

**REPORT OF OBSERVATIONS
ON IMPLEMENTATION OF
LANDLORD-TENANT REFORM
IN NEW JERSEY**

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Contents

Background on the New Jersey Housing Justice Project	1
Acknowledgments.....	2
Introduction	3
I. Certification for Eviction Protection.....	7
A. Cases in which N.J.S.A. 52:27D-287.9 was properly applied.....	10
B. Cases in which the plain language of N.J.S.A. 52:27D-287.9 was not applied.....	11
C. Cases in which rent claimed included both covered period and non-covered period rent .	15
D. Conclusions and proposed steps	17
II. Landlord-Tenant Court Reform	19
A. Cases in which procedures outlined in the Administrative Determinations were not followed	21
B. Conclusions and proposed steps	24
III. Access to Justice in the Virtual Environment	26
A. Cases in which litigants were denied access due to issues with technology	26
B. Proposed steps to ensure access to justice in the virtual environment.....	28
IV. Transparency and Equity Impact.....	30
Proposed steps towards improving transparency	30
Conclusion.....	32

Background on the New Jersey Housing Justice Project

In July 2021, both houses of the New Jersey Legislature passed, without dissent, a new law to fund experiential housing advocacy programs to provide legal services for low- and moderate-income tenants in need of housing assistance. Governor Murphy signed the legislation on July 22, 2021. The legislation acknowledged that the lack of affordable housing, a longstanding issue in New Jersey, was exacerbated by the COVID-19 pandemic and disproportionately impacts Black and Latinx residents of New Jersey. The legislation also recognized that the provision of free legal services to low- and moderate-income tenants in eviction cases in court, negotiations with landlords, and obtaining rental assistance and other benefits, is one of the most effective ways to address the ongoing eviction crisis.

Through this funding, Seton Hall University School of Law and Rutgers University Law School have established the New Jersey Housing Justice Project. The new funding has enabled the law schools to expand their clinical programs and provide representation to more tenants than ever before. An effective response to the eviction crisis, however, requires more than individual representation. Our law schools are uniquely positioned to engage in thoughtful review of the landlord-tenant court system, gather data and information, analyze that information, and develop strategies to meet the crisis.

Acknowledgments

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Introduction

The eviction process in New Jersey has long been plagued by a lack of transparency, accessibility, and fairness. As noted in [Maintaining Our Communities, Report of the Judiciary Special Committee on Landlord-Tenant](#):

The need to reexamine and reform landlord-tenant did not arise with the ongoing COVID-19 crisis. Rather, the current unparalleled emergency triggered the suspension of residential evictions and nearly all landlord-tenant trials. In so doing, the public health emergency imposed a pause that enabled judges, attorneys, court staff, and advocates to take a step back and consider the landlord-tenant docket not as it has been for decades, but for how it could be for the future.

* * * * *

The need for reform is overwhelming, and the timeframe for developing and implementing change is narrow.

Maintaining Our Communities: Report of the Judiciary Special Committee on Landlord Tenant 15-17 (submitted by Glenn A. Grant, J.A.D., Acting Administrative Director of the Courts; Chair, Special Committee on Landlord Tenant, April 2021).

And as noted by the Legislature:

It is, therefore, necessary for the Legislature to assist landlords who have suffered deep economic losses through no fault of their tenants or themselves, and, simultaneously, make efforts to assist tenants who need help as a result of this crisis, in order to ensure some measure of security and stability for their families and communities; provide landlords with the restored rental income stream required to safely and efficiently operate their buildings; and prevent a resurgence of the COVID-19 pandemic that will threaten the health and safety of tenants, landlords, and the public at large.

N.J.S.A. 52:27D-287.7(j).

The State of New Jersey has been and continues to be a national leader in fashioning a multi-faceted response to the worsening of the eviction crisis due to the pandemic. The Judiciary implemented comprehensive reforms in eviction procedures. [Administrative Determinations by the Supreme Court on the Report and Recommendations of the](#)

[Judiciary Special Committee on Landlord Tenant \(issued July 14, 2021\)](#)¹ (Administrative Determinations). The Governor’s Executive Orders provided a moratorium on evictions that exceeded the federal protections. See, e.g., [Executive Order 106 \(March 19, 2021\)](#). The Legislature enacted eviction protections for low-income tenants affected by COVID, as well as provisions intended to prevent misuse of court records to deny affected tenants rental opportunities in the future. N.J.S.A. 52:27D-287.7–287.11; N.J.S.A. 2A:42-144-148. Our Department of Community Affairs led the nation in distributing rental assistance to families in need. [Press Release, New Jersey Department of Community Affairs \(October 22, 2021\)](#).²

While we should be and are proud of our State’s accomplishments in this crisis, there is more work to be done. More than 25,000 new eviction cases were filed between July 1, 2021 and December 31, 2021. During this same period, almost 32,000 cases were resolved, most during the period in which the law for eviction protection and the judicial landlord-tenant court reforms were in place.³ Fifty thousand eviction cases were pending at the beginning of 2022. [New Jersey Judiciary Court Management Statistics \(December 2021\)](#).⁴

Despite our State’s efforts, New Jersey tenants, particularly low-income tenants, continue to face a significant risk of eviction. One researcher has estimated that almost 75,000 low-income households are at risk of eviction this year. Alan Mallach, *New Jersey Renters at Risk of Eviction in 2022* (Jan. 20, 2022).⁵ Thus, it is crucial that the landlord-tenant reforms, both legislative and judicial, be implemented correctly and consistently in order to prevent unjust evictions and resulting homelessness.

¹ See e.g., Order of the Supreme Court Relaxing and Supplementing Parts IV and VI of the New Jersey Court Rules, para. 7 (entered July 14, 2021) and Order of the Supreme Court Amending Rule 6:6-4 and Rules Appendix so as to Implement Landlord Tenant Reforms (entered July 14, 2021).

² Available at <https://nj.gov/dca/news/news/2021/approved/20211022.shtml>.

³ The available court management statistics do not provide information about how the cases were resolved, whether dismissed, settled, or tried.

⁴ Available at <https://www.njcourts.gov/public/assets/stats/cman2112.pdf?c=2ij>.

⁵ Available at https://www.hcdnj.org/assets/documents/Mallach%20NJ%20Renters%20at%20risk_final%201%2017%2022_Rev%202%207%2022.PDF.

