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EVICTING NON-PAYING HOTEL GUESTS IN THE NATION'S CAPITAL

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Introduction

It is a little mentioned fact in the hotel and lodging industry that hotels are permanent residences of some number of guests. This has long been true across market segments. New York's iconic Waldorf Astoria Hotel was famously home to both General Douglas MacArthur and President Herbert Hoover in retirement. In today's market, residency in hotels is much more common in the extended stay, select service and economy segments, and most long-term guests are people of limited means. The highly rated 2017 film *The Florida Project* explores the challenges of an unemployed single mother and her child who live in an economy hotel in Kissimmee, Florida.

For many hotels, long-term guests are an easy source of steady revenue. During the worst months of COVID-19, community leaders encouraged hotels to house vulnerable populations, including the homeless. I wrote a post addressing such efforts in Los Angeles. For many hotels, accepting such business was the only alternative to near-zero percent occupancy over much of 2020.

Housing long-term guests presents unique challenges, and a hotel should not accept this type of business unless it is prepared to deal with these. Most hotels are not. One of these challenges is that from time to time, a long-term guest will stop paying but refuse to check out.

I confronted this challenge last year when I represented the owner of a hotel in Washington, D.C. in a prolonged eviction action. The case offers some insights particular to eviction cases in the District of Columbia and others that apply in any large city in the United States. Principal among the latter is that eviction can be a long and expensive process. Landlord-tenant courts in large cities have procedures very favorable to defendants in eviction cases. There are multiple steps to adjudicating an eviction case that are all designed to protect the defendant's rights and prolong the process to give the defendant time to find alternate housing.

The process in the Landlord and Tenant Branch of the District of Columbia Superior Court is no exception. It often takes more than a year for a landlord to evict a tenant from a residential property in Washington, D.C. In my client's case, it took a little over nine months to evict a non-paying, long-term guest from my client's hotel. (This was only the time between the filing of our complaint and the guest's departure. It did not include several weeks beforehand when the hotel unsuccessfully attempted first to work with the guest and later to persuade him to leave voluntarily.) Between attorney's fees and lost revenue, the experience resulted in a six-figure loss to my client.

Read on if you would like to learn more about this process. Out of respect for the confidences of my client and the privacy of its former guest, I am omitting details that would identify either. In each section of this article, after summarizing the relevant events, I offer insights for hoteliers housing or evicting long-term guests, particularly in the District of Columbia.

A Long-Term Guest

The guest who would become the defendant in my client's case checked into my client's upscale, select service hotel in downtown Washington, D.C. during the worst period of COVID-19. We believe the guest was receiving some public assistance related to the pandemic, which he used to pay his guestroom fees. He stayed for several weeks, paying with a credit card. No lease was ever signed. Like many municipalities, the District of Columbia imposes an occupancy tax on hotel guests for up to a specified number of days. (In Washington, D.C. it is 90 days.[1]) After that, the tax is no longer imposed. Accordingly, after the guest had stayed in my client's hotel for 90 days, it no longer withdrew or forwarded this tax.

Insights

- A small number of hotel owners intentionally enter into landlord-tenant relationships with some of their guests. It is essential that any such hotel owner maintain the same license as the owner of a multi-unit apartment building to operate a residential housing facility (in addition to an innkeeper's license for its transient guest business). The owner of such a hotel should also require each tenant-guest to sign a lease on a form the owner has developed with an attorney.

- Most hotel owners do not operate on that business model, and prefer to avoid conveying leaseholds to any of their guests. A leasehold is a legal interest in real estate. A typical hotel guest does not have a leasehold, but a license, which is permission to occupy a guestroom for a limited period of time. A licensee has fewer rights with respect to a property than a tenant. A typical hotel owner should therefore never sign any lease with a guest, or any other document that might be construed as a lease.

