

## **Rule 10. Discovery**

(a) IN GENERAL. Except as provided in Rule 10(b) and (d), there is no discovery without leave of court.

(b) LEDGERS AND OTHER DOCUMENTARY EVIDENCE OF RENT PAYMENT HISTORY.

(1) *Plaintiff's Obligation to Bring to Court and Produce on Request.*

(A) *When Plaintiff Maintained a Rent Ledger.* In any case involving an allegation of nonpayment of rent, the plaintiff must bring to every court hearing, including the initial hearing and any mediation session, copies of all rent ledgers within the plaintiff's possession, custody, or control that tend to show the defendant's payment or nonpayment of rent owed throughout all periods of time in which the defendant's rental payments are alleged to be delinquent, i.e., back to the most recent point in time at which there was a zero balance. If during a remote hearing the defendant disputes the amount of rent due or requests a ledger, the plaintiff must provide a ledger to the defendant no later than 3 business days before the next hearing date. If mediation is conducted remotely, the plaintiff must provide a ledger to the defendant no later than 3 business days prior to the mediation date.

(B) *When Plaintiff Did not Maintain a Rent Ledger.* A plaintiff who has not maintained a rent ledger for the premises must bring to court or be prepared to send by electronic mail other materials, such as bank statements and rent receipts—"other materials"—that establish the defendant's payment history for the time periods in dispute. If during a remote hearing the defendant disputes the amount of rent due or requests a ledger, the plaintiff must provide other materials to the defendant no later than 3 business days before the next hearing date. If mediation is conducted remotely, the plaintiff must provide other materials to the defendant no later than 3 business days prior to the mediation date.

(C) *Producing Ledgers and Other Materials.* On request of the defendant or the court, the plaintiff must promptly produce either paper or electronic copies of all ledgers and other materials the plaintiff has brought to court or submitted to the defendant pursuant to this rule.

(2) *Sanctions for Plaintiff's Failure to Produce.* If the plaintiff fails on request to produce any or all of the materials described in Rule 10(b)(1), then the court, on the oral or written motion of a party, or on its own initiative, may enter an order requiring the plaintiff to produce the materials and, until the materials have been produced, may grant a continuance, decline to enter a protective order, or vacate, suspend, or modify an existing protective order.

(3) *Order for Production by Defendant.* At the initial hearing or any subsequent hearing, the court, on the oral or written motion of the plaintiff, or on its own initiative, may enter an order requiring the defendant to produce copies of all materials within the defendant's possession, custody, or control, including rent receipts, cancelled checks, and money order receipts, that tend to establish the defendant's payment or nonpayment of rent owed throughout all periods of time in which the defendant's rental payments are alleged to be delinquent.

(4) *Sanctions for Noncompliance With Court Order Compelling Production.* A failure by a party to comply with an order compelling production pursuant to Rule 10(b)(1) or (3) may subject that party to sanctions as set forth in Civil Rule 37(b). In no event,

however, may a default or a judgment for possession be entered as a sanction for a defendant's failure to produce materials as required by an order compelling production entered pursuant to this rule. In the event the court enters a dismissal as a sanction for the plaintiff's noncompliance with a court order compelling production entered pursuant to this rule, the dismissal will be without prejudice unless the court specifies that a dismissal with prejudice is warranted.

(5) *Limitations*. Nothing in this rule should be construed to require a party to create a rent ledger or any other document that does not already exist.

(c) CASES SCHEDULED FOR TRIAL IN THE LANDLORD AND TENANT BRANCH.

On the filing of a written motion requesting permission to engage in discovery, accompanied by the discovery requests to be propounded, for good cause, and with due regard for the summary nature of the proceedings, the court may authorize a party to proceed with discovery under Civil Rules 26 through 37. In addition to the protective orders provided in Civil Rule 26(c), the court may shorten the time within which a party is required to perform any act or make any response in connection with discovery.

(d) CASES TRANSFERRED TO THE CIVIL ACTIONS BRANCH UNDER RULE 6.

When a case is transferred to the Civil Actions Branch pursuant to Rule 6, limited discovery is permitted as a matter of right. The limited discovery consists of no more than 10 requests for production of documents and 10 interrogatories, including subparts, unless otherwise ordered by the court for good cause. All requests for additional discovery must be by written motion and, unless consented to by the parties, must be accompanied by the discovery requests to be propounded.

#### COMMENT TO 2024 AMENDMENTS

Section (d) of this rule has been amended to clarify that limited discovery is available as of right only in cases that have been transferred to the Civil Actions Branch because of a jury demand. Discovery is not available as of right in a case that has been transferred to the Civil Actions Branch because a party has not consented to having a magistrate judge preside over the case. Section (d) has also been amended to substitute "transferred" for "certified" to conform with the general restyling of the Superior Court rules.

#### COMMENT TO 2023 AMENDMENTS

Section (b) has been amended to create a process for implementing the requirements of the rule when a hearing or mediation takes place remotely. In particular, subsection (b)(1) has been amended to provide for electronic production of rent ledgers and other materials when one or more parties participate remotely in a hearing or mediation.

#### COMMENT TO 2019 AMENDMENTS

This rule has been amended consistent with the stylistic changes to the civil rules. Section (d) has been amended to provide that 10 requests for production are permitted, regardless of the number of documents responsive to those requests.

## COMMENT

Section (b) has been added to the Rule. It is intended to assist the court and parties in resolving cases fairly and expeditiously at the initial hearing or thereafter. It is not intended to require the plaintiff to present documentary evidence of the defendant's nonpayment of rent at trial, although such evidence, if competent, would likely be relevant and may be a significant part of the plaintiff's proof.