

## **Introductory Note to the 2019 Landlord & Tenant Rules Amendments**

The Superior Court has begun to retain old rule comments for historical purposes. Like historical federal advisory committee notes, old Superior Court rule comments are not altered; as a result, they may substantively conflict with any new text in the rule. Amendments are addressed in new comments that are labeled with the year of the amendment.

**Rule 1. Scope and Purpose**

These rules govern the procedure in summary proceedings for possession brought in the Landlord and Tenant Branch. When a case brought in the Landlord and Tenant Branch is certified to the Civil Actions Branch under Rule 6, the case remains subject to these rules except as provided for in Rule 13-I. When a case brought in the Landlord and Tenant Branch is certified to the Civil Actions Branch under Rule 5(c), the case is subject in all respects to the Superior Court Rules of Civil Procedure.

These rules may be known as the Superior Court Rules of Procedure for the Landlord and Tenant Branch and may be cited as "Super. Ct. L&T R. \_\_\_\_." They should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.

## **Rule 2. Applicability of Certain Superior Court Rules of Civil Procedure**

Except when inconsistent with these rules or the summary nature of landlord and tenant proceedings, the following Superior Court Rules of Civil Procedure are applicable to actions brought in the Landlord and Tenant Branch:

Civil Rules 4(h), 5, 5-I, 5-II, 5-III, 5.1, 5.1-I, 5.2, 6, 6-I, 8, 9, 9-I, 10, 10-I, 11, 12(b)-(h), 15, 16, 16-II, 17, 19, 20, 21, 22, 23, 23-I, 23.2, 24, 25, 38, 38-II, 39, 39-I, 39-II, 40-I, 41, 42, 43, 43-I, 44, 44-I, 44.1, 45, 46, 47, 48, 49, 50, 51, 52, 53, 53-I, 53-II, 54, 54-I, 54-II, 55, 55-I, 55-II, 55-III, 56, 57, 58, 59, 60, 61, 62(b), 63, 63-I, 64, 64-I, 64-II, 65, 65.1, 66, 67, 67-I, 68, 69, 69-I, 69-II, 70, 70-I, 71, 73, 77, 79, 79-I, 80, 82, 83-I, 84, 86, 101, 102, 103, 201, 202, and 203.

The following Superior Court Rules of Civil Procedure apply if discovery is authorized as of right or by court order, under Landlord and Tenant Rule 10: Civil Rules 26, 28, 29, 30, 31, 32, 33, 34, 36, and 37.

### COMMENT TO 2019 AMENDMENTS

This rule has been amended consistent with the stylistic changes to the civil rules. The rule now specifically lists applicable local civil rules with roman numeral designations; the omission of a local civil rule with a roman numeral designation is an indication that the rule is not applicable.

Civil Rule 4(h) has been added to address service on a corporation, partnership, or association.

### COMMENT

Any reference herein to a particular Rule, as for example, "Rule 5", comprehends both the original Rule and any addenda thereto, e.g., "Rule 5-I".

### **Rule 3. Commencement of Action**

#### **(a) IN GENERAL.**

(1) *Complaint for Possession of Real Property.* A landlord and tenant action is commenced by filing with the clerk a verified Complaint for Possession of Real Property completed on one of the following landlord and tenant forms:

(A) Form 1A (Nonpayment of Rent—Residential Property);

(B) Form 1B (Violation of Obligations of Tenancy or Other Grounds for Eviction—Residential Property);

(C) Form 1C (Nonpayment of Rent and Other Grounds for Eviction—Residential Property); or

(D) Form 1D (Commercial Property).

(2) *Summons.* Together with the complaint, the plaintiff must deliver to the clerk a prepared Form 1S (Summons to Appear in Court and Notice of Hearing), accompanied by information for litigants, as required by administrative orders of the Chief Judge.

(3) *Copies.* The plaintiff must provide the clerk with the original complaint and summons and with a copy of the complaint and summons for each defendant named in the complaint.

#### **(b) ADDITIONAL CLAIMS.**

(1) *Other Claims Allowed in a Landlord and Tenant Action.* In addition to a claim for possession of real property, an original or amended complaint in one of the forms set out in Rule 3(a) may include a claim for the following:

(A) the recovery of personal property located in the premises and belonging to the plaintiff;

(B) a money judgment based on rent in arrears and late fees as permitted by law; or

(C) the relief listed in both Rule 3(b)(1)(A) and (B).

(2) *Requirements for a Money Judgment.* A money judgment may be rendered against a defendant only if the defendant:

(A) has been personally served; or

(B) asserts a counterclaim for a money judgment.

(c) **JUDGMENT BY DEFAULT.** If the defendant fails to appear, the verification entitles the plaintiff to a judgment by default in accordance with Rule 14.

#### **COMMENT TO 2017 AMENDMENT**

This rule has been amended consistent with the stylistic changes to the civil rules. Subsection (b)(1)(B) was also modified in response to the Rental Housing Late Fee Fairness Amendment Act of 2016, D.C. Law No. 21-0172 (Dec. 8, 2016), which prohibits a landlord from evicting a tenant on the basis of nonpayment of a late fee. The rule now permits landlords to seek late fees as part of a money judgment.

#### **COMMENT**

D.C. Code § 16-1501 requires that a complaint for possession be made “under oath verified by the person aggrieved by the detention, or by his agent or attorney having knowledge of the facts.” Therefore, although SCR-Civ. 9-1 is incorporated into the Landlord and Tenant Rules, a complaint for possession must be verified under oath

before a notary public or other person authorized by law to administer an oath and may not be based on an unsworn declaration. See SCR-Civ. 9-1(e).

### **Rule 3-I. Properties Subject to Court-Ordered Receiverships**

#### **(a) OWNER OR OWNER'S AGENT.**

(1) *In General.* No owner or owner's agent may file a complaint for possession of real property based, in whole or in part, on nonpayment of rent if the property is subject to a court-ordered receivership under D.C. Code §§ 34-2301 to -2306, 42-3301 to -3307, or 42-3651.01 to -.08 (2012 Repl., 2019 Repl., and 2019 Supp.), unless authorized by court order in the receivership action. A copy of any order authorizing the filing of a complaint for possession of real property based, in whole or in part, on nonpayment of rent must be attached as an exhibit to the complaint.

(2) *Pending Actions.* If a complaint for possession of real property based, in whole or in part, on nonpayment of rent is pending when a receiver is appointed, the owner or owner's agent must file a motion:

(A) requesting a status hearing;

(B) indicating that a receiver was appointed; and

(C) stating whether a court order in the receivership action authorizes the owner or owner's agent to proceed with the action.

#### **(b) RECEIVERS.**

(1) *Receiverships Under D.C. Code §§ 34-2301 to -2306 or 42-3301 to -3307.*

(A) *Commencing an Action.* A receiver may file a complaint seeking to recover possession of real property that is the subject of a court-ordered receivership under D.C. Code §§ 34-2301 to -2306 or 42-3301 to -3307 (2012 Repl. & 2019 Repl.). The receiver as plaintiff must file, together with the complaint, a copy of the receivership order and either:

(i) a sworn statement signed by the owner reflecting the owner's consent to be joined as a party plaintiff; or

(ii) a motion for leave to join the owner as a party defendant under Civil Rule 19.

(B) *Service on Owner; Proof.* Notwithstanding Rule 13(c), the receiver must serve the complaint and any motion for joinder on the owner in any manner permitted by Civil Rule 4 at least 7 days, not counting Sundays and legal holidays, before the initial hearing. Proof of service must be by affidavit and must specifically state the person served and the manner and date of service. Proof of service must be filed at least 6 days before the date set for the initial hearing.

(C) *Court Determination.* If the court determines at the initial hearing that the owner may be joined under Civil Rule 19 and that the receiver has served the owner, the owner must be realigned as a party plaintiff. The complaint must be dismissed without prejudice at the initial hearing if the court determines that the owner may not properly be joined under Civil Rule 19 or that the receiver has not served the owner, unless the court, for good cause, extends the time for service.