- In many jurisdictions in the United States, even if a hotel owner has not executed a lease with a guest, the law will deem a tenancy to exist once the guest has stayed in the hotel for a certain period (often 30 days). The tenancy is periodic (usually day-to-day), as opposed

[1] D.C. Code § 47-2001(n)(1)(C); 9 DCMR § 472.1.

to lasting for a fixed term. However, that does not give the hotel an unfettered right to terminate the tenancy. Even if the guest stops paying, the tenancy limits the hotel's options for removing the guest. At this point in many jurisdictions, the hotel owner will no longer be permitted to simply deactivate the guest's keycard and issue a trespass notice ordering the guest to stay off the property. The hotel owner will be required to file an ejectment action in a court and obtain a judgment restoring possession of the guestroom to the owner. Strictly speaking, the District of Columbia is not one of these jurisdictions. However, for reasons discussed below, the situation in Washington, D.C. is complicated.

- There are steps a hotel can take to reduce the risk of a deemed tenancy:

    - If a hotel accepts a reservation for more longer 29 days, it should require the guest to sign an instrument waiving all rights of tenancy. This instrument may not be enforceable in the hotel's jurisdiction, but the hotel should require it anyway. It can help manage the guest's expectations and may win sympathy from a landlord-tenant judge, the importance of which will be evident below.

    - In a scene in *The Florida Project*, a sympathetic general manager enforces a company policy requiring the protagonist-guests, every 29 days, to check out of the hotel and spend a night in another hotel before checking back in. This policy is burdensome to guests, but could be very effective in a jurisdiction where a tenancy is deemed to exist at the 30-day point. It is more likely to be effective if the guest is not checked back into the same room upon return. If requiring a guest to change *hotels* every 29 days is infeasible, a hotel owner should consider requiring the guest to change *guestrooms* every 29 days. The latter policy may not be as effective, but is better than allowing the guest to stay indefinitely in the same room. Neither policy is likely to be at all effective if the guest is allowed to leave belongings in his guestroom after checking out and return later to the same room.

    - Airlines sometimes enter into contracts with hotel owners to use the same guestrooms (sometimes called "crash rooms") over long periods, often with the same flight crew members returning frequently to stay in the same guestrooms, sometimes without having to check in or out between stays. These contracts should also disclaim tenancy, either for the company or its employees who stay in such rooms. Any airline employee who stays at a hotel under the contract should be required to sign a similar disclaimer. These documents should prohibit the employees from leaving property in any guestroom between stays, and the hotel should enforce that policy. The guestrooms should be regularly serviced by housekeepers. Ideally, some check-in and check-out process should be required.

    - If a guest stops paying (including if his credit card account stops accepting charges or holds), the hotel should immediately deliver a letter to the guestroom requiring payment. If the guest does not pay within 24 hours of that demand, the hotel should immediately deliver another letter requiring the guest leave. If the guest has not left 24 hours after delivery of the second letter, the hotel should call the police. If

the guest has been staying at the hotel for longer than 29 days, the hotel should consult with an attorney before taking the second or third of these steps.

- All keycards and mobile phone key systems should be programmed to deny access to any guestroom at the end of a guest's reservation period. This establishes a status quo in which an additional step must be taken to readmit the guest. Having that status quo may be helpful in a later court action.

Problems

My client's guest caused problems from the moment he checked in. He was rude to hotel employees, making racist remarks to some of them. He stole from the hotel's sundries shop. He was confrontational with hotel employees and, on at least one occasion, shoved one of them. The hotel tolerated this and did not make records of his behavior or call the police. After several weeks, the guest's credit card stopped accepting charges. The hotel spoke with him about this and occasionally he brought his account current with cash payments. Eventually he stopped doing that.

The hotel asked him to check out, both orally and in writing. He refused to do so. The hotel therefore deactivated his keycard. He responded by taping the latch to his guestroom door to prevent it from locking during the few periods when he stepped out.

The hotel called the District of Columbia Metropolitan Police Department for assistance removing the guest. The department refused to provide it, insisting that the hotel would need to pursue an action for possession in the District of Columbia Superior Court and obtain assistance from the U.S. Marshals Service if it prevailed.

Sometime afterward, the hotel contacted me for legal advice.