As participants in a statewide tenant advocacy group, we have heard anecdotal accounts that the new eviction protection law and reform procedures are not being implemented in a consistent manner throughout the State or among courtrooms in the same vicinage. Law students who have participated in tenant assistance legal clinics have noted for themselves that tenants' experiences and outcomes vary depending on how the new law for eviction protection and landlord-tenant procedural reforms are implemented in their cases. While not surprising given the breadth and depth of the changes, the short period of implementation, and the lack of appellate guidance, inconsistent applications of procedures and law perpetuate the lack of fairness and equity that the Supreme Court has shown such commitment to eradicating.

Students at Seton Hall University School of Law School and Rutgers University School of Law – Camden location, under the supervision of the clinical faculty and New Jersey Housing Justice Project attorneys, have engaged in an inquiry to assess inconsistencies in the implementation of landlord-tenant reform. The students have reviewed the controlling statutes, court rules, and court directives. Most participated in the NJSBA webinar, Landlord Tenant Update Part 2, on January 24, 2022, and the White House, Justice Department, and Treasury Virtual Event on Eviction Prevention, held on January 28, 2022.⁶ They have reviewed cases handled by the New Jersey Housing Justice Project and conducted interviews with attorneys employed by six non-profit legal assistance providers that represent tenants around the State.

This report focuses on implementation of N.J.S.A. 52:27D-287.9, which provides for dismissal of certain complaints for eviction upon the filing of a certification for eviction

⁶ The White House event honored the 99 law schools around the country that responded to the U.S. Attorney General's call to action for stronger access to justice and court reform on eviction protection. Attorney General Garland noted that in the past five months, 2,100 law students have dedicated more than 81,000 hours to providing assistance to more than 10,000 households in need. The Housing Justice Project at Rutgers Law School (Newark campus) was one of the six programs highlighted during the event. Press Release, The [White House](#), Fact Sheet: The White House and Department of Justice Announced 99 Law Schools in 35 States and Puerto Rico Continue to Answer the Attorney General's Call to Action for Stronger Access to Justice and Court Reform on Eviction Prevention (January 28, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/01/28/fact-sheet-the-white-house-and-department-of-justice-announced-99-law-schools-in-35-states-and-puerto-rico-continue-to-answer-the-attorney-generals-call-to-action-for-stronger-access-to-just/>.

protection. We also offer initial observations from the field on how the new landlord-tenant procedures are being implemented.

In releasing this report now, we hope to inform tenant advocates and the public about the implementation of the new laws that protect tenants from eviction and the new procedures that enhance fairness in the landlord-tenant courts and provide useful information as the judiciary continues its work to transform the landlord-tenant court into a forum that is more accessible and fair.

I. Certification for Eviction Protection

To avoid a cascade of evictions and resulting homelessness following the lifting of the eviction moratorium, New Jersey enacted legislation that provides protections from eviction while still permitting landlords to collect rent lawfully owed to them through a monetary claim. In its findings, the Legislature noted:

In providing these protections, *the State must ensure that rent arrearages accrued during the covered period are not used as a mechanism for eviction.* Rather, such debt shall be treated as civil debt, subject to recovery by the landlord in a civil suit for a money judgment, which will balance the obligations of the tenant under a lease contract with the need to provide housing stability.

N.J.S.A. 52:27D-287.7(i) (emphasis added).

The law, which took effect August 4, 2021, provides in part:

3a. Notwithstanding any other law to the contrary, no residential tenant of a very low-income household, low-income household, moderate-income household, or middle-income household shall be evicted based upon nonpayment or habitual late payment of rent, or failure to pay a rent increase, that accrued during the covered period. Payments made by a tenant after the covered period ends shall be credited first to the current month's rental obligation, and any balance shall be credited to any arrearage owed by the tenant incurred following the conclusion of the covered period, and then to any arrearages incurred during the covered period.

* * * * *

d. Any amount of rent due and owing either prior to the start of the covered period or after the covered period ends may be pursued in the manner allowed by law for any other landlord-tenant action for rent due outside of the covered period. The provisions of P.L.2021, c. 188 (C.52:27D-287.7) shall not restrict a landlord from pursuing a money judgment action during the covered period, or following the covered period, for unpaid rent due during the covered period.

(1)(a) Notwithstanding the provisions of this section to the contrary, any tenant of a very low-income household, a low-income household, or a moderate-income household shall have continued protections from evictions as those that are applicable

during the covered period pursuant to subsections a. and b. of this section for residential rent arrearages incurred from the end of the covered period through December 31, 2021 if the household certifies under penalty of perjury:

- (i) the household's income;
- (ii) that the household was unable to pay rent due to circumstances arising from the COVID-19 pandemic; and
- (iii) that the household has applied for State, county, or local rental assistance programs for which they are eligible.

(b) The certification required by subparagraph (a) of this paragraph shall be made on a form established by the department. The tenant shall provide a copy of the completed form to the landlord, and, if there is a pending eviction action, to the court.

(2) The Administrative Director of the Courts shall provide notice to any residential tenant who is party to a landlord-tenant dispute for nonpayment of rent that includes information regarding tenant protections, income and COVID-19 impact attestation, and rental assistance programs established pursuant to P.L.2021, c. 188 (C.52:27D-287.7 et al.).

*e. All pending eviction actions alleging nonpayment or habitual late payment of residential rent, or failure to pay a rent increase, that accrued during the covered period **shall be dismissed** upon certification by the tenant, under penalty of perjury, in accordance with subparagraph (b) of paragraph (1) of subsection d. of this section that the tenant is a very low-income household, low-income household, moderate-income household, or middle-income household and that the reason for filing was nonpayment or habitual late payment of rent, or failure to pay a rent increase, during the covered period.*

f. If a case is dismissed and the landlord is required to subsequently file against the same tenant, the landlord may request that the case be reinstated with the court. In such circumstances the landlord shall pay the fees to serve the amended action, but no court filing fees shall be required.

N.J.S.A. 52:27D-287.9 (emphasis added).

All pending eviction actions alleging nonpayment or habitual late payment of residential rent during the covered period, or failure to pay a rent increase imposed during the covered period, shall be dismissed upon the filing of a certification for eviction protection. The baseline covered period is March 2020 through August 2021. N.J.S.A. 52:27D-287.8. Tenants who meet additional requirements – the household income is less than 80% of the Area Median Income for the county in which they reside; the household was unable to pay rent due to circumstances arising from the COVID-19 pandemic; and the household has applied for State, county or local rental assistance for which they are eligible – are entitled to an extended covered period through December 31, 2021. N.J.S.A. 52:27D-287.9(d)(1).