(2) *All other Receiverships.*

(A) *Commencing an Action.* In any other case brought by a receiver, the plaintiff must file, together with the complaint, a copy of the order permitting the plaintiff to proceed with the action and a statement specifying the reason that joinder of the owner is not required.

(B) *Court Approval.* If the court determines at the initial hearing that joinder of the owner is required, the court must continue the hearing to permit the plaintiff to serve and join the owner in accordance Rule 3-I(b)(1)(B)-(C).

(c) COMPLAINTS NOT INVOLVING A CLAIM FOR NONPAYMENT OF RENT.

(1) *Commencement of Action.* Unless prohibited by the receivership order, an owner or owner's agent may file a complaint for possession of property subject to a court-ordered receivership, under D.C. Code §§ 34-2301 to -2306, 42-3301 to -3307, or 42-3651.01 to -.08 (2012 Repl., 2019 Repl., and 2019 Supp.), that is not based, in whole or in part, on nonpayment of rent. The owner or owner's agent must attach a copy of the receivership order as an exhibit to the complaint.

(2) *Service.* At least 14 days before the initial hearing, the owner or owner's agent must file a certificate of service certifying that a file-stamped copy of the complaint has been sent by first-class mail to the receiver at the most recent address on file with the clerk in the receivership action.

(3) *Protective Orders.* In an action brought by an owner or owner's agent in which the complaint is not based, in whole or in part, on nonpayment of rent, the court may not enter a protective order unless the receiver has been joined as a party under Civil Rule 19 and served with process as required by Rule 3-l(b). No money paid into the court registry pursuant to a protective order may be released, except in a manner consistent with the court's orders in the receivership action.

(d) SERVICE OF PROCESS ON TENANT OR OCCUPANT. Nothing in this rule relieves a plaintiff's obligation to serve a tenant or occupant with process in accordance with Rule 4.

(e) SANCTIONS. Any party who files a complaint in violation of this rule is subject to reasonable sanctions, including, among others, reimbursement of the other parties' expenses, payment of reasonable attorney's fees, and dismissal of the complaint. Instead of or in addition to these sanctions, a violation of a court order issued pursuant to this rule or in connection with the receivership may result in an order treating the violation as a contempt of court.

## COMMENT TO 2019 AMENDMENTS

This rule has been amended consistent with the stylistic changes to the civil rules. The rule has also been amended to address receiverships not specifically covered by subsection (b)(1) and to update statutory references.

## COMMENT

Generally, when a property is subject to a court-ordered receivership under one of the statutory provisions cited in the rule, neither the owner nor the owner's agent is permitted to collect rent from a tenant or to maintain an action for possession of the property based upon a tenant's alleged nonpayment of rent. The owner is a necessary party, however, in the event that the receiver brings a complaint for possession of the property. *Shannon & Luchs Co. v. Jeter*, 469 A.2d 812 (D.C. 1983). To join an owner who will not join voluntarily, the federal counterpart of SCR-Civ. 19 requires that the owner be served with process, joined as a defendant, and realigned as a plaintiff. *JTG of Nashville, Inc. v. Rhythm Band, Inc.*, 693 F. Supp. 623, 628 (M.D. Tenn. 1988). See also *Raskauskas v. Temple Realty Co.*, 589 A.2d 17, 20 n.2, 21-22 (D.C. 1991).

Tenant receiverships are not included in section (b) because the reasoning in *Jeter* is inapplicable in tenant receiverships in which the receiver has the right to demand possession of the property. D.C. Code § 42-3651.06(a)(1) (2001).

### **Rule 3-II. Joinder of Persons or Entities Needed for Just Adjudication**

(a) **PERSONS OR ENTITIES SUBJECT TO JOINDER.** A person or entity, including one not in possession of the premises, is subject to joinder as a defendant in an action based on alleged nonpayment of rent if an existing party to the action claims that the person or entity is legally liable for all or part of the amount alleged in the complaint to be due and owing and establishes that joinder is warranted under Civil Rule 19.

(b) **PROCEDURES.**

(1) *Motion for Joinder.* A party seeking joinder must file a written motion no later than the time for appearance of the existing defendant stated in the summons or within such additional time as the court may allow for good cause. The motion must comply with the procedural requirements of Rule 13 and must set forth the basis for the claim of liability against the person or entity to be joined. The motion must be served on all other existing parties to the action in accordance with Rule 13.

(2) *Court's Consideration of Motion.*

(A) *In General.* A motion for joinder must be considered by the court in accordance with the procedures set forth in Rules 13 and 13-I.

(B) *Requirements of Order.* Any order granting a motion for joinder must:

- (i) be in writing;
- (ii) be served on the existing parties to the action;
- (iii) set a deadline for service of process on the person or entity to be joined in accordance with Rule 3-II(b)(3);
- (iv) set a further hearing at which the joined defendant is to appear; and
- (v) direct the clerk to issue a summons to that person or entity.

(C) *Hearing.* The further hearing must be set as promptly as practicable but no sooner than 28 days after the issuance of the order granting the motion for joinder.

(3) *Serving Party to Be Joined.*

(A) *In General.* Except as provided in Civil Rule 54-II(i), the party that moved for joinder is responsible for serving the person or entity to be joined. The person or entity to be joined must be served in the manner provided for service of summons in Civil Rule 4.

(B) *Materials to Be Served.* The following materials must be served on the person or entity to be joined:

- (i) the summons issued by the clerk in accordance with the court's order granting the motion for joinder;
- (ii) the court's order granting the motion for joinder;
- (iii) the complaint and any answers and counterclaims that have been filed; and
- (iv) the motion for joinder.

(C) *Deadline for Service.* Unless the court for good cause orders otherwise, the person or entity to be joined must be served at least 7 days before the date of the further hearing (not counting Sundays and legal holidays). Any motion to extend the time for service of process must set forth in detail the efforts that have been made, and will be made in the future, to obtain service.

(4) *Proof of Service.* Proof of service on the person or entity to be joined must be filed at least 6 days before the date set for the further hearing.

(5) *Pleading by Joined Defendant.* A person or entity joined as a defendant under this rule is not required to file any answer, plea, affidavit, or other defense

in writing. However, any counterclaim, jury demand, or other pleading allowed by these rules must be filed no later than the further hearing set in the court's order granting the motion for joinder or within such additional time as the court may allow for good cause.

(c) JUDGMENT AND REDEMPTION OF TENANCY.

(1) *Money Judgments.* A party joined under this rule and served with process in accordance with any of the methods of service authorized by Civil Rule 4 is subject to a money judgment.

(2) *When Court May Not Enter Judgment for Possession.* Where a party has been joined under this rule, the court may not enter a judgment for possession in favor of the plaintiff if the court finds that the party in possession of the premises is not legally liable for any of the amount owed to the plaintiff.

(3) *Redemption.* The redemption figure required by Rule 14-II must be limited to the amount determined to be owed by the party in possession of the premises and must not include any amount determined to be owed by any other party.

COMMENT TO 2019 AMENDMENTS

This new rule is intended to standardize the procedures for joinder of additional parties, consistent, to the greatest extent practicable, with the summary nature of landlord and tenant proceedings.

#### **Rule 4. Process**

(a) **HOW AND BY WHOM.** Service of process must be made in compliance with D.C. Code § 16-1502 (2012 Repl.) by any competent person not less than 18 years of age who is not a party to the suit. A separate copy of the summons and complaint must be provided for each defendant.

(b) **PROOF OF SERVICE.**

(1) *In General.* Proof of service of the summons and complaint must be made under oath and in the format set forth in L&T Form 3. A separate L&T Form 3 must be filed for each defendant.

(2) *Time for Filing.* Proof of service must be filed at least 6 days before the date set for the initial hearing.

(3) *Motion for Extension.* Prior to the expiration of the foregoing time period, the plaintiff may make a motion to extend the time for service. The motion must set forth in detail the efforts that have been made, and will be made in the future, to obtain service. If the plaintiff shows good cause, the court must extend the time for an appropriate period.