Insights

- If a guest becomes physically confrontational with a hotel employee or another guest, hotel management should immediately insist that the guest leave the hotel and call the police if he does not. If the guest presents a sufficient danger to other people, the police should be called first. Hotel management should do the same if the guest is seen engaging in any criminal conduct in the hotel. The police will hopefully remove the guest from the hotel, at which time hotel management should de-activate the guest's key card, check him out and not allow him to check back in.

- Even if the police do not remove a guest in the above circumstances, the hotel should make records of the guest's misconduct. In the District of Columbia, there are procedures to expedite eviction of a resident known be engaging in illegal conduct in a premises. To take advantage of those procedures, a hotel must be able to prove the illegal activity. If a hotel employee sees a guest shoplifting, security cameras should be checked immediately and any footage of the incident preserved. A hotel can also work with an attorney to produce affidavits of employees making records of such incidents.

- Hotel management should not wait before taking action to remove a non-paying or otherwise unruly guest from a hotel, including calling the police when appropriate. The longer the hotel waits, the fewer options it may have.

Weighing Our Options

I explored a few potential options with the hotel's General Manager and the General Counsel of its management company. From research, I discovered that in 2001, the District of Columbia Court of Appeals held that, unlike a landlord to a non-paying tenant, a hotel *can* legally engage in "self-help" to remove a non-paying guest by locking him out of his guestroom.[2] Because my client's guest had been physically confrontational in the past, my client did not want to exercise that option without police assistance.

I called the D.C. Metropolitan Police Department to renew my client's request for assistance, and this was again denied. I then appealed to the department's General Counsel, informing her of the 2001 Court of Appeals decision. She was not convinced, and insisted that if the hotel wished to remove this guest, it would need to obtain a judgment of possession in the D.C. Superior Court. She was mistaken about the law. However, my client did not wish to risk the physical altercations and potential liability that could result from locking the guest out without police assistance.

Insights

- Under District of Columbia law, a housing provider cannot legally engage in "self-help" to remove a non-paying tenant from a rental unit by locking him out. The District's eviction statute requires a landlord to post a Notice to Quit, and to file an action for possession in the Landlord and Tenant Branch of the D.C. Superior Court if the tenant does not vacate or pay the past-due rent within 30 days after the notice.[3] (The 30-day period was extended to 60 days during the COVID-19 pandemic.) Because a hotel is not a "housing provider," a Notice to Quit is not ordinarily required before the hotel owner may file an action for possession of a guestroom.

- The D.C. evictions statute making the above prohibition does not apply to "any hotel or inn with a valid certificate of occupancy."[4] In *Harkins v. WIN Corp*., the District of Columbia Court of Appeals held that a hotel may engage in "self-help" to evict a non-paying guest (even a long-term guest who stops paying) by locking him out of his guestroom, without having to file a lawsuit.[5]

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[2] *Harkins v. WIN Corp*., 781 A.2d 1025, amended by *Harkins v. WIN Corp*., 777 A.2d 800 (2001).
[3] D.C. Code § 42-3505.01; *see also Mendes v. Johnson*, 389 A.2d 781 (D.C. 1978).
[4] *See Id*. §§ 42-3505.1(a-1)(1), 42-3501.03(33) and 42-3501.03(14).
[5] 781 A.2d at 1028-28.

- Unfortunately, the District of Columbia Metropolitan Police Department has a mistaken understanding of these laws and will not provide assistance to remove a non-paying guest from a hotel.

- A guest removed from a hotel by "self-help" might respond by bringing a lawsuit against the hotel owner and/or operator for "wrongful eviction." In some jurisdictions, a wrongful eviction action can be brought not only by "a former tenant," but also by any other "former . . . possessor of real property," against "one who has put the plaintiff out of possession [if] the eviction was illegal."[6] Because of the *Harkins* decision, this is less of a risk in the District of Columbia. Still, without police assistance, there is risk that a physical altercation could ensue that would result in other tort liability.