The text of the law is clear. Rent arrears that accrued during the covered period, be it the baseline covered period of March 1, 2020 through August 31, 2021, or the extended covered period that runs through December 31, 2021, may never be used as a mechanism to evict an eligible tenant. There are no limiting factors in the statute other than those set out on its face.

N.J.S.A. 52:27D-287.9(d)(1) & (e) mandate that all cases in which a qualifying certification is filed be dismissed. There is no date by which the certification must be filed for the case to be dismissed. There is no exception to the dismissal mandate for cases that have proceeded to settlement or judgment. There is no limitation in the statute that would exempt certain cases from dismissal, for example, if the rent claimed is for both covered periods and uncovered periods. There is no provision for amending the complaint to exclude claims for covered period rent in lieu of dismissal. Yet our experience and that of other legal services providers who represent tenants is that in some cases dismissals are not occurring as mandated in the statute.

The reports of the tenant attorneys included here are based on their experience and that of their colleagues. The featured counties are the ones where the lawyers interviewed by the students practice.⁷ The inclusion or exclusion of cases from any particular county

⁷ Burlington County, cited with some frequency here, is a leader in providing access to counsel, permitting an attorney from Community Health Law Project to provide information about its services at the calendar call, referring unrepresented tenants to legal services providers, and providing adjournments so that tenants may obtain counsel.

should not, therefore, be taken as a reflection of that county's overall treatment of landlord-tenant cases. The accounts below are anecdotal and non-comprehensive.

As the vast majority of tenants appear without representation and, except in a few counties, virtual proceedings are not accessible to court observers, we do not have evidence at this time of how unrepresented tenants are faring in eviction proceedings. Nevertheless, the cases described here illustrate misapplication of the new eviction prevention law and inconsistency among counties throughout the State.

A. Cases in which N.J.S.A. 52:27D-287.9 was properly applied

By way of example, attorneys representing tenants have reported proper application of the statute in the following counties and cases:

Mercer County: An unrepresented tenant consented to a settlement agreeing to vacate the premises within a couple of weeks. After the date to move out had passed, the tenant requested assistance from a legal services provider. As the tenant already had a pending rental assistance application, counsel assisted the tenant in filing a certification for eviction protection. Upon receipt of the certification, the clerk administratively dismissed the case.

Morris County:

- Complaint was filed for nonpayment of rent that included the covered period. Judgment of Possession was entered and the Warrant of Removal was issued. The pro se tenant filed a post-judgment Order to Show Cause for relief. The court entered an Order for Orderly Removal. Thereafter, the tenant filed a qualifying certification, and the matter was dismissed.
- In another case, the tenant, while waiting for tardy landlord counsel to appear at the case management conference, completed and filed a qualifying certification. The case was dismissed during the conference.

Union County: A legal services provider reported that they had not experienced misapplication of the law in Union County. The provider noted, however, that how quickly a case is dismissed after a certification is filed varies, with some dismissals occurring within one business day and others taking several days.

Warren County:

- A legal services provider reported that they had not experienced misapplication of the law in Warren County. The legal services provider reported that sometimes dismissals are processed quickly and at other times, the dismissal may occur a week or more after the certification is filed.
- In one Warren County case, a pro se tenant who filed an Order to Show Cause certified that they had filed for rental assistance, but it was not clear whether the tenant had also filed the certification for eviction protection as the court did not have a record of the submission. The tenant was assisted in filing a new certification and the case was dismissed.

B. Cases in which the plain language of N.J.S.A. 52:27D-287.9 was not applied

Tenant attorneys who practice regularly in other counties reported that the plain language of the law is not consistently being followed. We have included some examples below.

Burlington County

Burlington-1: A complaint for nonpayment of rent was filed in the summer of 2021 and dismissed upon the tenant's filing of a certification for eviction protection. A new complaint was filed on October 7, 2021, claiming rent arrears for September and October. The tenant filed a second qualifying certification for eviction protection in late October. The tenant certified that the tenant's household income was less than 80% Area Median Income ("AMI"), income loss was due to COVID, and the tenant had applied for rental assistance. Therefore, the tenant was entitled to protection during the extended covered period through December 31, 2021, but the complaint was not dismissed. The Landlord Tenant Legal Specialist (LTLS) advised counsel that the case was not dismissed because the rent alleged was "only after the covered period."

Burlington-2: A complaint for nonpayment alleged that rent was due only for September 2021 forward. The tenant filed a certification qualifying the tenant for the extended covered period protection through December 31, 2021, but the case was not administratively dismissed. At the case management conference, the tenant's attorney was informed that administrative dismissals occur only for cases involving rent that accrued prior to September 2021.

On the trial date, the landlord's attorney requested an adjournment. The tenant's attorney again asserted that dismissal was required under the law. The court refused to dismiss the case, stating that it made no difference whether the complaint was dismissed

and refiled or continued with unamended pleadings. The case is still pending. If the law had been applied correctly, a refiled complaint could claim only those rent arrears, if any, that accrued after December 31, 2021.

Camden County

Camden-1: Landlord filed a nonpayment complaint in February 2020. After several COVID related adjournments, the case was scheduled for a case management conference in August 2021. The tenant did not appear and the court entered default judgment. The landlord then filed a Request for a Warrant of Removal, attaching a letter to the tenant stating that rent was due for June, July, August, September, October, and “possibly November” 2021.

In early November 2021, the tenant filed a certification that qualified her for protection for rent claimed during the baseline and extended coverage period. The court did not dismiss the complaint and on the next day, the tenant filed pro se for a hardship stay. The tenant also contacted a legal services provider, which then filed an Order to Show Cause asking the court to vacate the default judgment and dismiss the case. Without providing either party an opportunity to be heard, the court denied the application for dismissal but granted a hardship stay until late November 2021. Tenant’s counsel filed an appeal. The Appellate Division granted tenant’s request to file an emergent motion for a stay and granted a stay of the execution of the warrant of removal. The matter is pending before the Appellate Division.

Essex County

Essex-1: The warrant of removal in this matter was issued in April 2020 but execution was stayed by the moratorium. At the landlord’s request, made without notice to the tenant, the court re-issued the warrant of removal on December 28, 2021. The tenant immediately filed a certification for eviction protection, which was uploaded by the court on December 30, 2021. The Certification recited that the tenant’s income was less than 80% AMI, the tenant’s loss of income was due to COVID, and the tenant had applied for rental assistance. The court failed to dismiss the complaint. Following the intervention of a legal assistance provider, the landlord agreed to dismissal of the complaint.