(4) *Dismissal.* The plaintiff's failure to comply with the requirements of this rule will result in the dismissal without prejudice of the complaint. The clerk will enter the dismissal and serve notice on all the parties.

#### **COMMENT TO 2019 AMENDMENTS**

This rule has been amended consistent with the stylistic changes to the civil rules. The rule was amended to require that an affidavit of service be filed at least 6 days before the date set for the initial hearing and to permit the clerk to dismiss the case where the plaintiff has failed to comply with this rule. Parties should refer to D.C. Code § 16-1502 (2012 Repl.) and L&T Form 3 for additional guidance on service and proof of service. As Rule 2 provides, Civil Rule 4(h) addresses service on a corporation, partnership, or association.

The provision relating to costs has been moved to Rule 15.

#### **COMMENT**

This rule requires that the plaintiff mail to the defendant a copy of the summons and complaint when service is made by posting pursuant to D.C. Code 2001, § 16-1502. See *Greene v. Lindsey*, 456 U.S. 444, 102 S. Ct. 1874, 72 L. Ed. 2d 249 (1982). This requirement is not intended to excuse the plaintiff's obligation to make a "diligent and conscientious effort" to secure personal or substitute service before resorting to service by posting. See, e.g., *Parker v. Frank Emmet Real Estate*, 451 A.2d 62 (D.C. App. 1982).

## **Rule 5. Pleading by the Defendant**

(a) **IN GENERAL.** In a landlord and tenant action, it is not necessary for a defendant to file any answer, plea, affidavit, or other defense in writing except as provided in Rules 6 and 13(d).

(b) **COUNTERCLAIMS.**

(1) *When Permitted.* In actions for recovery of possession of property in which the basis of recovery is nonpayment of rent or in which there is joined a claim for recovery of rent in arrears, the defendant may assert an equitable defense of recoupment or set-off or a counterclaim for a money judgment based on the payment of rent or on expenditures claimed as credits against rent or for equitable relief related to the premises. No other counterclaims, whether based on personal injury or otherwise, may be filed. These claims may be filed in other branches of the court.

(2) *Procedure for asserting counterclaims and defenses of recoupment and setoff.*

(A) *In General.* A counterclaim or a defense of recoupment or setoff must be in writing if it is based on the payment of rent, or on expenditures claimed as credits against rent, during a time period beyond that set forth in the plaintiff's complaint.

(B) *Time for Filing.* A defendant may file a written counterclaim at any time at least 14 days before trial if the case is scheduled for trial in the Landlord and Tenant Branch, unless the deadline is extended by the court for good cause shown. In cases certified to the Civil Actions Branch for jury trial, any counterclaim must be included in the answer required by Rule 6 or in any amended answer filed under Civil Rule 15.

(c) **PLEA OF TITLE.**

(1) *Filing Requirements.* A defendant desiring to make a plea of title must file the plea in writing, under oath, accompanied by a certification that it is filed in good faith and not for the purpose of delay. Along with the plea of title, the defendant must file an application for an undertaking, or for waiver of undertaking, specifying the form and amount of any undertaking to be approved by the court.

(2) *Filing the Undertaking.* If the court approves the undertaking, the undertaking must be paid into the court registry within 7 days. After the funds are deposited in the court registry, or if the court has waived the undertaking, the clerk must certify the case to the Civil Actions Branch for an expedited trial. If the defendant fails to timely file the undertaking, the clerk must strike the plea of title unless the court, for good cause, extends the time within which the undertaking may be filed.

## **COMMENT TO 2019 AMENDMENTS**

This rule has been amended consistent with the stylistic changes to the civil rules. The rule has also been amended to include the procedures for asserting counterclaims and defenses of recoupment and setoff and for filing an undertaking.

**Rule 6. Jury Demand**

(a) MAKING A JURY DEMAND. Any party entitled to a jury trial may demand a trial by jury of any action by filing a jury demand, signed by the party or his or her attorney of record. The demand must be filed not later than the date for appearance stated in the summons, or by a later date set by the court for good cause, and must be accompanied by:

(1) the fee provided in Civil Rule 202, unless the court has authorized the party to proceed without payment or prepayment of costs; and

(2) a verified answer setting out the facts on which the defense is based, if the jury demand is made by the defendant.

(b) CERTIFYING CASE TO CIVIL ACTIONS BRANCH. If a jury trial is properly demanded, the clerk must certify the case to the Civil Actions Branch for an expedited trial.

**COMMENT TO 2019 AMENDMENTS**

This rule has been amended consistent with the stylistic changes to the civil rules.

## **Rule 7. Time of Sessions, Office Hours, and Trials**

(a) **SESSIONS.** The Landlord and Tenant Branch must hold sessions every business day except as determined by the Chief Judge.

(b) **OFFICE HOURS.** The clerk's office—with a clerk or deputy on duty to assist the public—must be open during normal business hours as set by the Chief Judge. When practicable, those hours will comport with the hours of operation posted on the Superior Court's website.

(c) **INITIAL HEARING.**

(1) *In General.* All cases must be set for an initial hearing.

(2) *Application for Continuance.*

(A) *Application.* A party may file an application requesting that the court continue the initial hearing date. Before requesting a continuance, the applicant must make a reasonable effort to notify the other party.

(B) *Hearing.* The court must hold a hearing on the application on the day that the application is filed. The court may hold the hearing in the absence of the other party. But if the other party is neither present at the hearing nor available by telephone, the court may continue the initial hearing only for good cause and for a reasonable period of time.

(C) *Notice of New Date.* If the court continues the hearing when the other party is neither present at the hearing nor available by telephone, the clerk must mail notice of the new date to that party.

(d) **NON-JURY TRIALS.** Cases are set for trial by the court or by consent of the parties after consultation with the clerk about available trial dates.

## **COMMENT TO 2019 AMENDMENTS**

This rule has been amended consistent with the stylistic changes to the civil rules. The provision addressing applications for continuance has been expanded to include additional procedures for the same-day hearing.

**Rule 7-I. [Deleted].**

COMMENT

Repealed by Court Order dated Dec. 17, 2003, effective January 5, 2004.

## **Rule 8. Trial Continuance**

### **(a) CONTINUING TRIAL DATE.**

(1) *In General.* No trial date may be continued except by court order. Except as provided in Rule 8(a)(3), engagement by an attorney in another court or in any other branch or division of this court is not a ground for continuing, to a later date, a trial in the Landlord and Tenant Branch.

(2) *Sanctions for Failure to Comply.* Failure of an attorney to appear for trial when a case is called in the Landlord and Tenant Branch, or in the Civil Actions Branch after referral from the Landlord and Tenant Branch, may be grounds for:

(A) striking the appearance of the absent attorney;

(B) a dismissal or a default; or

(C) any other appropriate sanction.

(3) *Exceptions.* This rule does not apply to engagement by an attorney in:

(A) the Supreme Court of the United States;

(B) the United States Court of Appeals for the District of Columbia Circuit;

(C) the United States District Court for the District of Columbia; or

(D) the District of Columbia Court of Appeals.

(b) **PROCEEDING WITHOUT THE ATTORNEY.** If permitted by Rule 9, a person, whose attorney fails to appear at trial, may proceed without representation.

## **COMMENT TO 2019 AMENDMENTS**

This rule has been amended consistent with the stylistic changes to the civil rules.

**Rule 9. Persons Appearing in a Representative Capacity**

(a) IN GENERAL. Except as provided in Rule 9(b) and (c) and District of Columbia Court of Appeals Rule 49(c), only members in good standing of the District of Columbia Bar are permitted to appear in the Landlord and Tenant Branch in a representative capacity for any purpose other than securing a continuance. This rule does not prevent a natural person from prosecuting or defending any action on the person's own behalf without counsel.

(b) CORPORATIONS AND PARTNERSHIPS. No corporation or partnership may appear in the Landlord and Tenant Branch without a member in good standing of the District of Columbia Bar, except that a corporation or partnership may appear as a defendant through an authorized officer, director, partner, or employee solely for the purpose of entering into a consent agreement as approved by the court. The non-lawyer appearing for the corporation or partnership must file the proof of authority required by District of Columbia Court of Appeals Rule 49(c)(11).