Action for Possession

My client decided to pursue a judicial remedy so that the U.S. Marshal Service would be available to help evict the guest after a judgment of possession was entered. I filed an action for possession of the guestroom in the Landlord-Tenant Branch of the Civil Division of the District of Columbia Superior Court. The court scheduled an initial hearing in the case for a little over two months after the date of our complaint.

After our process server served a copy of our complaint and the court summons on the defendant, he became enraged. The following day, he threatened to kill one of the hotel's housekeepers. Unfortunately, the housekeeper and another hotel employee who witnessed the threat waited a day before informing the General Manager of the incident. As soon as the General Manager became aware of it, on my advice, he called the D.C. Metropolitan Police. A police officer visited the hotel but refused to remove the guest. The police department took the position that because the hotel employees had waited a day before reporting the incident, there must not have been an emergency or, if there had been one it no longer existed. We would need to continue with the judicial process.

I filed a motion to expedite the initial hearing, attaching affidavits in which the two hotel employees recounted the guest's threat. I argued that the court should expedite adjudication of the case for the safety of the hotel's guests and employees. A hearing on my motion to expedite took place about a month after I filed it, and two weeks before the scheduled date of the initial hearing. The court was not swayed by my argument and refused to proceed any earlier with the initial hearing.

At the initial hearing two weeks later, the defendant requested a continuance to give him time to find an attorney to represent him in the case. The court agreed that the two months he already had were not sufficient and gave him five more weeks. The initial hearing was continued.

Five weeks later, about an hour before the continued hearing, the defendant filed an answer in which he asserted four defenses to my client's complaint, as well as a demand for a jury trial. This time, the defendant was represented by an attorney whose appearance was limited to the filing

[6] *Black's Law Dictionary* p. 1933 (11th Ed. 2019).

of the defendant's answer and that day's hearing. Knowing that it would cause significant further delay if a jury trial were scheduled, I expressed skepticism that the defendant was entitled to a jury trial. The court therefore continued the initial hearing for another month and granted me leave to file a motion to strike the jury trial demand in the intervening time.

Insights

- In most highly-populated jurisdictions in the United States, there is a separate landlord-tenant court that adjudicates eviction cases. In the District of Columbia, this is the Landlord and Tenant Branch of the Civil Division of the District of Columbia Superior Court. This branch is staffed by Magistrate Judges whose authority is more limited than that of the Associate Judges who staff the Civil Division's Civil Actions Branch and other divisions of the court.

- Cases before the Landlord and Tenant Branch are governed by a separate set of Superior Court Rules of Procedure for the Landlord and Tenant Brach, which incorporate by reference several of the Superior Court Rules of Procedure that apply in other civil cases.

- Most eviction cases in the District of Columbia are actions for possession of leased premises brought by landlords against tenants who have held leaseholds. However, the Landlord and Tenant Branch is also the only forum in D.C. in which a property owner may file an action for possession against a defendant who "is not a tenant" and does not have "any legal right to occupy the premises."[7] My client fell into the latter category.

- After a property owner files a complaint in the Landlord and Tenant Branch and serves a copy on the defendant, the next step is an "initial hearing," at which the court advises the defendant of his rights and a trial is scheduled. These hearings are frequently continued.

- In an action for possession of a leased premises brough by a landlord against a tenant in the D.C. Superior Court, the defendant may demand a jury trial as a matter of right, even if the complaint does not seek payment of past-due rent.[8] This is not true in all jurisdictions.[9] It is not clear whether the same right in the District of Columbia extends to actions to possess real estate in which there has never been a lease.

- Unlike a criminal defendant, a defendant in a landlord-tenant case does not have an absolute right to counsel, such that an attorney will be appointed if he cannot afford one. However, a defendant who chooses to be represented by an attorney has a right to do so, and the court strongly encourages this. A public interest legal services organization called

[7] *See* D.C. Landlord & Tenant Form 1B ¶ 3.B.