Hudson County

Hudson-1: A complaint based on nonpayment was filed in June 2020. On November 17, 2021, the court issued a notice scheduling a “settlement conference” for December 3, 2021. The tenant submitted a certification for eviction protection that included all the requirements for extending the covered period. Court staff uploaded the tenant’s certification for eviction protection on December 1, 2021, but did not dismiss the case and the settlement conference proceeded on December 3, 2021. The case was not dismissed on December 3, 2021 and trial was scheduled for January 11, 2022. The unrepresented

tenant entered into a stipulation of settlement to vacate the property. The landlord's attorney requested a warrant of removal on January 17, 2022. The tenant is now represented by a legal services provider and the case is ongoing.

Hudson-2: A complaint for nonpayment of rent was filed against four roommates. Each of the four tenants completed qualifying certifications for eviction protection through the online portal of the Department of Community Affairs ("DCA"), as required for all such certifications. As counsel was concerned about delays in uploading the certifications by court staff, she uploaded the certifications for eviction protection onto eCourts herself, choosing "certification" as the type of document for each, a procedure she had used successfully in the past. Rather than entering the dismissal, the processing clerk added a note to the case jacket stating, "Document must be submitted as a DCA certification if you have technical difficulties, please contact the Judiciary Help Desk: 609-421-6100."

Over the next month, counsel spent hours on hold with the Help Desk, speaking with clerks who referred her somewhere else, emailing the Civil Case Management Office, and even emailing the judge's chambers. Eventually the case against one of the four tenants was dismissed on the basis of his certification, but the other three defendants remained active on the trial date, which took place in January 2022. The court refused to dismiss those cases as the rent for January was now due. The case was adjourned. The cases against two of the tenants, but not the final tenant, were administratively dismissed. Finally, two weeks later, the certification of the remaining tenant was "processed," and the case against that tenant was administratively dismissed.

Middlesex County

Middlesex-1: Nonpayment complaint was filed. An unrepresented tenant entered into a settlement agreement to pay. Upon breach, the landlord requested that the warrant of removal issue. With the assistance of counsel, the tenant submitted a qualifying certification and filed an Order to Show Cause to vacate the warrant of removal and dismiss the action. The court refused to dismiss the case because the certification had been submitted after a consent judgment had been entered.

Middlesex-2: Complaint based on nonpayment was filed in November 2021. The accompanying rent ledger showed that the landlord claimed the tenant fell into arrears in August 2020 and, despite making periodic payments, had accumulated rental debt of more than \$12,000. The eviction complaint demanded allegedly overdue rent during both the baseline and the extended covered periods.

On November 29, 2021, court staff uploaded the tenant's certification for eviction protection but did not dismiss the case. Instead, the clerk's office sent the tenant an email advising that the case would not be dismissed as the tenant had not certified that the tenant had applied for rental assistance. In addition to the failure to dismiss upon the

filing of a qualifying certification, this case also had jurisdictional issues, i.e., the landlord verification was not signed on behalf of the owner of the property and there was no evidence that the landlord had complied with the Landlord Registration Act.

Somerset County

Somerset-1: On the same day that the judgment for possession was entered, the tenant, with the assistance of counsel, filed a DCA certification for eviction protection. The court staff refused to administratively dismiss. The tenancy judge instructed the legal services attorney to file an order to show cause. At the hearing, despite clear evidence that a qualifying certification had been filed, the court refused to vacate the judgment for possession and the warrant for removal. The judge insisted that the client had not made a good faith effort to obtain rental assistance, as he had not followed up with DCA. The judge set the matter for trial to take evidence on whether the tenant had meaningfully complied with the requirement to apply for rental assistance.

The rent claimed in this case fell within the baseline covered period, not the extended covered period; therefore, there was no requirement that the tenant apply for rental assistance. In addition to failing to dismiss as required by statute and Supreme Court Order, the court allowed the case to proceed despite inadequate service of process. The “proof of service” uploaded to the court docket included a notation that the mail was undeliverable and a handwritten note stating, “need apt #.” The building has 12 units. Neither the summons nor the complaint contained a unit number.

In each of these cases, the protections afforded by law were denied to the tenants. In most of the cases cited here, the clerk’s office failed to administratively dismiss the case. The errors in some of the cases appear to be a misapplication of the law on extended covered period protection by the clerk’s office or the Landlord Tenant Legal Specialist. In other cases, the status of the case (e.g., settled, warrant of removal issued) has been arbitrarily added as a barrier to dismissal.

The tenants in the cited cases are some of the few tenants who have representation in eviction cases. According to recent court statistics, less than 2% of tenants have representation in eviction court while more than 85% of landlords are represented.⁸ With tenant attorneys reporting these and other examples of misapplication of the law in counties around the State, it is reasonable to infer that hundreds of unrepresented tenants

⁸ Reporting and Business Data Analysis, Trial Court Services/Data Division, N.J. Administrative Office of the Courts (Jan. 27, 2022) (on file with the authors).

have been denied the protections afforded to them under the law and been wrongfully evicted.

C. Cases in which rent claimed included both covered period and non-covered period rent

In addition to those cases in which the failure to dismiss rests on a misunderstanding of the applicable “covered period” and the associated certifications, several other situations came to the attention of the interviewers. Most of these cases involve the question of dismissal when rent claimed includes both covered period rent and non-covered period rent. The statute, however, makes no distinction between cases involving only rent that came due during the covered period and cases involving rent that came due both during and outside the covered period (“mixed-rent cases”).

The law provides that “[a]ll pending eviction actions alleging nonpayment or habitual late payment of residential rent, or failure to pay a rent increase, that accrued during the covered period shall be dismissed upon certification by the tenant” NJSA 52:27D-287.9(e) (emphasis added). There is no exception for mixed-rent cases.

In the context of the landlord-tenant docket, this broad mandate makes sense. Unrepresented residential tenants, who are the overwhelming majority of tenants appearing in landlord-tenant court, cannot be expected to distinguish the arrears they must pay to avoid eviction from other arrears claimed in the complaint. Thus, the legislature required dismissal and refiling (with filing fees waived in accordance with subsection (f)) based on the arrears that are legally due to avoid eviction.