(c) LAW STUDENTS. Any law student admitted to the limited practice of law under District of Columbia Court of Appeals Rule 48 may engage in the limited practice of law in the Landlord and Tenant Branch subject to the provisions of Civil Rule 101.

**COMMENT TO 2019 AMENDMENTS**

This rule has been amended consistent with the stylistic changes to the civil rules.

**COMMENT**

This rule does not alter the requirement that defendant corporations may not appear pro se to defend a case and must be represented by counsel for any matter other than a consent judgment. Court of Appeals Rule 49(c)(8) provides that the non-lawyer's appearance on behalf of the corporation shall be accompanied by an affidavit of a corporate officer or corporate resolution vesting in the representative the requisite authority to bind the corporation in a settlement or consent judgment. See SCR LT Form 6.

## **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.

(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 other materials, such as bank statements and rent receipts, that establish the defendant's payment history for the time periods in dispute.

(C) *Producing Ledgers and Other Materials.* On request of the defendant or the court, the plaintiff must promptly produce all ledgers and other materials the plaintiff has brought to court 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 CERTIFIED TO THE CIVIL ACTIONS BRANCH. When a case is certified to an individual calendar in the Civil Actions Branch, 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 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.

## **Rule 11. Proceedings by the Court**

(a) **BEGINNING OF SESSIONS.** At the beginning of each session, the court must provide an introductory description of the procedures and legal framework governing cases brought in this branch.

(b) **CASES SCHEDULED FOR INITIAL HEARING.**

(1) *In General.* The clerk must determine whether parties are present or absent in the cases scheduled for initial hearings. A plaintiff who seeks a money or non-redeemable judgment must notify the clerk when the case is called.

(2) *Entry of Default.* The clerk must enter a default against the defendant in any case scheduled for an initial hearing if:

(A) the plaintiff or the plaintiff's attorney is present;

(B) neither the defendant nor the defendant's representative is present;

(C) there is no question as to the validity of service on the defendant; and

(D) the complaint alleges facts sufficient, if true, to entitle the plaintiff to possession of the premises.

(3) *Dismissal.* The clerk must dismiss the case without prejudice for want of prosecution if the plaintiff fails to appear for the initial hearing, either personally or through counsel.

(4) *All Other Cases.* The clerk must present all other cases to the court, including cases where the plaintiff seeks a money or non-redeemable judgment by default or where ex parte proof is otherwise required under Rule 14. At the initial hearing, the court must:

(A) ascertain the status of the case;

(B) explore the possibilities for early resolution through settlement or alternative dispute resolution techniques;

(C) determine a reasonable time frame for bringing the case to conclusion; and

(D) in cases involving self-represented defendants alleged to be in arrears in the payment of rent, specifically ask the defendant:

(i) whether the defendant failed to pay the rental amount alleged to be due by the plaintiff; and

(ii) if the rent has not been paid, the defendant's reasons for not paying it.

(5) *Setting a Case for Trial.* If the case remains unresolved, the court must set a non-jury trial date, or in the case of a defendant wishing to request a jury trial under Rule 6, the court may continue the matter for 2 weeks for the filing of a verified answer, except for good cause. Nothing in this rule should be construed to limit the parties' ability to consent to further proceedings.

(c) **PLAINTIFF'S FAILURE TO APPEAR.** If, in any case, the plaintiff fails to appear without prior notice, the court may dismiss the action without prejudice for want of prosecution or continue the case for further proceedings.

(d) **CONTINUANCES BY AGREEMENT.** On joint application of all parties, the clerk may continue any hearing other than a trial.

## **COMMENT TO 2019 AMENDMENTS**

This rule has been amended to be consistent with the stylistic changes to the civil rules and to accommodate technological changes. The default judgment provisions

have been moved to Rule 14. Subsections (b)(4) and (b)(5) and section (c) include provisions previously found in Rule 12, but subsection (b)(4) has been modified to be more consistent with Civil Rule 16(b)(3).

**Rule 11-I. [Deleted].**

COMMENT TO 2019 AMENDMENTS

Internal operating procedures address tasks performed by the Interview and Judgment Officer.

**Rule 12. [Deleted].**

COMMENT TO 2019 AMENDMENTS

This rule was deleted because its substantive provisions have been incorporated into Rule 11.

## **Rule 12-I. Protective Order**

### **(a) ENTERING A PROTECTIVE ORDER.**

#### *(1) In General.*

(A) *Requesting a Protective Order.* Any party may move for the entry of a protective order on the initial return date or at any time thereafter.

(B) *Entering a Protective Order.* A protective order may be entered only after a hearing at which the court finds that the equities merit the entry of an order or by consent of the parties in accordance with Rule 12-I(c). If entered, the protective order must require the defendant to deposit money into the court registry instead of paying rent directly to the plaintiff. A protective order may be prospective only and, except in accordance with Rule 12-I(d), must not require the defendant to deposit money for periods prior to the entry of the order.

(C) *Protective Orders in Cases Without Allegations of Nonpayment of Rent.* In a case that does not include an allegation of nonpayment of rent, the court may enter a protective order over the defendant's objection only if, after inquiry by the court, the defendant declines to stipulate that the plaintiff's acceptance of rent from that date forward is without prejudice to the plaintiff's ability to prosecute the action.

#### *(2) Motions and Hearings.*

(A) *Requesting a Protective Order by Oral Motion.* If the parties are present in court, a request for the entry of a protective order may be made by oral motion.

(B) *Requesting a Protective Order by Written Motion.* Any other motion for the entry of a protective order must be made in writing in accordance with Rule 13.

(C) *Hearing on Motion for Entry of a Protective Order.* If the amount or other terms of the proposed protective order are in dispute, the court must permit both parties to make arguments regarding the amount or other terms of the protective order and, if the court deems it appropriate, to present evidence in support of their arguments. The court must state on the record the reasons for its ruling on the request for a protective order.

(D) *Continuing the Hearing.* The court may continue the hearing on a motion for a protective order for a reasonable period of time to permit the parties to prepare arguments and evidence for presentation to the court.

(3) *Instructions to Defendant.* On the entry of a protective order, the clerk must immediately provide the defendant with a completed L&T Form 8 that includes written instructions regarding the amount, due dates, and form of payments, as well as the location and business hours of the clerk's office.

### **(b) MODIFYING A PROTECTIVE ORDER.**

(1) *Motion to Modify Protective Order.* On motion and a showing of good cause, any party may seek modification of a protective order at any time after its entry. Unless the court determines otherwise, the motion must be made in writing, in accordance with Rule 13.

(2) *Hearing on Motion to Modify Protective Order.* If the requested modification to the protective order is in dispute, the court must permit both parties to make arguments regarding the modification and, if the court deems it appropriate, to present evidence in support of their arguments. The court must state on the record the reasons for its ruling on the request for a modification of the protective order.

(3) *Continuing the Hearing.* The court may continue the hearing on a motion for modification of a protective order for a reasonable period of time to permit the parties to prepare arguments and evidence for presentation to the court.

(c) PROTECTIVE ORDERS BY CONSENT. Parties, whether self-represented or represented by counsel, may enter into, vacate, or otherwise modify protective orders by consent, with the approval of the court.

(d) CONTINUED CASES. In any case that is continued from the initial return date for ascertainment of counsel, for a hearing on the amount of the protective order, or for any other reason, the court may, for such time as is reasonable, defer ruling on a motion for a protective order until counsel, if any, has been retained, until a hearing has been held on the amount of the protective order, or until the other reason for the continuance has been addressed by the court. At the time the continuance is ordered, the court must inform the parties that, unless otherwise ordered by the court, a protective order, whenever entered, will be retroactive to the date on which it was first requested in open court.

(e) FORM OF PAYMENT. Payment into the court registry must be made by any combination of cash, money order, certified check, attorney's escrow account check, or other form of payment approved by the Budget and Finance Division. Any money order, certified check, or attorney's escrow account check must be made payable to "Clerk, D.C. Superior Court."

