

# SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

## ORDER

By action of the Board of Judges of this Court and pursuant to D.C. Code § 11-946, it is this 3rd day of January, 2005:

**ORDERED** that Superior Court Rules of Procedure For the Landlord and Tenant Branch 11, 14 and 16 are amended as set forth below; and it is

**FURTHER ORDERED** that Superior Court Rules of Procedure For The Landlord and Tenant Branch 14-I and 14-II are promulgated as set forth below; and it is

**FURTHER ORDERED** that the above-enumerated Rules shall take effect February 7, 2005 and govern all proceedings thereafter commenced and, insofar as just and practicable, all pending proceedings.

### AMENDMENTS TO SCR LT 11

#### PRELIMINARY PROCEEDINGS

(a) Introductory Statement. At the beginning of each session of the Court, ~~the judge the Clerk shall~~ make an introductory statement approved by the Chief Judge or his or her designee that describes the procedures and legal framework governing cases brought in the Landlord and Tenant Branch. ~~advise all persons present that, except for a corporation, no party need be represented by an attorney, but that any party may retain a counsel or may, if eligible for such an appointment, request the judge to appoint an attorney or a qualified law student.~~

(b) Roll call and entry of a default when the defendant fails to appear. The Clerk shall then ~~make any other announcements ordered by the Board of Judges and shall call the cases scheduled for initial hearings assigned for that day in order to determine if any parties are absent. Except in cases in which possession is sought pursuant to section 1303 of the Fiscal Year 2001 Budget Support Act of 2000 (authorizing evictions for maintaining a "drug haven"),~~ The Clerk shall enter judgment for the plaintiff as demanded in the complaint if, a default against the defendant in any such case in which (1) the plaintiff or the plaintiff's attorney is present, and ~~(1)(2) neither the defendant nor the defendant's representative is present, (2)(3) there is no question as to the validity of service upon the defendant, and (4) the complaint alleges facts sufficient, if true, to entitle the plaintiff to possession of the premises. and (3) the plaintiff does not seek a money judgment or attorney's fees, except that, upon request of the plaintiff, the Clerk shall reduce the amount of rent claimed to be owing.~~

(c) Dismissal when both parties or the plaintiff fail to appear. ~~If both parties fail to appear for the roll call, either personally or through counsel,~~ The Clerk shall dismiss the case

without prejudice for want of prosecution if both parties fail to appear for the roll call, either personally or through counsel, or if the defendant appears, personally or through counsel, but neither the plaintiff nor the plaintiff's attorney is present. If neither the plaintiff nor the plaintiff's attorney is present and the defendant or the defendant's attorney is present, the Clerk shall dismiss the case for want of prosecution.

(d) All other cases. The Clerk shall present all other cases to the Court for disposition except that the Clerk may continue a case to a later date upon agreement of the parties.

(e) Entry of judgment for possession by default. (1) In any case in which a default is entered under section (b) and in which either the plaintiff seeks possession pursuant to section 1303 of the Residential Drug – Related Evictions Re-Enactment Act of 2000 (D.C. Code § 42-3602) (authorizing evictions for maintaining a “drug haven”) or the defendant has previously entered an appearance, a judgment for possession in favor of the plaintiff may be entered only upon the plaintiff's presentation of ex parte proof and the filing of an affidavit satisfying the Servicemembers Civil Relief Act (2003) (50 U.S.C. app. § 501 et seq.) In cases requiring the presentation of ex parte proof, the plaintiff shall appear before the judge on the day that the default is entered to present ex parte proof or to schedule a hearing for a later date for the presentation of ex parte proof. If the presentation of ex parte proof is scheduled for another date, the Clerk shall send written notice to all parties.

(2) In all other cases in which a default is entered under section (b), the Clerk shall enter a judgment for possession in favor of the plaintiff upon the filing of an affidavit satisfying the Servicemembers Civil Relief Act (2003) (50 U.S.C. app. § 501 et seq.).

(f) Entry of money judgment by default. The plaintiff shall appear before the judge to request the entry of a money judgment following the entry of a default under section (b). The Court may hear and rule upon the plaintiff's request; however, entry of a money judgment by default shall be deferred until the plaintiff files an affidavit satisfying the Servicemembers Civil Relief Act (2003) (50 U.S.C. app. § 501 et seq.).

## AMENDMENTS TO SCR LT 14

### ENTRY OF JUDGMENT

(a) A judgment for possession may be entered:

(1) by the Clerk in favor of the plaintiff if the defendant fails to appear at the 9:00 a.m. roll call and the plaintiff files an affidavit satisfying the Servicemembers Civil Relief Act (2003) (50 U.S.C. app. § 501 et seq.), unless the presentation of ex parte proof is required.