[8] In *Pernell v. Southall Realty*, 416 U.S. 363 (1974), the U.S. Supreme Court held that the Seventh Amendment of the U.S. Constitution gives a tenant a right to a jury trial in an eviction action. However, this is only a federal right. *Pernell* was heard on appeal from the District of Columbia Court of Appeals. The District of Columbia is a federal jurisdiction.

[9] Unlike many or most amendments in the Bill of Rights, the Seventh Amendment right to a jury trial in a civil case has never been held to apply to the states. *Minneapolis & St. L.R. Co. v. Bombolis,* 241 U.S. 211, 217, 36 S.Ct. 595, 596, 60 L.Ed. 961 (1916), *cited in Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 80 (1989).

Rising for Justice operates out of the Landlord and Tenant Branch courthouse. Its attorneys sometimes make appearances limited to a particular hearing or filing. On other occasions, they counsel defendants before hearings at which the defendants represent themselves.

Changing Strategy

After additional research, I determined that it could be counterproductive to argue that the defendant had no right to a jury trial. As noted above, if the parties had executed a lease, he would unquestionably have had that right. The defendant had asserted in his answer that some leasehold existed between the parties, an argument I was confident he would lose. However, I had little reason to doubt that the court would extend the jury trial right even if there were no lease. I therefore did not move to strike the defendant's jury trial demand.

At the same time, I wanted to avoid *any* trial if possible. I therefore filed a motion for summary judgment. By this point in the process, over four months after I had filed the complaint, I had become acutely aware of the Landlord and Tenant Branch's favorable disposition to tenants, and wanted there to be no doubt that my summary judgment motion would be ruled on by an Associate Judge in the Civil Actions Branch. I therefore filed a motion to certify the case there, as appropriate based on the defendant's jury trial demand.

During the third iteration of the initial hearing, a Magistrate Judge in the Landlord and Tenant Branch certified the case to the Civil Actions Branch. This triggered the scheduling of several events, none of which included an actual trial date. One of these was a mediation session, which was mandatory for a case to proceed to trial and would be held three months later. If the case did not settle from mediation, a pre-trial hearing would be held a month after the mediation session. Only then would a trial be scheduled, for a date at least two or three months later.

To avoid these events and the associated delay, after the case had been safely certified to the Civil Actions Branch, I filed an amended and restated version of my summary judgment motion and sent a courtesy copy to the Associate Judge's chambers. My motion addressed all of the required elements of my client's case and all of the defenses the defendant had raised in his answer. About a month after I made this filing, without any hearing, the Associate Judge entered an order granting my motion and a separate nonredeemable judgment of possession. My client and I were relieved and thought the case would be over soon.

Insights

- In a District of Columbia landlord-tenant case, if the tenant demands a jury trial, the Landlord and Tenant Branch is required to certify the case to the Civil Actions Branch of the Superior Court's Civil Division.[10]

- Cases certified for jury trial are automatically referred to mandatory mediation in the D.C. Landlord & Tenant Mediation Program[11], which might not take place until months after

[10] Landlord and Tenant Rule 6(b).
[11] See District of Columbia Superior Court, Mediation Matters, Landlord & Tenant. Available at https://www.dccourts.gov/services/mediation-matters/landlord-and-tenant.

certification. If a case does not settle in mediation, it can take additional months to schedule a jury trial.

- None of this prevents either party from filing a motion for summary judgment for faster resolution of the case if there is no genuine issue of material fact.[12]

- When a case is certified to the Civil Actions Branch, it is assigned to an Associate Judge. However, most of the Superior Court Rules of Procedure for the Landlord and Tenant Branch continue to apply.[13] One of those rules provides that the Associate Judge assigned to the case will be the judge who rules on any motion for summary judgment.[14]

Post-Judgment Litigation Begins

I sent copies of the court's nonredeemable judgment of possession to the defendant in his guestroom. I also brought a copy to the clerk's office at the Landlord Tenant Branch and applied there for court to issue a writ of restitution to enforce it. About a week later, the court issued a writ of restitution, and I received a call from the U.S. Marshals Service to schedule an eviction. The earliest date available was about three weeks later. I drafted a notice of eviction and served a few copies on the defendant by various means, including having a copy of the notice taped to the door of his guestroom. I instructed my client to be ready to help the defendant move out on the scheduled eviction date.