(f) LATE AND PARTIAL PROTECTIVE ORDER PAYMENTS. Payments due under a protective order must be made on or before the dates specified in the order. The clerk's office must accept for deposit any protective order payment, even if it is a partial payment and even if it is not timely made, without prejudice to the plaintiff's right to file a motion for sanctions in accordance with Rule 12-l(g).

(g) SANCTIONS FOR UNTIMELY, PARTIAL, OR MISSED PAYMENTS.

(1) *In General.*

(A) *Motion for Sanctions.* If a defendant fails to make one or more payments required by a protective order or makes one or more untimely or incomplete payments, the plaintiff may file a written motion, in accordance with Rule 13, seeking sanctions against the defendant.

(B) *Hearing on Motion for Sanctions.* In determining whether to impose any sanction for untimely, incomplete, or missed payments, the court must hold a hearing on the motion and consider, among any other facts or arguments raised by the parties, the extent of and reasons for the defendant's noncompliance and any prejudice the plaintiff would suffer were the requested sanction not imposed.

(C) *Available Sanctions.* If the court determines that a sanction should be imposed, the sanction may include those sanctions generally available to the court for noncompliance with court orders, including but not limited to striking the defendant's jury demand or counterclaim, precluding certain defenses, and entering a judgment for possession in favor of the plaintiff. No money judgment may be entered on the underlying claims as a sanction for noncompliance with a protective order.

(2) *Judgments for Possession.*

(A) *Nonpayment of Rent Cases.* In a case based on the defendant's alleged nonpayment of rent, the court may not enter a judgment for possession as a sanction for the defendant's failure to comply with a protective order without first requiring the

plaintiff to present proof of liability and damages. The plaintiff may present proof of liability and damages on the same day that the motion for sanctions is scheduled for hearing or may ask the court to schedule a hearing for a later date. If the hearing is scheduled for a later date, the clerk must send written notice to all parties. In its discretion, the court may permit the plaintiff to present proof of liability and damages by sworn affidavits, provided that the plaintiff has attached to its motion seeking sanctions against the defendant the affidavits on which it seeks leave to rely. Affidavits must be made on personal knowledge, set forth such facts as would be admissible in evidence, and show affirmatively that the affiant is competent to testify to the matters stated in the affidavit. Sworn or certified copies of all papers or relevant parts of papers referred to in an affidavit must be attached to the affidavit or served with it. The court may not enter a judgment for possession unless the court is satisfied with the proof presented. Any judgment is subject to the defendant's right to redeem the tenancy and avoid eviction.

(B) *Cases Without Allegations of Nonpayment of Rent.* The court may not enter a judgment for possession as a sanction for the defendant's failure to comply with a protective order in any case in which the complaint does not allege the defendant's nonpayment of rent as a basis for the entry of a judgment in favor of the plaintiff. On motion of the plaintiff, however, the court, on a finding that the defendant has failed to comply with the terms of a protective order, must consider any appropriate sanction other than the entry of a judgment for possession, including advancing the trial date and, in a case that has been certified to the Civil Actions Branch under Rule 6 pursuant to the defendant's demand for a jury trial, striking the defendant's jury demand.

(C) *Cases Involving Allegations of Nonpayment of Rent and Other Allegations.* Where the defendant has failed to comply with a protective order in a case that involves allegations of nonpayment of rent and allegations on which the plaintiff seeks the entry of a judgment for possession that is not subject to the defendant's right to redeem the tenancy and avoid eviction, the court may, on the plaintiff's motion, and in accordance with Rule 12-l(g)(1):

(i) dismiss the allegations that do not relate to nonpayment of rent and enter a judgment for possession under Rule 12-l(g)(2)(A), subject to the defendant's right to redeem the tenancy;

(ii) allow the plaintiff to proceed under Rule 12-l(g)(2)(B) with respect to all of the allegations in the complaint; or

(iii) enter a judgment for possession under Rule 12-l(g)(2)(A) on the claim of nonpayment of rent, subject to the defendant's right to redeem the tenancy, and, as to the plaintiff's allegations other than nonpayment of rent, consider any appropriate sanction other than the entry of a non-redeemable judgment for possession, including advancing the trial date and, in a case that has been certified to the Civil Actions Branch under Rule 6 pursuant to the defendant's demand for a jury trial, striking the defendant's jury demand.

(3) *Cases That Have Been Certified to the Civil Actions Branch.*

(A) *Striking the Jury Demand.* If the court strikes the defendant's jury demand in accordance with Rule 12-l(g), then the case must be certified back from the Civil Actions Branch to the Landlord and Tenant Branch, and the court must vacate all discovery, mediation, pretrial conference, and trial dates pending in the Civil Actions Branch and, with notice to the defendant, set the case for a non-jury trial in the Landlord

and Tenant Branch on the earliest available date deemed fair to all parties in light of the totality of the circumstances.

(B) *Imposing Other Sanctions*. If the court decides not to strike the defendant's jury demand in accordance with Rule 12-l(g), then the court must immediately attempt to contact the judge in the Civil Actions Branch to whom the case has been assigned and inform the assigned judge of the circumstances; the assigned judge must, in turn, consider whether to advance the date for a jury trial or otherwise modify the scheduling order. If, having decided not to strike the defendant's jury demand, the court is unable to reach the assigned judge, then the court, with notice to the defendant, must set the case for a status conference before the assigned judge on the earliest available date; at the status conference, the assigned judge must consider whether to advance the date for a jury trial or otherwise modify the scheduling order.

## COMMENT TO 2019 AMENDMENTS

This rule has been amended consistent with the stylistic changes to the civil rules. Also, in response to *Crockett v. Deutsche Bank Nat'l Tr.*, 16 A.3d 949 (D.C. 2011), subsection (g)(2)(B) was amended to make clear that a judgment for possession may not be entered as a sanction for a defendant's failure to comply with a pretrial payment order in any case in which the complaint does not allege the defendant's nonpayment of rent as a basis for the entry of a judgment in favor of the plaintiff, i.e., that a judgment for possession is unavailable as a sanction in a case lacking a nonpayment of rent claim regardless of whether there is a contractual landlord-tenant relationship between the parties, and regardless of whether the defendant is or is alleged to be a "tenant" within the meaning of the Rental Housing Act.

This rule does not foreclose the court, in a case in which there is no landlord-tenant relationship between the parties (e.g., where the defendant is alleged to be a squatter, terminated employee, permissive occupant, or foreclosed homeowner), from fashioning an equitable remedy to protect the legitimate interests of both parties and to maintain a proper balance during the litigation. See *Bell v. Tsintolas Realty Co.*, 430 F.2d 474, 482 (D.C. Cir. 1970); *Davis v. Rental Assocs. Inc.*, 456 A.2d 820, 823 (D.C. 1983). Such a remedy may include payment for the fair use and occupancy of the property, while the litigation is pending, in the form of a bond, a periodic payment, or both. See *Lindsey v. Prillman*, 921 A.2d 782, 785 (D.C. 2007) ("[W]e decline to say that a periodic-payment protective order can never be contemplated for use outside the typical landlord-tenant context . . ."). However, "[p]rotective orders, by their very nature, are designed to govern a contractual landlord-tenant relationship, and their utility is questionable when the litigants lack such a relationship." *Crockett*, 16 A.3d at 952. See *Walker v. Smith*, 499 A.2d 446, 450 (D.C. 1985) ("Moreover, in the absence of the traditional landlord-tenant relationship, with privity of contract, the validity of [a] protective order is open to serious question."). The amount of any payment required in such a case must be strictly limited to the value of the use and occupancy of the premises. *Crockett*, 16 A.3d at 953 n.8 ("[T]he only conceivable reason to enter a protective order in [a case that does not involve parties with a landlord-tenant relationship] would be to protect the [plaintiff's] interest in the value of the use and occupation of the home during the pendency of litigation.").

### **Rule 13. Motions**

(a) **IN GENERAL.** A motion that depends on facts not in the record must be in writing and filed with the clerk. The motion must include or be accompanied by a statement of points and authorities setting out the facts on which the motion is based. The movant may provide or the court may require affidavits or other forms of sworn testimony.