We note that for many of these cases, if the mandate of the law had been followed when the certification was submitted, the issue of dismissal in cases involving both covered period rent and post-covered period rent would not have arisen as the cases would have been administratively dismissed before any post-covered rent was due.

Burlington County

Burlington-3: A nonpayment of rent case was filed in late 2021. The tenant filed a qualifying certification but the case was not administratively dismissed, apparently because the rent claimed included rent due during the extended covered period. During the case management conference, the landlord’s attorney argued that because the

landlord was now claiming rent due for January 2022 and February 2022 (which rent was not yet due), the case should not be dismissed. The Landlord Tenant Legal Specialist agreed that the case should not be dismissed because the rent sought included rent outside the covered period.

Camden County

Camden-2: A complaint for nonpayment of rent was filed in February of 2020. The trial was adjourned due to the pandemic. Rent continued to accrue throughout the pandemic. In January of 2022, with the assistance of their minor grandchild, tenant completed a certification in which the question about income loss being related to COVID was mistakenly checked “no.” Although rent claimed included rent in the baseline covered period, the case was not administratively dismissed. A clerk notice in eCourts states “DCA NOT APPLICABLE FOR TIME OUTSIDE COVERED PERIOD.” The case is ongoing.

Essex County

Essex-2: A complaint for nonpayment of pre-covered period and covered period rent was filed. The tenant filed a qualifying certification for eviction protection. The clerk’s office advised counsel that only the claims for covered period rent would be dismissed, and the case would continue as to rent owed before the pandemic.

Hudson County

General Observations: A legal services provider who practices in Hudson County noted that there seemed to be confusion among the Landlord Tenant Legal Specialists, as they are reluctant to dismiss cases when the landlord has asked for rent during both the covered period and outside of the covered period. While the attorney is able to obtain dismissals in the cases in which the attorney appears, the attorney is concerned about what is happening to the many unrepresented tenants in Hudson County.

Middlesex County

Middlesex-3: Nonpayment case filed in February 2020 for nonpayment of January 2020 and February 2020 rent. The complaint included a claim for rent that accrued after the filing. By the time the case was listed for a case management conference, the tenant also owed rent for the covered period. The tenant filed a qualifying certification. The court did not dismiss the case as the landlord alleged rent due for the pre-covered period as well as the covered period. The case is pending.

D. Conclusions and proposed steps

As noted by the Judiciary Special Committee on Landlord Tenant, “[t]he need for reform is overwhelming, and the timeframe for developing and implementing change is narrow.” While recognizing this challenge, we note that the cases cited here appear to reflect a lack of uniform guidance for the offices of the civil case managers, with the result that each vicinage has developed its own procedures and practices, some of which do not comply with the law.

Dismissals are being denied for reasons not found in the controlling statute. Judgments for possession and the execution of warrants of removal are being issued against tenants who are legally entitled to have their cases dismissed. Each unjust eviction exposes that individual or family to the trauma and devastation of homelessness. At the same time, each unjust eviction damages public trust in the fairness of the judicial system.

While issues of interpretation of the statute by judges will wind their way through the courts, there are actions the Judiciary can consider with regard to administrative decisions that are being made daily by court staff and Landlord Tenant Legal Specialists.

We recognize that the Court has already committed substantial resources to implement the requirements of the law for eviction protection and that it is continuing to develop and revise procedures. As part of an ongoing, common effort to improve compliance and operations, we respectfully suggest that the Court:

1. Provide written guidance and additional training aimed at court staff, Landlord Tenant Legal Specialists, and Court Navigators on the law for eviction protection; landlord-tenant practitioners are available, if the court would find this useful, to assist in developing the training.
2. Develop additional methods of informing unrepresented tenants of the eviction protections afforded under law, which may include information provided by Landlord Tenant Legal Specialists, the Offices of the Ombudsperson, the Clerk’s offices, and Court Navigators, as well as information relayed at the calendar calls for case management conferences and trials.
3. Implement the Court Navigator program as soon as possible.
4. Develop a plan to publish data, by county, on the number of cases in which certifications are filed, how many of those cases are administratively dismissed,

and for those cases that were not administrative dismissed, why the case was not administratively dismissed and the ultimate disposition of those cases.⁹

⁹ See Section IV for a broader discussion of the need for data collection and analysis in landlord-tenant matters.

II. Landlord-Tenant Court Reform

While collecting information on the progress of eviction protection under N.J.S.A. 52:27D-287.7 to 287.9, we noted a number of cases in which the judicial landlord-tenant reforms implemented pursuant to the [Administrative Determinations by the Supreme Court on the Report and Recommendations of the Judiciary Special Committee on Landlord Tenant \(July 14, 2021\)](#) (Administrative Determinations) were not applied as intended. This preliminary report is based on a limited number of cases, nonetheless, we believe that it is critical that we raise these issues now given the serious risk to tenants who are being evicted when they should instead be protected by the reforms developed by the New Jersey Supreme Court. We hope the Court will find this information helpful as it analyzes the implementation of landlord-tenant reforms and considers potential revisions to these reforms.

The work of the New Jersey Housing Justice Project has been guided by the Supreme Court's Action Plan for Ensuring Equal Justice. In its [2020 Report](#), the Court stated: "The New Jersey Judiciary is committed to ensuring access and fairness for everyone, and to seeking out and eliminating barriers to equality wherever they exist." The 2020 One-Year Action Plan included a pledge to improve the landlord-tenant process and implement a system that promotes fairness and removes barriers by providing plain language information to tenants and landlords about claims and defenses and engaging judges in focused review. New Jersey Judiciary -- Commitment to Eliminating Barriers to Equal Justice: Immediate Action Items and Ongoing Efforts (July 16, 2020).¹⁰

In the [2021 Update](#) on its Action Plan for Ensuring Equal Justice, the Court noted:

The 2020 Action Plan introduced nine areas in which the Court sought to make equity-based improvements within one year. Consistent with the Court's pledge, the Judiciary has advanced those action items. In addition, members of the court community have embraced the opportunity to examine internal processes, expand collaboration with stakeholders, and enhance court procedures and services to address both identified and potential gaps in equity. These ongoing interrelated efforts are designed to support greater access, fairness, and equity for all who seek justice through the New Jersey courts,

¹⁰ Available at <https://www.njcourts.gov/public/assets/supremecoutactionplan.pdf>.

especially for individuals and communities who throughout history have been underrepresented and as a result have experienced less than true equality under the law. Taken together, they are intended to ensure that our system of justice provides expanded options for individuals to connect with court services, understandable processes for navigating court systems, meaningful opportunities to be heard, and consistent procedures that support fair and unbiased outcomes.