(2) by the Interview and Judgment Clerk by consent in the case of a consent judgment executed in accordance with ~~Landlord and Tenant~~ Rule 11-I;

(3) by the Court:

~~(A) at the conclusion of a proceeding scheduled pursuant to Landlord and Tenant Rule 7-I; or upon the defendant's confession of liability before the Court; or~~

(B) upon the defendant's failure to pay a protective order; or

(C) upon the entry of summary judgment; or

(D) in accordance with ~~16 D.C. Code § 1501~~ D.C. Code § 16-1501 in a trial proceeding; or

(E) when ex parte proof is required, upon the presentation of ex parte proof and the filing of an affidavit satisfying the Servicemembers Civil Relief Act (2003) (50 U.S.C. app. § 501 et seq.).

(b) Summary judgment may be entered in favor of the plaintiff or defendant on the issue of possession.

(c) A money judgment may be entered by the Court:

(1) in favor of the plaintiff, upon default by the defendant, when the plaintiff has prayed for such relief in the complaint, and has obtained personal service, to the extent of the amount sued for in the complaint and filed an affidavit satisfying the Servicemembers Civil Relief Act. (2003) (50 U.S.C. app. § 501 et seq.). A money judgment entered based upon the defendant's default shall be limited to the amount sued for in the complaint.

(2) in favor of the prevailing party in accordance with ~~Landlord and Tenant~~ Rule 3 or 5(b), at the conclusion of a ~~trial~~ trial or other hearing to the extent of the total amount proven; or

(3) by consent of the parties.

(d) Additional relief may be entered:

(1) by consent of the parties; or

(2) in favor of either party, by the Court at the conclusion of a trial or a hearing.

## AMENDMENTS TO SCR LT 16

### EXECUTION

(a) *Issuance of the writ.* (1) No writ of restitution may issue in a case in which a judgment for possession has been entered in favor of the plaintiff based upon the defendant's nonpayment of rent until (A) the Court has set a redemption amount on the record in the presence of the parties or the plaintiff has filed a Notice to Tenant of Payment Required to Avoid Eviction pursuant to Rule 14-II, and (B) the expiration of two days after the entry of (i) a default judgment entered pursuant to Rule 11 or (ii) a judgment entered pursuant to Rule 11-I or 14.

(2) No writ of restitution may issue in any other case until the expiration of two days after the entry of (1)(A) a default judgment entered pursuant to Rule 11 or (2)(B) a judgment entered pursuant to Rule 11-I or pursuant to Rule 11-I [sic] or pursuant to Rule 12 or 13 Rule 11-I or 14. A prepared writ of restitution and the United States Marshal's 3-day notice to tenant shall be filed with the Clerk at the time that said writ is ordered. If alias writs of restitution are ordered, prepared writs and notices shall be filed with the Clerk. The Clerk shall deliver the original or alias writ and notice to the Marshal, who shall mail all such notices to the tenants before executing the original or alias writs. A writ of restitution shall be valid for a period of 75 days.

(b) *Stay of execution.* In its discretion and upon the posting of a bond or on such other conditions for the security of the adverse party as are proper, the Court may stay the execution of judgment in a Landlord and Tenant action pending the disposition of any motion made pursuant to Superior Court Rules of Civil Procedure 50, 52(b), or 59 or any appeal of the judgment, provided that any such motion or notice of appeal is filed within 3 days of the date of judgment.

(c) *Motion for stay of execution.* A party may seek a stay of execution of a writ of restitution by either oral or written motion. Said motion shall include a statement that the adverse party has been notified and has been given an opportunity to appear. Prior to a hearing on movant's request for a stay, the Court shall inquire of the Clerk's office when the defendant is pro se or of counsel when movant is represented by counsel, whether or not the adverse party has been notified of the movant's intent to appear before the Court on an Application for Stay.

(i) Notice. (A) By counsel. When the movant is represented by counsel, the movant's attorney shall notify the adverse party of the date and time that the Motion for Stay will be presented before the Court.

(B) By Clerk's Office. When the movant is not represented by counsel, the Landlord-Tenant Clerk's Office shall notify the adverse party on the movant's behalf.

(ii) Appearance by adverse party. If the Clerk's Office is notified that the adverse party intends to oppose the request for a stay or if the adverse party cannot be reached, the motion shall be held in abeyance until the adverse party has an opportunity to be heard if the writ of restitution is not capable of being executed. If the writ is capable of being executed, then the Motion may be presented to the Court, which may, in its discretion, impose a stay of execution no greater than three business days unless the adverse party consents to a longer stay, in order to give the adverse party an opportunity to appear before the Court.

(iii) New hearing date. If the Court grants a stay of execution, the Court shall set a date for further hearing on the request. If the adverse party was absent for the Application for Stay, the Clerk's Office shall notify the adverse party by facsimile transmission, mail or telephone of the date so set by the Court.

(d) *Ninety day time limit.* No writ of restitution shall be issued later than (1) 90 days after entry of judgment; or (2) 90 days after entry of default, if a default was taken; or (3) 90 days after vacation of a stay of execution; except by leave of court granted not less than 3 days after service of notice on the defendant in the form set forth in L&T Form 2.