(b) **TIMING AND NOTICE OF HEARING.** Except as provided in Rule 13(e), on filing of a motion, the clerk must set a hearing and must issue and mail a notice of motion hearing.

(1) *Timing.* The clerk must set a motion, except a motion filed under Rule 4(b)(3), for a hearing not earlier than 14 days after the motion is filed.

(2) *Notice.* The notice of motion hearing must specify the date, time, and location of the hearing.

(c) **SERVICE.**

(1) *By Counsel.* A movant represented by counsel must serve the motion in accordance with Civil Rule 5.

(2) *By Self-Represented Person.* A self-represented person filing a motion must provide a copy of the motion for each of the other parties. The clerk must serve a copy of the motion on each of the other parties and must note the date and method of service on the docket.

(d) **OPPOSITION.**

(1) *In General.* Within 14 days after service of the motion or before the time set for any hearing, a party who opposes a motion may file a statement of opposing points and authorities. The court may extend the time for filing a statement of opposing points and authorities.

(2) *Attending Hearing.* If a hearing is set on the motion, a party who opposes the motion must attend the hearing, either personally or through counsel.

(3) *Summary Judgment Motion Addressed in Civil Actions Branch.* A party who opposes a motion for summary judgment that will be decided by a judge in the Civil Actions Branch under Rule 13-I must file a written statement of opposing points and authorities in accordance with Civil Rule 56.

(e) **MOTIONS NOT AUTOMATICALLY SCHEDULED FOR HEARINGS.**

(1) *Motion Addressed in Civil Actions Branch.* The clerk will not schedule a hearing for a motion that will be addressed by a judge in the Civil Actions Branch under Rule 13-I.

(2) *Motions to Alter or Amend or for Relief From a Ruling or Sanction.* Unless the court orders otherwise, the clerk will not schedule a hearing for a motion to alter or amend or for relief from a ruling or sanction. A motion to alter or amend or for relief from a ruling or sanction must, whenever practicable, be decided by the same judge who issued the ruling or sanction, and the motion must include that judge's name in the caption immediately below the case number.

(3) *Request for Hearing.* A party may request a hearing on a motion by stating at the bottom of the party's motion or opposition, above the party's signature, "Hearing Requested." If the court decides to hold a hearing on the motion, the court must give all parties appropriate notice of the hearing and may specify the matters to be addressed at the hearing.

(f) **COURT ACTION.**

(1) *In General.* Except as provided in Rule 13-I(f)(2), the court may not grant a motion to which the opposing party has not consented unless:

(A) a statement of opposing points and authorities has been filed or the time for filing under Rule 13(d)(1) has expired; and

(B) it appears from the motion, any accompanying exhibits and documents, any opposition, and any prior proceedings in the case that the movant is entitled to relief.

(2) *Application or Motion for Continuance*. For good cause, the court may grant an application or motion for continuance without waiting for the time period in Rule 13(d)(1) to expire.

(g) RETENTION; ASSIGNMENT BY THE PRESIDING JUDGE. A judge or magistrate judge sitting in the Landlord and Tenant Branch may retain a particular motion for decision by notifying the parties and causing a notation to be made in the docket. The Presiding Judge may also assign any motion arising in the Landlord and Tenant Branch to a particular judge or magistrate judge.

## COMMENT TO 2019 AMENDMENTS

This rule has been amended and reorganized consistent with the stylistic changes to the civil rules. The rule has also been revised for electronic filing and service.

## COMMENT

“In matters involving pleadings, service of process, and timeliness of filings, *pro se* litigants are not always held to the same standards as are applied to lawyers. Indeed, the trial court has a responsibility to inform *pro se* litigants of procedural rules and consequences of noncompliance [including] at least minimal notice . . . of pleading requirements. *Pro se* litigants are allowed more latitude than litigants represented by counsel to correct defects in service of process and pleadings.” *Padou v. District of Columbia*, 998 A.2d 286, 292 (D.C. 2010) (citations omitted).

A motion captioned as a “Motion for Reconsideration” is considered under subsection (c)(2) as a motion to alter, amend, or for relief from a ruling or sanction and will be treated as such under this Rule. See *Fleming v. District of Columbia*, 633 A.2d 846, 848 (D.C. 1993); *Wallace v. Warehouse Employees Union #730*, 482 A.2d 801, 804-05 (D.C. 1984).

“The trial court is not free to treat as conceded an unopposed motion for summary judgment” filed under section (d). *Milton Props., Inc. v. Newby*, 456 A.2d 349, 354 (D.C. 1983). “Even if an unopposed motion for summary judgment is deemed to establish that no genuine issue of material fact exists, the court must still review the pleadings and other papers to determine whether the moving party is legally entitled to judgment.” *Id.*

### **Rule 13-I. Motions in Cases Certified to Civil Actions Branch**

(a) MOTIONS TO BE DECIDED BY THE ASSIGNED JUDGE. The judge to whom a case has been assigned for a jury trial under Rule 6 will determine the following motions in accordance with the Superior Court Rules of Civil Procedure, the general order, and any applicable calendar orders:

- (1) a motion to dismiss or for judgment on the pleadings;
- (2) a motion concerning discovery;
- (3) a motion for summary judgment under Civil Rule 56;
- (4) a motion concerning the conduct of the trial (e.g., motions *in limine* to exclude or receive evidence);
- (5) a motion to amend the pleadings;
- (6) a motion filed under Civil Rules 17-25;
- (7) a motion to continue trial or any other hearing scheduled before the assigned judge;
- (8) a motion relating to the entry and withdrawal of counsel;
- (9) a motion for recusal of the assigned judge;
- (10) a motion to consolidate or sever;
- (11) a motion relating to any subject that is filed during trial or so close to trial that a hearing cannot be scheduled in the Landlord and Tenant Branch before the trial date;
- (12) a post-trial motion concerning the conduct or outcome of the trial or an appeal of the judgment;
- (13) a motion to vacate a dismissal, default, or default judgment entered by the assigned judge;
- (14) a motion to alter or amend or for relief from an order issued by the assigned judge; and
- (15) a motion for enlargement of time to file any motion, opposition, or other paper that will be determined by the assigned judge in accordance with Rule 13-I(a)(1)-(14).

(b) PARTIES OPPOSING MOTIONS. Any party opposing a motion filed under Rule 13-I(a) may serve and file a statement of opposing points and authorities within 14 days after service of the motion on the party or such further time as the assigned judge may grant.

(c) REQUEST FOR HEARING. Any party may request a hearing on a motion filed under Rule 13-I(a) by stating at the bottom of the party's motion or opposition, above the party's signature, "Hearing Requested." If the court decides to hold a hearing on the motion, the court must give all parties appropriate notice of the hearing and may specify the matters to be addressed at the hearing.

(d) COURT ACTION.

(1) *In General*. Except as provided in Rule 13-I(d)(2), the court may not grant a motion to which the opposing party has not consented unless:

(A) a statement of opposing points and authorities has been filed or the time for filing under Rule 13-I(b) has expired; and

(B) it appears from the motion, any accompanying exhibits and documents, any opposition, and any prior proceedings in the case that the movant is entitled to relief.

(2) *Application or Motion for Continuance*. For good cause, the court may grant an application or motion for continuance without waiting for the time period in Rule 13-I(b) to expire.

(e) MOTIONS TO BE DECIDED IN THE LANDLORD AND TENANT BRANCH. Except as provided in Rule 13-I(a)(11) or as otherwise ordered by the court, the following motions will be heard and decided under the rules of the Landlord and Tenant Branch by a judge or magistrate judge sitting in that branch:

- (1) motions relating to a protective order;
- (2) motions for an administrative stay of the proceedings;
- (3) motions for a temporary restraining order or preliminary injunction;
- (4) motions to enforce a settlement agreement or consent judgment, unless otherwise specified by the court in the agreement; and
- (5) post-trial motions not concerning the conduct or outcome of the trial or an appeal of the judgment.