[New Jersey Supreme Court Action Plan for Ensuring Equal Justice: Update On 2020 Action Items & 2021 Initiatives.](#)

In early 2021, the Court formed a Judiciary Special Committee on Landlord Tenant, which produced a comprehensive analysis of the residential eviction process in New Jersey and made recommendations for how that process could be reformed to enhance fairness and equity. [Maintaining Our Communities: Report of the Judiciary Special Committee on Landlord Tenant](#) 15-17 (submitted by Glenn A. Grant, J.A.D., Acting Administrative Director of the Courts; Chair, Special Committee on Landlord Tenant, April 2021).¹¹ The Supreme Court sought comments on the recommendations of the Special Committee from a wide range of stakeholders before implementing changes in the court processes.

The [Administrative Determinations by the Supreme Court on the Report and Recommendations of the Judiciary Special Committee on Landlord Tenant \(July 14, 2021\)](#) (Administrative Determinations) established a new process for residential landlord-tenant court that included the following provisions:

- Requiring that the landlord file a Landlord Case Information Statement.
- Requiring that the tenant complete a Tenant Case Information Statement.
- Requiring enhanced review of complex cases.
- Establishing the Landlord Tenant Legal Specialist (LTLS) program.
- Requiring case management conferences.
- Requiring the landlord to file a copy of the written lease and the landlord registration statement, if applicable, and the rent control registration statement, if requested by the court.
- Noting that there should be consequences for failure to attend the case management conference, but that those consequences should not be

¹¹ Available at <https://www.njcourts.gov/courts/assets/supreme/reports/2021/landlordtenantcomm.pdf>.

dispositive, i.e., the case should not be dismissed or defaulted unless the landlord or tenant fails to appear for trial.

- Enabling the LTLS to conduct settlement negotiations in conjunction with the case management conference or before trial.
- Revising the Consent to Enter Judgment forms.
- Requiring that a settlement that provides for a judgment for possession against an unrepresented tenant be written and either signed by the parties or placed on the record in lieu of signature.
- Conducting landlord-tenant trials virtually, whenever possible.
- Revising the *Harris* announcements.
- Requiring that the new Landlord Tenant Procedures document accompany the complaint and be posted on the Judiciary website.
- Creating new Judgment for Possession forms.
- Creating a new Request for Warrant of Removal form.
- Creating new Warrant of Removal forms.

Grounded in the Court's commitment to ensuring access and fairness, the new landlord-tenant procedures are intended to transform New Jersey's landlord-tenant court into one that provides expanded access, understandable processes, meaningful opportunities to be heard, and consistent procedures that support fair and unbiased outcomes. If the reforms are ignored, misunderstood, or applied inconsistently, the result is the denial of the very access and fairness that the Supreme Court envisioned when it sought to transform the landlord-tenant process.

A. Cases in which procedures outlined in the Administrative Determinations were not followed

The following are some examples of missteps in implementing the reforms. The devastating impact these failures have on tenants and their families were avoided in many of the cases described by the intervention of tenant attorneys. As we are well aware, however, more than 98% of tenants are unrepresented. We raise these issues now given the increase in eviction filings and the risk that errors in implementing the reforms could result in hundreds, or even thousands, of improper evictions.

Burlington County

Burlington-3: The landlord filed a complaint for nonpayment of rent in April 2021. One month later, the landlord filed an Order to Show Cause asking that the case be expedited because the tenant called the police too often. The landlord did not seek to amend the

complaint to include a new cause of action and did not serve the tenant with the notice(s) required for a “cause” eviction. Nevertheless, the court handled the case as if it were a “cause” case. The court refused to dismiss the case upon the filing of a qualifying certification and required that an application for dismissal be filed by notice of motion. There was no enhanced review, as is required for “cause” cases. If the case had been filed as a “cause” case, such review should have resulted in dismissal as the court lacked jurisdiction.¹²

Burlington-4: Landlord’s counsel filed a “holdover” complaint on December 3, 2021. The complaint noted that the tenancy at issue was subsidized. Although the complaint recited that required notices were attached, there were no notices attached. The landlord did not cite in the complaint any of the causes for eviction provided by law, all of which are referenced in the Landlord Case Information Statement (LCIS) form, but rather relied on his statement, based on hearsay, regarding alleged drug activity at the premises.

As a holdover case and one that involved a subsidized tenancy, the complaint should have undergone enhanced review. Such review would have revealed that the landlord had not alleged a specific cause of action under the statute, had not provided a notice to cease or notice to quit, and had not provided the pre-complaint notice required in subsidized tenancies. Such review further would have revealed that the landlord’s attorney had filed an LCIS in which the attorney asserted that the case was a nonpayment case, but that the tenant had a \$0 rent balance. The attorney attached what purported to be correspondence from the local police stating that it was investigating drug activity by the “occupants” of the address and that a search warrant had been executed. The correspondence did not identify the tenant as one who was engaged in such activity.

The court proceeded on the landlord’s Order to Show Cause for an expedited hearing and entered a judgment for possession, using new Form C. The Order included a provision that the tenant must vacate by January 11, 2022, but that the removal is on a “temporary basis” pending final judgment. The Order went on to state that the letter from the local police department, together with a police investigatory report, were admitted into evidence. The police investigatory report does not appear in the court docket. The case was then scheduled for trial. The tenant appeared on the trial date and denied that she was involved in any illegal activity. Based on the observation of a participant in the Zoom who was not part of this proceeding, no testimony was taken, and the court entered an order for another warrant of removal. The court entered judgment against this tenant, without giving her an opportunity to testify.

¹² NJSA 2A:18-61.1 et seq.

Camden County

Camden-2: A tenant attorney filed a limited appearance under the [Order of the New Jersey Supreme Court \(January 4, 2022\)](#) in order to review documents before deciding to accept a case for representation. The attorney was able to see the status of the case but not the Complaint, filed in February 2020, as it was not uploaded to eCourts. The attorney contacted the clerk's office to obtain a copy of the pleadings but was told by several staff members that the only way to obtain the documents was to file a formal Notice of Appearance and then come to the courthouse and pick up a copy of the documents. The clerk's office personnel had apparently not heard of the change in court rules permitting legal services to file a Notice of Limited Appearance in order to access court records and advised that the attorney could only access records by filing a Notice of Appearance.