(e) *Automatic stay of the enforcement of a money judgment.* No execution shall issue, or proceedings be taken to enforce, a money judgment until the expiration of 10 days after its entry. Nothing herein shall be construed to interfere with the Court's right to enter a stay pursuant to paragraph (b) of this Rule or with a party's right to funds deposited in accordance with SCR Civ. 67.

## SCR LT 14-I

### DISMISSAL FOR FAILURE TO PROSECUTE

The Clerk shall dismiss the complaint without prejudice if, within 90 days of the entry of a default, the plaintiff fails to file an affidavit in compliance with the Servicemembers Civil Relief Act (2003) (50 U.S.C. app. § 501 et seq.) or to request an opportunity to present ex parte proof, when such proof is required. The Clerk shall mail written notice of the dismissal to all parties. This rule shall apply to any complaint or counterclaim on which a default has been entered.

## SCR LT 14-II

### REDEMPTION OF TENANCY

(a) In any case in which the Court, following a trial on the merits, has entered a judgment for possession in favor of the plaintiff based upon the defendant's nonpayment of rent, the Court shall determine and, in the presence of the parties, shall state on the record the amount of money that the defendant must pay to the plaintiff, as of that time, to redeem the tenancy and avoid eviction. The Court shall advise the parties that the amount of money that the defendant must pay to avoid eviction will increase as additional rents become due and, if applicable, as the plaintiff incurs additional court costs.

(b) In any other case in which a judgment for possession is entered in favor of the plaintiff based upon the defendant's nonpayment of rent, the Court may, at any time at or after the entry

of judgment, determine and, in the presence of the parties, state on the record the amount of money that the defendant must pay to the plaintiff, as of that time, to redeem the tenancy and avoid eviction. The Court shall advise the parties that the amount of money that the defendant must pay to avoid eviction will increase as additional rents become due and, if applicable, as the plaintiff incurs additional court costs.

(c) In any case in which a default against a defendant has been entered pursuant to Rule 11 or a judgment for possession has been entered in favor of the plaintiff based upon the defendant's nonpayment of rent and in which the Court has not set the redemption amount on the record pursuant to section (a) or (b), the plaintiff, unless the Court rules otherwise, shall file a Notice to Tenant of Payment Required to Avoid Eviction, in the form prescribed in Landlord and Tenant Form 6, within five days, excluding Saturdays, Sundays, and legal holidays, of the date on which the default or judgment was entered. However, if a judgment has been stayed pursuant to a consent judgment agreement or otherwise, the five-day period for the filing of a Notice to Tenant of Payment Required to Avoid Eviction shall not begin to run until the stay has been lifted. The Clerk shall promptly mail a copy of the Notice to Tenant of Payment Required to Avoid Eviction to the defendant and shall make an entry in the record indicating the date and time of mailing.

(d) A plaintiff who fails to file a Notice to Tenant of Payment Required to Avoid Eviction within five days of the entry of a default or judgment for possession against a defendant shall not be permitted to file the notice late except with leave of Court after a hearing. A plaintiff who wishes to file such notice late shall file an Application seeking leave of Court. The plaintiff shall attach to the Application a copy of the Notice and an affidavit by the plaintiff justifying a finding of excusable neglect or good cause. The Application also shall inform the defendant of the hearing date and the defendant's opportunity to be heard on the Application. A copy of the Application, Notice, and affidavit shall be served on the defendant. The hearing shall be set by the plaintiff for no earlier than the fifth day after service on the defendant of the Application, Notice, and affidavit, whether service is by hand or by mail. At the hearing, the judge shall determine whether the plaintiff has established that the failure to file the Notice timely was due to the plaintiff's excusable neglect or that there is otherwise good cause why the plaintiff should be permitted to file the Notice late.

(e) A defendant who wishes to challenge the redemption amount set forth in a Notice to Tenant of Payment Required to Avoid Eviction that has been filed by the plaintiff may file an Application to Reduce Payment Required to Avoid Eviction, in the form prescribed in Landlord and Tenant Form 7. The defendant shall serve the Application to Reduce Payment Required to Avoid Eviction upon the plaintiff and shall set the application for a hearing not less than five days after service of the application on the plaintiff, whether service is by hand or by mail. However, if the defendant also has filed an application for a stay of execution of a writ of restitution pursuant to Rule 16(c), the defendant's Application to Reduce Payment Required to Avoid Eviction may be heard together with the application for a stay of execution.

(f) A judgment for possession entered in favor of the plaintiff based upon the defendant's nonpayment of rent shall be stayed permanently in any case in which the defendant, prior to the completion of an eviction, has paid to the plaintiff the full amount of money necessary to redeem the tenancy and avoid eviction.

By the Court:

Date: January 3, 2005

/s/ Rufus G. King, III  
Rufus G. King, III  
Chief Judge

Copies to:

All Judges  
All Magistrate Judges  
Director of the Civil Division  
David Luria, Attorney Advisor