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PROCEDURAL DUE PROCESS ASPECTS OF DISTRICT OF COLUMBIA EVICTION PROCEDURES

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In nearly 50,000 cases per year the landlord and tenant court in the District of Columbia provides summary adjudications of landlords' rights to possession of their property and resulting evictions of tenants. The thesis of this article is that two aspects of court operations raise serious issues as to whether the court unreasonably risks erroneous deprivation of a tenant's property, under the rule of *Connecticut v Doehr*.[2] First, the court's standard practice risks error by of granting judgment to the landlord based solely on a half page complaint

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[2] 501 U.S. 1 (1991). That housing plays a major role in social issues involving class, poverty, racial segregation, and family security is not to be disputed. The property interests at stake in evictions actions both for landlords and for tenants are considerable and undisputable. This article need not take time to discuss these interests for the purposes of the *Doehr* analysis,

stating the landlord's conclusory allegations, in a setting where most tenants default or are *pro se.* Upon a tenant's default, the court's standard practice compounds the risk of erroneous deprivation by entering what amounts to summary judgment in most cases with no consideration of the validity of the landlord's claim. In the rare case when the tenant comes to court with an attorney, these due process issues attenuate.

Second, court rules prohibit the tenant from filing certain defenses and counterclaims in response to the landlord's complaint and thereby also give rise to an unreasonably high risk of erroneous deprivation of the tenant's property. In some cases, the court permits a landlord to proceed fairly promptly to obtain possession, while the tenant must proceed in another forum on a claim which if adjudicated concurrently with the action for possession might forestall eviction.

Doehr sets up a three part test for due process compliance by court and agency procedures where actions may result in the taking of property. The three part test as stated in *Doehr* is:

> ... first, consideration of the private interest that will be affected by the prejudgment measure;[3] second, an examination of the risk of erroneous deprivation through the procedures under attack and the probable value

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since they are described at length elsewhere in the literature.

[3] This first part of the test, the nature of the "private interest", is not really at issue here. Loss of one's housing is essentially always a sufficiently significant private interest so as to merit Due Process protection. *Lindsey v. Normet*, 405 U.S. 56 (1972); *Doehr, supra; Covey v. Sommers*, 351 U.S. 141 (1956); *Green v Lindsey*, 456 U.S. 444 (1982); *Frank Emmet Realty v*

> of additional or alternative safeguards; and third... principal attention to the interest of the party seeking the prejudgment remedy, with, nonetheless, due regard for any ancillary interest the government may have in providing the procedure or forgoing the added burden of providing greater protections.[4]

Before examining the issues surrounding the risk of erroneous deprivation resulting from the court procedures addressed in this article, the standard procedure is set forth to clarify where and how a risk of erroneous deprivation may arise in the D.C. L&T court setting.

Monroe, 562 A.2d 134 (1989).

[4] 501 U.S. at 11.

POINT I

D.C.'S FORCIBLE ENTRY AND DETAINER ACTIONS

Under Rule 1 of the D.C. Superior Court Rules of Civil Procedure for the Landlord and Tenant Branch ("L&T Rules") the D.C. Superior Court authorizes the establishment of a branch of the court for hearing actions for possession pursuant to D.C.'s Forcible Entry and Detainer statute,[5] D.C. Code §16-1501 et seq., which provides as follows:

> When a person detains possession of real property without right, or after his right to possession has ceased, the Superior Court of the District of Columbia, on complaint under oath verified by the person aggrieved by the detention, or by his agent or attorney having knowledge of the facts, may issue a summons in English and Spanish to the party complained of to appear and show cause why judgment should not be given against him for the restitution of possession.

Stated more plainly, the section gives the court the power to determine whether one person has more "right" to possession of a piece of property than another person, i.e., a "superior right to possession".[6] The provision does not

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[5] D.C. by statute also provides for ejectment actions, D.C. Code §16-1101, but these are practically never used.

[6] The statute is not phrased in terms of landlords and tenants, so as to encompass, for example, actions by tenants seeking to evict their subtenants. In other words, the provision does not deal with all the various laws and real property case law that may determine what constitutes estates in land, possession of real estate, and who may have a right to possess real estate that is superior to that of another person.

address issues arising from how or when the right to possession ends perhaps in part because other provisions address these issues and because the language of the statute was crafted in an era when a landlord could evict a tenant without giving any reason for doing so other than that the tenancy had expired. As a number of commentators have shown,[7] tenant rights have expanded greatly during the past forty years, and a showing that the landlord has a "superior right to possession" and that the tenant detains property "without right" can be