Essex County

Essex-2: The complaint was filed in December 2019 and judgment for possession was entered against the tenant on January 28, 2020. The warrant of removal issued on April 20, 2020, but was not executed due to the moratorium. On December 15, 2021, the landlord's attorney sent a letter to the court requesting execution of the warrant. The landlord did not send the letter "on notice to the tenant(s)" as required by [Order of the New Jersey Supreme Court \(September 9, 2021\)](#) and Rule 6:7-1(d) when the warrant is to be executed more than 30 days after entry of the judgment for possession.

Despite this deficiency, the Court issued the warrant. The first the tenant knew of the warrant was when it was posted on her door. She was understandably confused and terrified as all the past due rent, plus rent due for the next several months, had been paid to the landlord in mid-November 2021 through a rental assistance program. The landlord's attorney eventually requested dismissal of the case, but only after the tenant obtained legal representation and the legal services provider prepared an Order to Show Cause.

Essex-3: A case management conference was scheduled for late October 2021 on a complaint for failure to pay a rent increase filed in February 2020. At the conference, the LTLS observed that a notice to quit was not attached to the complaint, whereupon the landlord uploaded a letter that she had allegedly served on the tenant. The tenant's counsel responded that if the case was not dismissed, it must be tried because the complaint was defective and the requested increase was unconscionable.

At trial, counsel moved for dismissal as the required notices were not attached to the complaint. The court was prepared to deny the motion as the court record now contained the document that the landlord uploaded at the conference. Counsel directed the court's attention to the original complaint on eCourts, which did not have the required notice.

After review, the court confirmed that the original complaint did not have the required notice, whereupon the court dismissed the complaint.

Mercer County

Mercer-1: An unrepresented tenant consented to a settlement agreeing to vacate the premises within a couple of weeks. It appears that the tenant did not know about the protections afforded under the law and was not informed during the settlement process about the protections available to the tenant.

Mercer-2: At a calendar call for case management conferences, most of the cases scheduled were cases in which the landlords were represented by the same solo practitioner. That attorney had been scheduled by the same court for trials. Numerous tenants waited two-and-a-half hours for the attorney's appearance. When the attorney did not appear, the LTLS set all the cases for trial rather than rescheduling the case management conferences as required by the Administrative Determinations' adoption of Recommendation 7 of the Judiciary Special Committee on Landlord Tenant. These tenants, who had taken time from work to appear, were denied an opportunity to participate in case management conferences.

Salem County

Salem-1: A complaint for nonpayment against a tenant with a rental subsidy was filed in January 2021. The landlord's verification, although signed, was otherwise blank, with no information completed. The LCIS noted that the tenancy was subsidized and stated that all required notices were attached to the complaint, however, there were no notices attached to the complaint. The first the tenant learned of the eviction was when the warrant of removal was posted on his door. He called a legal services provider. The legal services attorney was able to assist the tenant in filing the eviction protection certification and the matter was dismissed.

B. Conclusions and proposed steps

The Court has made a commitment to access, fairness, and equity and taken significant steps to meet these goals in landlord-tenant court. The actions and reforms made by the Court have the potential to move the landlord-tenant court in New Jersey toward greater procedural due process. Our objective in proposing the following actions is to provide suggestions, based on our observations, that may further the hard work of achieving the goals of access, fairness, and equity in landlord-tenant court.

Proposed steps:

1. Provide written guidance and additional training to court staff, Landlord Tenant Legal Specialists, and Court Navigators on the new landlord-tenant procedures. Subjects might include the enhanced review process; timing for entry of default judgments; requirements for notice to tenants at various steps in the proceedings; and the relaxation of [R. 1:38 \(January 4, 2022\)](#) to provide access to court files for attorneys who have entered a limited appearance.
2. Develop a plan to make the services of the Office of the Ombudsperson more available to litigants, particularly those whose proceedings are occurring in the virtual environment.
3. Provide additional opportunities for non-profit legal assistance providers, including volunteers affiliated with those providers, to appear at the case management and trial calls to provide information about the availability of legal assistance; grant adjournments to tenants who seek legal assistance.

III. Access to Justice in the Virtual Environment

In the Supreme Court's 2020 Equal Justice Action Plan, the Court committed to bridging the digital divide:

The Judiciary will continue to leverage technology to enable access to the courts, including through new and improved electronic filing systems designed for self-represented litigants. In launching and expanding such efforts, we recognize that people of color are less likely to have access to home computers and reliable internet service and we will continue to assist court users and provide technology when necessary, including in dedicated resource rooms in Judiciary facilities and, in some cases, via distribution of technology to jurors and others involved in virtual court proceedings.

2020 Action Plan for Ensuring Equal Justice, 5-6.¹³

A. Cases in which litigants were denied access due to issues with technology

In speaking with advocates about their recent observations in landlord-tenant court, we heard repeated accounts of tenants having difficulty accessing virtual proceedings. We cannot know how many tenants do not appear for case management conferences or trials because they do not understand the notices they receive, do not know how to log on and navigate their way, or just do not have access to the required technology.

Essex County

Essex County-4: The tenant in this case, a senior citizen, requested an adjournment of a remote settlement conference until the matter could be heard in person as he did not have reliable access to the technology required. In addition, the tenant had concerns that any settlement that might be reached could not adequately be explained and understood in the virtual environment. The tenant's request was ignored. A week later, the landlord requested an adjournment to find new counsel, which was granted. The case was rescheduled for a virtual settlement conference on November 12, 2021.

The tenant appeared for the conference as required and renewed his request as the virtual environment was too difficult for him. Although the LTLS noted in the case management

¹³ Available at <https://www.njcourts.gov/public/assets/supremecourtactionplan.pdf>.

information sheet that no request for accommodation had been made and the case could proceed virtually, apparently the court made arrangements for the tenant to use a technology room at the courthouse. The tenant reported that a court staffer assisted in setting up access to the virtual proceeding from the technology room but the tenant found it difficult to hear as there was so much noise outside the technology room. The trial was adjourned and has not been rescheduled.

Hudson County

In 2021, Hudson County held a “Blitz Week” in which all eight civil part judges heard thirty landlord-tenant cases each day. Tenants had great difficulty gaining access to the courts as judges demanded that litigants’ appearance include video as well as audio. Tenants who were unable to meet the technological requirements or who did not meet the expectations of the court for demeanor, for example, because they appeared on screen while smoking or breastfeeding an infant, had defaults entered against them.