Insights

- In an ordinary landlord-tenant case, even after a judgment of possession has been entered against a tenant for non-payment of rent, the tenant can avoid eviction by paying the full amount of past-due rent. There was no tenancy in our case. The court therefore entered a "nonredeemable" judgment of possession.

- Not surprisingly, some defendants refuse to vacate premises even after the court has entered judgments of possession. In the District of Columbia, the duty falls to the U.S. Marshals Service to conduct evictions in such cases. To obtain this assistance, the plaintiff must apply for the court to issue a "writ of restitution" directing the U.S. Marshals Service to enforce the judgment. This application must be submitted *in person* at the clerk's office with a fee. (Credit card payments are not accepted and only members of the D.C. Bar are allowed to pay with uncertified checks.) There is only one employee in the clerk's office who reviews these applications and he usually does so within a week of their filing. If this employee is sick or on vacation, the applications are not reviewed until he returns. The application consists of a single form in which the address of the occupied premises must be entered twice. If the two entries are not identical (e.g. if the room number is omitted from one), the application will be rejected and will need to be resubmitted, again in person.

[12] *See* Landlord and Tenant Rule 2 and Civil Rule 56.
[13] Landlord and Tenant Rule 1.
[14] Landlord and Tenant Rule 13-1(a)(3).

- After the court issues a writ of restitution, it forwards it to the U.S. Marshals Service, which calls the plaintiff's representative to schedule an eviction. An eviction date is usually not available until weeks later.

- When an eviction is scheduled, it is the plaintiff's responsibility to serve a notice of the eviction on the defendant. It is recommended that this notice be served by multiple means, one of which should be taping a copy of the notice to the defendant's door.

- The U.S. Marshals Service will contact the plaintiff the morning of the eviction date with a time window. One or two officers will spend no more than an hour within that window overseeing an eviction. They will not help move a defendant's possessions. If a guest being evicted has multiple possessions, the hotel should be prepared with boxes, bags and staff on hand to package and move the guest's possessions. It used to be customary to leave these possessions on the street curb if the defendant left without them. The law now requires a housing provider to keep these possessions in an evicted tenant's rental unit for up to 7 days (excluding Sundays and federal holidays) before disposing of them.[15] Although this requirement does not extend to hotels (absent a landlord-tenant relationship with a guest), I recommend that a hotel store any abandoned guest property (other than hazardous materials and contraband) in a secure location (not necessarily the guestroom) for the same period of time and dispose of it afterward if the defendant does not pick it up within that timeframe.

- The U.S. Marshals Service Procedures for Eviction provide that "[t]o protect tenants, evictions will not be conducted when the temperatoure is forecasted to be below freezing or when it is precipitating."[16] This requires an eviction to be rescheduled. If more than 75 days pass before a writ of restitution is executed, it expires and the plaintiff must apply for a new one.[17] If more than 90 days pass after the date of the judgment and the defendant still occupies the premises, then the plaintiff must petition the court to renew the judgment.[18]

~~Forum~~ Judge Shopping

Two days before the scheduled eviction date, the defendant, representing himself, filed an application to stay enforcement of the court's writ of restitution. At about 6:00 p.m. that day, the court notified me of the application and an emergency hearing to be held the next morning. The following morning, the defendant and I attended a hearing before a Magistrate Judge in the Landlord and Tenant Branch. The judge considered the defendant's arguments and held that there were no grounds to stay execution of the writ of restitution. He noted that the defendant had filed no appeal or motion for reconsideration. There was therefore no proceeding pending that the court could accommodate by staying an eviction to preserve the status quo. The judge also stated that

[15] D.C. Code § 42-3505.01a(d)(2).
[16] U.S. Marshals Service, Procedures for Evictions, available at https://www.usmarshals.gov/sites/default/files/media/document/PUB-22%287%29.pdf.
[17] D.C. Landlord & Tenant Rule 16(a)(4).
[18] D.C. Landlord & Tenant Rule 16(c)(1)(A).

he could see no basis that would support an appeal of the court's judgment. He therefore denied the defendant's application. It appeared that the eviction would go forward the next day.