(f) MOTIONS TO ALTER OR AMEND OR FOR RELIEF FROM RULINGS OR SANCTIONS ENTERED IN THE LANDLORD AND TENANT BRANCH. A motion to alter or amend or for relief from a ruling or sanction entered by a judge or magistrate judge sitting in the Landlord and Tenant Branch will be decided by that judge or magistrate judge whenever practicable. The motion must include the judge's or magistrate judge's name in the caption below the case number. A party opposing the motion may file a statement of opposing points and authorities within 14 days after service of the motion or such further time as the court may allow. A hearing on the motion will not automatically be set, but a hearing may be requested or held in accordance with Rule 13(e)(3).

(g) ALL OTHER MOTIONS. Except as provided in Rule 13-I(a)(11), all other motions will be heard and decided by the judge or magistrate judge sitting in the Landlord and Tenant Branch under the rules of that branch, except that the Presiding Judge of the Civil Division has the discretion to certify any other motion not listed in Rule 13-I(a) to the assigned judge.

#### COMMENT TO 2019 AMENDMENTS

This rule has been amended consistent with the stylistic changes to the civil rules.

#### COMMENT

A motion captioned as a "Motion for Reconsideration" is considered under sections (a)(14) and (e) as a motion to alter, amend, or for relief from a ruling or sanction and will be treated as such under this Rule. See *Fleming v. District of Columbia*, 633 A.2d 846, 848 (D.C. 1993); *Wallace v. Warehouse Employees Union #730*, 482 A.2d 801, 804-05 (D.C. 1984).

## **Rule 14. Entry of Judgment**

(a) **JUDGMENT FOR POSSESSION.** A judgment for possession may be entered:

- (1) by consent;
- (2) on the defendant's confession of liability before the court;
- (3) as a sanction for the defendant's failure to comply with a protective order, as provided in Rule 12-I;
- (4) by summary judgment in favor of the plaintiff or the defendant;
- (5) in accordance with D.C. Code § 16-1501 (2012 Repl.) in a trial proceeding; or
- (6) by default in accordance with Rule 14(c)

(b) **MONEY JUDGMENT.** Subject to Rule 3, a money judgment may be entered:

- (1) by consent;
- (2) on the defendant's confession of liability before the court;
- (3) by summary judgment in favor of the plaintiff or the defendant;
- (4) in favor of the prevailing party, at the conclusion of a trial or other hearing to the extent of the total amount proven; or
- (5) by default in accordance with Rule 14(c).

(c) **DEFAULT JUDGMENT.**

(1) *Servicemembers Civil Relief Act Affidavit.* In any case where the defendant has not made an appearance, a default judgment may be entered against the defendant only if the plaintiff files a Civil Action Form 114 that complies with the Servicemembers Civil Relief Act (50 U.S.C. §§ 3901-4043).

(2) *Default Judgment for Possession.*

(A) *"Drug Haven" Case.* In a case where default is entered under Rule 11(b)(2) and the plaintiff seeks possession under the Residential Drug-Related Evictions Re-Enactment Act of 2000 (D.C. Code § 42-3602 (2012 Repl.)) (authorizing evictions for maintaining a "drug haven"), the court may enter judgment for possession in favor of the plaintiff only on the plaintiff's presentation of ex parte proof and, if required by Rule 14(c)(1), the filing of Civil Action Form 114.

(B) *Cases Where Defendant Has Appeared.* In a case where default is entered under Rule 11(b)(2) but the defendant has previously entered an appearance, the court may enter a judgment for possession in favor of the plaintiff only on the plaintiff's presentation of ex parte proof.

(C) *Procedure for Presenting Ex Parte Proof.* In cases requiring the presentation of ex parte proof, the plaintiff must 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 must send written notice to all parties.

(D) *All Other Cases.* In all other cases where a default is entered under Rule 11(b)(2), the clerk must enter a judgment for possession in favor of the plaintiff on the filing of the Civil Action Form 114 required by Rule 14(c)(1).

(3) *Default Money Judgment.*

(A) *Procedure.* The plaintiff must appear before the judge to request the entry of a money judgment following the entry of a default under Rule 11(b)(2). The court may hear and rule on the plaintiff's request; however, entry of a money judgment by default must be deferred until the plaintiff files the Civil Action Form 114 required by Rule 14(c)(1).

(B) *Limitations*. A money judgment entered based on the defendant's default must be limited to the amount demanded in the complaint.

(d) ADDITIONAL RELIEF. 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.

#### COMMENT TO 2019 AMENDMENTS

This rule has been amended consistent with the stylistic changes to the civil rules. The rule was also reorganized and modified to include default judgment provisions previously found in Rule 11.

#### COMMENT

This rule clarifies the situations when the prevailing party is entitled to the entry of a money judgment and/or to the entry of a judgment for possession. This rule does not change the Court's authority to fashion appropriate relief for a prevailing party.

This rule is procedural only and is not intended to modify any case law or statutory provisions.

**Rule 14-I. Dismissal for Failure to Prosecute**

The clerk must dismiss the complaint without prejudice if, within 90 days after the entry of a default, the plaintiff fails to file a Civil Action Form 114 in compliance with the Servicemembers Civil Relief Act (50 U.S.C. §§ 3901-4043) or to request an opportunity to present ex parte proof, when it is required. The clerk must mail written notice of the dismissal to all parties. This rule applies to any complaint or counterclaim on which a default has been entered.

**COMMENT TO 2019 AMENDMENTS**

This rule has been amended consistent with the stylistic changes to the civil rules.

## **Rule 14-II. Redemption of Tenancy**

### **(a) JUDGMENT FOR POSSESSION AFTER TRIAL.**

(1) *In General.* 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 on the defendant's nonpayment of rent, the court must 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.

(2) *Additional Rents and Court Costs.* The court must 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) JUDGMENT FOR POSSESSION BEFORE TRIAL.**

(1) *In General.* In any other case in which a judgment for possession is entered in favor of the plaintiff based on 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.

(2) *Additional Rents and Court Costs.* The court must 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) **NOTICE TO DEFENDANT.** If the court makes a finding under Rule 14-II(a) or (b), then the clerk must provide the defendant with a completed L&T Form 6a or 6c, which must specify the amount of money that the defendant must pay to avoid eviction and advise the defendant that the amount will increase as additional rents become due and, if applicable, as the plaintiff incurs additional court costs.

### **(d) JUDGMENT FOR POSSESSION BY DEFAULT; NOTICE TO TENANT OF PAYMENT REQUIRED TO AVOID EVICTION.**

(1) *In General.* In any case in which a default against a defendant has been entered under Rule 11 or a judgment for possession has been entered in favor of the plaintiff based on the defendant's nonpayment of rent and in which the court has not set the redemption amount on the record under Rule 14-II(a) or (b), the plaintiff, unless the court rules otherwise, must file a notice to tenant of payment required to avoid eviction, in the form prescribed in L&T Form 6, within 7 days after the date on which the default or judgment was entered. If the 7th day falls on a holiday, the time for filing will be extended to the next business day.

(2) *Stayed Judgments.* If a judgment has been stayed in accordance with a consent judgment agreement or otherwise, the 7-day period for the filing of a notice to tenant of payment required to avoid eviction does not begin to run until the stay has been lifted.

(3) *Copy to Defendant.* The clerk must promptly mail to the defendant a copy of the notice to tenant of payment required to avoid eviction and must make an entry in the record indicating the date and time of mailing.

### **(e) LATE FILING OF NOTICE.**

(1) *In General.* On application and after a hearing, the court may permit a plaintiff to file a notice to tenant of payment required to avoid eviction after the time for filing in Rule 14-II(d)(1) has expired, if the plaintiff shows excusable neglect or good cause.

(2) *Content of Application to Late File Notice.* A plaintiff who wishes to late file the notice to tenant of payment required to avoid eviction must file an application seeking leave of court and justifying a finding of excusable neglect or good cause. The plaintiff must attach to the application a copy of the notice to tenant of payment required to avoid eviction.