Hudson-2: Tenant logged on for a calendar call but his phone died before his case was called. He went to the courthouse the same day to explain what had happened and to try to access the proceedings from the courthouse. Despite the tenant’s efforts to appear, a default judgment was entered. The tenant obtained counsel who filed a motion to vacate the default judgment. The motion was denied as the court determined, without taking testimony, that the tenant did not have a likelihood of success on the merits.

Hudson-3: Unrepresented tenants logged on for trial on a nonpayment case. (Note: It appears that either all or at least most of the rent claimed by the landlord accrued during the covered period.) The court noted at the beginning of the proceeding that the tenants did not have a computer and did not have video on their telephone. The landlord’s attorney called the manager of the building, and the court noted that the manager was “still under oath,” apparently from prior matters in which she had testified.

Landlord’s attorney entered exhibits (Landlord Registration Statement, Lease, Rent Ledger, 2021 Security Deposit Notification), which the tenants, given their technological difficulties, were not able to access through eCourts or see on the video. The judge repeatedly referred to the rent ledger that had been admitted into evidence, however, the tenant was unable to see the ledger. The judge found that the tenant had access to the rent ledger as it was “available online.” The tenant had documents she hoped to use during trial. The tenant had submitted the documents to the person the tenant called the “mediator” (probably the LTLS) and the landlord’s manager. The court refused to consider the evidence because the tenant had not submitted the documents separately to the court using the evidence portal, despite the tenant pleading that she could not use that method as she did not have a laptop computer. The Judge excluded the tenant’s evidence at trial and entered a judgment for possession.

Salem County

Salem-1 (summarized above, p. 24): The notices of the case management conference and trial in this case were postcards with the following directions:

PLEASE REPORT TO: JUDGE ASSIGNED –
COURT ROOM REMOT [sic]
YOU MUST ATTEND REMOTELY
CONTACT THE COURT FOR DETAILS

The telephone number on the notice is the main number for the vicinage. A call to that number takes one to an automated system with a complex menu. The tenant has disabilities, including significant cognitive difficulties that are known to the landlord of this subsidized building. The tenant does not recall receiving either postcard. With no access to technology except for a cell phone (he has no email or ability to send or receive texts), the tenant would not have been able to appear virtually and it is unlikely that he could have conveyed a request for accommodation if he received this cursory notice and understood that he needed to contact the court.

B. Proposed steps to ensure access to justice in the virtual environment

We respectfully propose the following steps that may assist the Court in continuing its work to bridge the digital divide:

1. To simplify access to remote proceedings by litigants and advocates, courts in each vicinage could use a single or a limited number of Zoom or Microsoft Teams link(s) and call-in number(s) for landlord-tenant proceedings. Thus, the same call-in information and link would apply for every virtual calendar call held by a particular judge.
2. As is already done in some vicinages, the Zoom or Microsoft Teams link, room information and call-in number should be included on all court notices.
3. Courts should continue to improve the availability of accommodations for litigants who do not have video access. Defaults should not be entered against litigants who attempt unsuccessfully to participate in the proceeding.
4. The Court might consider having a dedicated telephone number in each vicinage, staffed prior to and during remote court proceedings, where litigants who are having difficulty accessing the remote proceeding may obtain assistance.

5. Court notices of case management conferences and trials should include a copy of the complaint if the complaint was filed more than three months prior to the conference.
6. Before a case is listed for case management conference or trial, court staff should upload to eCourts all documents in the case docket that are not otherwise available on eCourts.

IV. Transparency and Equity Impact

Drawing on tens of millions of records, the [Eviction Lab](#) at Princeton University has made nationwide eviction data publicly available and accessible. Its data is used by policymakers, researchers, journalists, and others to look at evictions over time, by neighborhood, cities, and states, to develop a better understanding about America's eviction epidemic. However, when one searches for data on evictions in New Jersey, one discovers that the Eviction Lab is unable to provide accurate rankings or other information about evictions in New Jersey because the data is not available.

Other than data in the Court Management Statistics reports on the number of tenancy filings, number of tenancy cases "resolved," and number of tenancy cases pending, there is no information available to the public that would provide insight into the eviction process or the effectiveness of the law for eviction protection and judicial reform of landlord-tenant court.

Proposed steps towards improving transparency

We recognize that data collection and analysis is not an easy task. To the extent the data exist, we respectfully request that the court make the data available to the public. We recognize that collection of new categories of data is a much more complicated task and will take time and resources to achieve, but analysis of this information is important as the Court, researchers, and advocates assess the results of landlord-tenant reforms and implementation of the law for eviction protection. Accessibility to and analysis of the data is also critical in effectively evaluating the Court's Equal Justice Action Plan for Ensuring Equal Justice.

We respectfully request that the Court work toward providing the following court data, by county, in residential eviction cases:

- Representation rates for landlord and tenants
- Complaints filed as nonpayment complaints and holdover complaints
- Cases in which enhanced review took place and the results of that enhanced review, e.g., case dismissed, notice to landlord to provide additional documentation or forms
- Voluntary dismissals by landlords

- Participation rate of landlords and tenants, with counsel and unrepresented, in case management conferences
- Cases disposed of at case management conference, type of disposition (dismissal or settled), including whether consent judgment was entered in a settled case
- Cases in which default was entered at case management conference
- Cases settled at trial, including whether a consent judgment was entered
- Disposition of cases that are tried
- Applications for post-judgment relief by type of application
- Disposition of applications for post-judgment relief
- Issuance of warrants of removal
- Execution of warrants of removal
- As noted in Section I, number of certifications filed, cases administratively dismissed, reasons why cases are not administrative dismissed, and the ultimate disposition of those cases.

Conclusion

As noted at the outset, the State of New Jersey has been and continues to be a leader in the nation in fashioning a multi-faceted response to the worsening of the eviction crisis due to the pandemic. The Judiciary implemented comprehensive reforms, and the Executive and Legislative branches of state government took decisive action. Without these actions, the eviction crisis would have been much, much worse in New Jersey.

For the individuals and families who were meant to be protected but were not, however, the overall statistics give no comfort. We owe them, and others who may face an unjust eviction this year or in the future, no less than a whole-hearted commitment to examine the system, acknowledge failures when they occur, and make improvements and revisions when needed. We are compelled to engage in this analysis, so that barriers to equality are identified and eliminated, and access and fairness are assured for everyone who interacts with landlord-tenant courts in the state of New Jersey.