Immediately after this hearing, the defendant walked down the hall to the clerk's office and, still representing himself, filed a second application to stay the writ of restitution. The clerk's office accepted the second application and scheduled another emergency hearing for the next morning. I received another evening phone call from the clerk's office notifying me of the second application and another emergency hearing the next morning. The defendant made no arguments in his second application that he had not made in his first.

A different Magistrate Judge presided at the second emergency hearing. He opened by acknowledging that 24 hours earlier, one of his colleagues had reviewed and denied effectively the very same application. He added that he was unaware of any earlier case in which the court had considered a second application to stay the same enforcement of the same writ of restitution, and suggested that the clerk's office should not have accepted the second filing. Nevertheless, he decided to impute within the defendant's arguments a new motion, pursuant to Rule 60(b) of the Superior Court Rules of Civil Procedure, to set aside the nonredeemable judgment of possession that an Associate Judge had entered a month earlier. He tentatively received that motion and encouraged the defendant to engage an attorney to file a written version of the motion within a week. In the meantime, he granted the defendant's second application and quashed the writ of restitution. The eviction was cancelled. It had now been nearly five months since we filed our complaint.

Insights

- Rule 16(b)(1) of the D.C. Superior Court Landlord and Tenant Rules states that "[a] party may seek a stay of execution of a writ of restitution by either oral or written motion." Before 2019, Rule 16 only allowed the court to "stay the execution of a judgment in a Landlord and Tenant action pending the disposition of any motion made pursuant to [certain] Superior Rules of Civil Procedure [challenging the judgement] or any appeal of the judgment . . ." [19] A stay was also only available "the posting of a bond or . . . such other conditions for the security of the adverse party as are proper . . ."[20] These conditions were removed in 2019. Beyond giving the plaintiff an opportunity to be heard, the rule now imposes no conditions or limits to a judge's discretion to stay execution of a writ of restitution and postpone an eviction.

- A significant factor determining the progress of a landlord-tenant case in the District of Columbia is the judge presiding over the case at any given time. Cases before the Landlord and Tenant Branch are not assigned to any particular Magistrate Judge. The identity of the Magistrate Judge who rules on some aspect of a case depends on who is presiding on the

[19] See Superior Court of the District of Columbia Notice of Proposed Amendments to the Superior Court Rules of Procedure for the Landlord and Tenant Branch, page 40, available at https://www.dccourts.gov/sites/default/files/2019-04/Notice-of-Proposed-Amendments-to-the-Landlord-and-Tenant-Rules.pdf.
[20] Id.

day when the applicable hearing is scheduled. Five Magistrate Judges issued rulings in the case discussed in this article.

- When a landlord-tenant case is certified to the Civil Actions Branch, it is assigned to an Associate Judge who remains as the Judicial Officer overseeing the case and rules on all matters requiring ruling by the Civil Actions Branch. However, even after certification, not all matters require attention at that level, and those that do not are heard by the rotation of Magistrate Judges in the Landlord and Tenant Branch.

Playing One Court Branch off the Other

I filed a second application for a writ of restitution, and a second eviction date was eventually scheduled to take place about a month after the first one. The defendant ignored the plea of the Magistrate Judge at the last hearing to engage counsel and make a written submission within a week. Rather, he waited about a month, until the day before second eviction date. Continuing to represent himself, on that day he filed a third application to stay the writ of restitution and a separate motion to set aside the nonredeemable judgment of possession. The defendant presented no arguments in these filings that the court had not previously considered.