(3) *Timing and Notice of Hearing.* On filing of the application, the clerk must set a hearing and must issue and mail a notice of hearing.

(A) *Timing.* The clerk must set the application for a hearing not earlier than 14 days after the application is filed.

(B) *Notice.* The notice of hearing must specify the date, time, and location of the hearing.

(4) *Service.* A copy of the application must be served on the defendant as set forth in Rule 13(c).

(5) *Determination.* At the hearing, the judge must determine whether the plaintiff has established that the failure to timely file the notice was due to the plaintiff's excusable neglect or that there is otherwise good cause for permitting the plaintiff to late file the notice.

(f) CHALLENGING THE REDEMPTION AMOUNT.

(1) *Application to Reduce Payment Required to Avoid Eviction.* 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 L&T Form 7.

(2) *Timing and Notice of Hearing.* On filing of the application, the clerk must set a hearing and must issue and mail a notice of hearing.

(A) *Timing.* The clerk must set the application for a hearing not earlier than 14 days after the application is filed.

(B) *Notice.* The notice of hearing must specify the date, time, and location of the hearing.

(3) *Service.* A copy of the application must be served on the plaintiff as set forth in Rule 13(c).

(4) *Joint Hearing of Application to Reduce Payment Required to Avoid Eviction and Motion to Stay the Execution of a Writ of Restitution.* If the defendant also has filed a motion for a stay of execution of a writ of restitution under Rule 16(b), the defendant's application to reduce payment required to avoid eviction may be heard together with the motion for a stay of execution.

(g) AMENDING THE NOTICE TO TENANT OF PAYMENT REQUIRED TO AVOID EVICTION. A plaintiff who seeks to amend the redemption amount set forth in a notice to tenant of payment required to avoid eviction must file a motion under Rule 13.

(h) JUDGMENT PERMANENTLY STAYED AFTER REDEMPTION. As a matter of law, a judgment for possession entered in favor of the plaintiff based on the defendant's nonpayment of rent is 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.

## COMMENT TO 2019 AMENDMENTS

This rule has been amended consistent with the stylistic changes to the civil rules. Provisions that address the scheduling and notice of hearings have been revised to accommodate electronic filing and service. D.C. Code § 42-3505.31(c)(4) (2019 Supp.) prohibits a housing provider from evicting a tenant for nonpayment of a late fee; accordingly, in a residential housing case, the redemption amount may not include late fees.

## **Rule 15. Fees and Costs**

(a) FEES. Fees must be in accordance with the schedule set out in Civil Rule 202.

(b) COSTS. On entry of judgment, the prevailing party must be awarded, as a matter of course, all taxable costs in the action including the filing fee, notary fee, postage, and a maximum of \$ 10.00 per defendant to cover the costs incurred for service by a special process server. Notwithstanding Civil Rule 54(d), any court filing fee and U.S. Marshals Service administrative fee for any writ of restitution, including alias writs, must be awarded as a cost without further action by the court. Any other fee associated with any writ of restitution must be awarded as a cost if the United States Marshals Service appears on the premises to execute the writ, regardless of whether the writ is executed. The clerk must tax costs on the filing of the writ of restitution pursuant to Rule 16(a) and payment of the required fees. Other costs may, in the court's discretion, be awarded to the prevailing party or any other party, as appropriate, and costs may be awarded so as to discourage the filing of frivolous, vexatious, or premature actions or defenses.

### **COMMENT TO 2014 AMENDMENTS**

The fee for a writ of restitution includes a filing fee charged by the court, and an administrative fee and an execution fee charged by the U.S. Marshals Service. The court's filing fee and U.S. Marshals Service's administrative fee are awarded as costs upon payment by the plaintiff to the clerk. The execution fee must be paid by the plaintiff to the court upon filing of a writ of restitution, but is awarded as a cost only if charged by the U.S. Marshals Service.

In many instances, the plaintiff does not seek to schedule an eviction after a judgment for possession is obtained because the tenant redeems the tenancy, or vacates the premises, or for other reasons. If the U.S. Marshals Service does not appear on the premises to conduct an eviction, then the U.S. Marshals Service generally does not charge the execution fee and the court returns the fee to the plaintiff. The fee is returned approximately 90 days after the writ of restitution expires or is quashed, including any alias or reissued writ, or earlier if the plaintiff files a praecipe stating that the plaintiff will not be seeking re-issuance of the writ. In some instances, the U.S. Marshals Service may appear on the premises to supervise an eviction that does not take place, for example, because the writ of restitution is quashed or stayed before the eviction is concluded. In those circumstances, as well as in circumstances where the writ is executed, the U.S. Marshals Service does charge the execution fee, and that fee therefore is taxable as a cost.

In the past, the court has required the defendant to include the execution fee in the amount required to redeem the tenancy. Based on the amended rule, the execution fee will be required as part of the amount the tenant must pay to redeem the tenancy only if the redemption is taking place when the U.S. Marshals Service has appeared on the premises to execute the writ.

## **Rule 16. Execution**

### **(a) ISSUANCE OF THE WRIT.**

(1) *Nonpayment of Rent Cases.* In a case in which a judgment for possession has been entered in favor of the plaintiff based on the defendant's nonpayment of rent, a writ of restitution may issue if:

(A) the court has set a redemption amount on the record in the presence of the parties; or

(B) the plaintiff has filed a notice to tenant of payment required to avoid eviction in accordance with Rule 14-II.

(2) *All Other Cases.* In any other case, a writ of restitution may issue after entry of the judgment.

(3) *Filing Prepared Writ.* A prepared writ of restitution must be filed with the clerk at the time that the writ is ordered. If an alias writ of restitution is ordered, a prepared writ must be filed with the clerk. The clerk must deliver the original or alias writ to the United States Marshal.

(4) *Validity of the Writ.* A writ of restitution is valid for a period of 75 days.

### **(b) MOTION FOR STAY OF EXECUTION.**

(1) *In General.* A party may seek a stay of execution of a writ of restitution by either oral or written motion. The motion must include a statement that the adverse party has been notified and has been given an opportunity to appear. Prior to a hearing on the motion, the court must inquire of the clerk's office, when the defendant is self-represented, 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 a motion for stay.

(2) *Notice.*

(A) *By Counsel.* When the movant is represented by counsel, the movant's attorney must 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 clerk's office must notify the adverse party on the movant's behalf.

(3) *Appearance by Adverse Party.*

(A) *When the Writ is Not Executable.* 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 court must give the adverse party an opportunity to be heard if the writ of restitution is not capable of being executed.

(B) *When the Writ is Executable.* 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 3 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.

(4) *New Hearing Date.* If the court grants a stay of execution, the court must set a date for further hearing on the request. If the adverse party was absent for the motion for stay, the clerk's office must notify the adverse party by facsimile, mail, or telephone of the hearing date set by the court.

### **(c) TIME LIMIT FOR ISSUING WRIT.**

(1) *In General.* Except as provided in Rule 16(c)(2), a writ of restitution must be issued within:

- (A) 90 days after entering the judgment;
- (B) 90 days after entering a default, if a default was entered; or
- (C) 90 days after vacating a stay of execution.

(2) *With the Court's Leave*. If the writ is not issued within the time frame provided in Rule 16(c)(1), the plaintiff may file a request for issuance of the writ. The plaintiff must give the defendant notice of this request on the form provided by the clerk. The clerk will schedule a hearing in accordance with Rule 13.

(d) **AUTOMATIC STAY OF THE ENFORCEMENT OF A MONEY JUDGMENT**. A money judgment may not be executed or enforced until 14 days after its entry. Nothing in this rule should be construed to interfere with the court's right to enter a stay in accordance with Civil Rule 62(b) or with a party's right to funds deposited in accordance with Civil Rule 67.

#### COMMENT TO 2019 AMENDMENTS

This rule has been amended consistent with the stylistic changes to the civil rules. The 2-day waiting period in subsections (a)(1) and (2) was deleted as unnecessary. The provision regarding a stay of execution was deleted because Civil Rule 62(b) is now made applicable by Rule 2.