings.

Does the statute mean that if the defendant appears and files an answer, no motion for use and occupancy will lie?

Does it mean that if the defendant appears and use and occupancy is ordered, the defendant need not file an answer until he fails to make payments (monthly) and is ordered to file an answer?

Does it mean that if he makes the payments - he need not file an answer - ever?

To eliminate the problems which the present wording of the statute suggests, I would propose the following as a substitute for 47A-26(b):

"During the pendency of the action the plaintiff is entitled to payment for the fair rental value of the premises as ordered by the court on motion of the plaintiff and after hearing."

#### FORCIBLE ENTRY AND DETAINER

The statutes on forcible entry and detainer also pose some problems. 47A-43(b) provides that the judge to whom a complaint is exhibited shall issue, to the party complained of, a summons to appear at a specified time

and place within eight days from the exhibition of such complaint to answer the matters complained of.

47A-43(c) says the summons shall be served on the party complained of six days, inclusive, before the day appointed for trial.

Is the day that the party complained of is to appear and answer the same day as that for trial? Does appearing and answering mean the same thing as it does in other matters, to wit: the filing of an appearance and the filing of a written answer - not a physical appearance by the party in question prepared to go to trial? Or what does it mean? Consider the fact that the provisions of 47A-44 provides for a jury trial once the issue is joined on a complaint, if the appropriate motion has been made prior to the joining of the issue.

Furthermore, 47A-43(d) provides that if the party complained of does not appear and defend, the judge shall proceed in the same manner as if he were present. Does this mean that the judge hears the matter without the defendant being present and makes a judgment on the basis of the evidence presented? Or does it mean that a default judgment may be entered against the defendant, as would be the case in any other matter?

Also, the kind of judgment that may be rendered by the court is somewhat ambiguous. 47A-45(a) provides that the judge shall render judgment that the complainant be restored to and resealed of the premises and award a writ of restitution accordingly. What is a writ of restitution? Is it merely an order to restore the plaintiff to the premises or does it mean making him whole?

There has been some law to the effect that Section 47A-46, which provides for double damages, once the requirements for an action in forcible entry and detainer have been established, creates a separate civil action, different from that for possession. This would seem to mean that no damages would be allowed in the action for possession - unless a writ of restitution is interpreted to mean to make the plaintiff whole.

In any event, it seems to me that the Legislature would do well to clarify these statutes and thus make the job of the judge easier.

#### DEPOSITS & COMMISSIONS FOR RENTAL UNITS

Another area of concern to the court, which might be the subject of legislation or regulation by the Department of Consumer Protection is the payment of a commission to real estate dealers by tenants for the obtaining of a rental apartment. The practice in this matter varies, but in

Bridgeport it is commonplace for the tenant to pay the real estate agent's commission, thereby, increasing substantially the amount a tenant must pay before obtaining a place to live. A complaint to the Real Estate Commission produced the answer that the matter was really negotiable, but in fact the tenants either are not advised of that, or have no understanding of that, or feel they are not in a position to negotiate.

In addition, receipts given to tenants for deposits on rental premises may in fact be a means of depriving the tenant of that deposit without adequate consideration. One such receipt provided that if the tenant, for any reason, decided not to take the apartment in question, under no circumstances could the tenant receive back his deposit. The same receipt provided that all of its terms were subject to the approval of the landlord and, further, that the rental agent was not guaranteeing any delivery date as to when the premises would be ready. If, for example, the tenant needed an apartment within, say, a month and paid the deposit on the oral understanding that it would be available in a month, the tenant would not be able to get the deposit returned if the rental was not available and the tenant was forced to find another place, since he could not wait for the date when the one for which the deposit was paid became available.

Now that the Real Estate Commission has been supplanted by the Department of Consumer Protection it may be that this problem will be subject to the department's regulations. A complaint has been made to the department, which is investigating the matter.

#### CONCLUSION

The work of the Housing Court has been both challenging and rewarding. Challenging because the law in this area is in the process of development and the precedents are few; rewarding because the court has been able to help people find rents as well as obtain correction of code violations. The latter was accomplished primarily through the enthusiastic and dedicated efforts of our housing specialists, as well as through the expertise of our assistant clerks.

In my judgment, the court is truly what one newspaper reporter called it, a "People's Court," and I believe it is fulfilling at least one purpose of its creation, that is, providing a forum in which the total attention of the court personnel is focused on the problems of landlord/tenant or owner/occupant relationships and problems.

I do believe, however, while assignments should be of at least the duration suggested by the legislation, that is,

eighteen months, there should be more of an effort made to integrate the court facilities and personnel with the Judicial District facilities. Otherwise, judges in this court become somewhat isolated and assignments, therefore, become undesirable.

In addition, some thought should be given to a new name since the court handles commercial as well as residential property matters.

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Margaret C. Driscoll, Judge