An emergency hearing was held the following morning, before the same Magistrate Judge who had reversed his colleague's decision a month earlier. At this hearing, he advised that he could not allow an eviction go forward while a motion was pending to set aside the court's judgment, which would have to be considered by the same Associate Judge who had entered the judgment. He therefore granted the defendant's third application and quashed the court's second writ of restitution. At the same hearing, the Magistrate Judge relayed a message from the Associate Judge that she had scheduled a hearing to take place five days later, at which she would consider the defendant's motion to set aside her earlier judgment. The eviction was again cancelled.

Five days later, the parties appeared before the Associate Judge. She considered the defendant's arguments and denied his motion to set aside the court's nonredeemable judgment of possession. She stated that it was never her intention or expectation that, two months after entering a nonredeemable judgment of possession, the defendant would still be living in the hotel. I moved for all further litigation in the case to be heard by the Associate Judge, as the Judicial Officer who had technically been overseeing the case since its certification to the Civil Actions Branch. She denied my motion, but asked me to keep her informed of future developments affecting the case. It had now been nearly six months since I had filed my client's complaint.

Immediately after that hearing, I again returned to the clerk's office at the Landlord and Tenant Branch and filed a third application for a writ of restitution. This time, it took over three weeks for the clerk's office to issue a writ and the U.S. Marshals Service to call me to schedule an eviction date.

The End Finally Comes

The third eviction date was scheduled to take place just over nine months after I had filed my client's complaint. Predictably, on the eve of the eviction date, the defendant filed a (fourth)

application to stay execution of the writ of restitution and a motion, now addressed to the Chief Judge of the Superior Court, to reconsider the court's order upholding its earlier nonredeemable judgment of possession. As usual, an emergency hearing was scheduled for the following morning in the Landlord and Tenant Branch.

That evening, I filed briefs opposing the defendant's pleadings and emailed courtesy copies of these to the Associate Judge's chambers with a note reminding her of the case's history and her request that I keep her informed.

When I walked into the courtroom the next morning, I was advised that the emergency hearing had been transferred to the courtroom of the Presiding Magistrate Judge who oversees the Landlord and Tenant Brach. I knew at that moment that this case would finally end. Although it was never mentioned, I am certain that the Associate Judge had read my filings and sent word to the Presiding Magistrate Judge, who then took control of the case. The latter judge patiently listened to the parties' arguments and finally denied the defendant's application and motion. She warned the defendant that U.S. Marshals would be at the hotel within hours and that he should spend those hours preparing to move.

The defendant returned to the hotel, packed up his possessions and was picked up and driven away by his parents, all before the U.S. Marshals arrived. Hotel management secured the guestroom door immediately upon his departure, called the U.S. Marshal Service and advised that it would not be necessary for them to come.

Closing Thoughts

This week, the National Park Service cleared out an encampment of people who, since COVID-19, have been living in tents in McPherson Square, in downtown Washington, D.C. The District of Columbia Department of Health and Human Services is providing vouchers to some of the displaced people for temporary housing, including in hotels. I do not wish, by this article, to discourage hotel owners and operators from contributing to the federal and city governments' efforts to address homelessness. However, any hotel owner or operator should be aware of the risks involved before agreeing to house a person who may not be inclined to leave when a third party stops funding his stay.

When a hotel in Washington, D.C. is next confronted with this situation, it might consider alternatives to pursue instead of, or in addition to, an action for possession in the D.C. Superior Court. One alternative that my client considered while our case was dragging on was to simply offer the defendant money to leave the hotel voluntarily. It decided against this strategy, partly because if word of that remedy were to spread, more of its guestrooms might fill with non-paying guests bargaining for pay-outs to leave. Nevertheless, I am aware of two large, well-known hotel management companies in the United States that have offered money to guests who have stopped paying in exchange for their voluntary departure.

A more effective strategy for the long-term may be to file a lawsuit against the District of Columbia Metropolitan Police Department seeking an injunction compelling it to provide assistance to support a hotel's self-help remedy of locking a guest out, as plainly allowed by the

District of Columbia Court of Appeals. In the meantime, hotel industry organizations like the Hotel Association of Washington, D.C. could help make a difference by alerting the Metropolitan Police Department of that precedent and lobbying the District of Columbia government for support.