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[7] Several authors have discussed and analyzed the revolution in tenant rights, and their work provides excellent underpinning and background for the positions laid out in this article. Prof. Mary Spector traces the history of the development of FED proceedings, and the modern tenant rights scene. Her article contrasts the wisdom learned from the arena of protections for consumers under modern consumer law, with the lack of such development in much of the law governing eviction procedures. TENANTS' RIGHTS, PROCEDURAL WRONGS: THE SUMMARY EVICTION AND THE NEED FOR REFORM, 46 Wayne L. Rev. 135 (2000). Randy Gerchick's, NO EASY WAY OUT: MAKING THE SUMMARY EVICTION PROCESS A FAIRER AND MORE EFFICIENT ALTERNATIVE TO LANDLORD SELF-HELP, 41 UCLA L. Rev. 759 (1994), analyzes steps in the standard eviction process applicable in most jurisdictions, and suggests ways to make the process fairer to tenants, while preserving the landlord's need for expedition. Chester Hartman has produced a study showing the strong correlation between evictions and homelessness. Hartman, Evictions the Hidden Housing Problem, HOUSING POLICY DEBATE 14;461(2003). Finally, there is the National Housing Law Project's extensive manual on tenant rights in federally assisted housing: HUD HOUSING PROGRAMS, TENANTS RIGHTS, (National Housing Law Project, 3d edition, 2004). See also, Christian C. Day & Mark I. Fogel, The Condominium Crisis: A Problem Unresolved, 21 URB. L. ANN. 3, 15-17 (1981); Mary A. Glendon, The Transformation of American Landlord-Tenant Law, 23 B.C. L. REV. 503, 545-75 (1982); Edward H. Rabin, The Revolution in Residential Landlord-Tenant Law: Causes and Consequences, 69 CORNELL L. REV. 517, 520-40 (1984). This article will not attempt to replicate these materials, and the reader is referred to these materials for more complete explanations of the intricacies of landlord and tenant practice.

complex indeed in D.C..[8] For example, D.C. by statute limits the grounds for evictions to nine, including non-payment of rent, serious and repeated breach of the lease, commission of a crime on the premises, and the landlord's desire to occupy an apartment for himself. In addition, rent is controlled generally in many private apartments, and strictly controlled in all public housing units, and the accurate calculation of rent levels can be complex. Landlords are required by D.C. law to warrant the habitability of their rental units[9], and the existence of severe violations within a dwelling of the housing code voids the lease agreement entirely.[10] Retaliatory evictions are prohibited.[11] A tenancy does not

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[8] A short background note may be helpful here to readers not steeped in landlord and tenant court practice. Landlord and tenant law is not derived from any single primary source. Aspects of real property law affecting landlord and tenant practice can be traced back to the earliest days of medieval English jurisprudence. Forcible Entry and Detainer state statutes were enacted in many jurisdictions during the Nineteenth Century as a reform to protect tenants from extra-judicial, self help eviction activities by landlords, activities that could result in violence. Much of landlord and tenant court practice is grounded in court-made common law. On the other hand, significant tenant rights have been created since the late 1960s by federal and state legislatures seeking to protect low income tenants against the harshest aspects of an ongoing crisis in affordable housing for low and moderate income households. The warranty of habitability, statutory controls on rents, good cause evictions, and fair housing rights, are all rooted in actions by legislatures to protect tenants' rights, without direct regard for the local housing court procedures that might interact with those rights. *Lindsey v. Normet* came down at the end of a much simpler– but hardly halcyon -- age, and at the dawn of the revolution in tenant rights. It is hardly surprising therefore, that what seemed reasonable to the Supreme Court in the *Lindsey* case seems hopelessly outdated today to most tenant advocates.

[9] D.C. Municipal Reg. Title 14. Chapter 3.

[10] Brown v. Southall Realty, 237 A. 2d 834 (D.C. 1968).

terminate when a lease expires, but essentially continues indefinitely unless the tenant fails to pay the rent, or one of the other limited grounds for eviction arises. Determining who has the "superior right to possession" within this complex web of rights and responsibilities has not been a matter for simple determination since the 1970s, when the Supreme Court issued its seminal decision on eviction law, *Lindsey v. Normet*, 405 U.S. 56 (1972) , which upheld the constitutionality of several aspects of Oregon's summary eviction procedures.

Under the section of the FED just quoted, to obtain a judgment for possession, the landlord must plead to the court in a "complaint under oath verified by the person...having knowledge of the facts" that the tenant "detains possession...without right". Judgment is to be entered on the basis of this complaint alone since the proceedings are to be summary.[12] However, the tenant is entitled to come to court to "show cause why judgment should not be given against him for ... possession". The FED authorizes the court to enter judgment based upon what is set forth in the complaint alone.[13] No additional motions practice is required. No motion for a preliminary injunction or motion for summary judgment is contemplated by the FED. The court is to enter

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[11] D.C. Code §3505.02 (2000 ed. All references herein to the D.C. Code are to the 2001 edition.).

[12] Tutt v. Doby, 459 F.2d 1195 (D.C. Cir 1972).

[13] L&T Rule 11.

judgment is based solely upon statements set forth in the complaint, unless the tenant appears and asks for a trial on the claims.

Thus, the FED requires a considerably heightened standard of pleading for the complaint beyond mere notice pleading. The landlord must set forth under oath in the complaint itself why the detention is "without right". From the perspective of modern civil procedure, the FED effectively allows the court to enter what might be termed summary judgment for the landlord based upon the statements set forth in the complaint alone.

The FED provides that the tenant must, to avoid eviction, come to court and, on the very first day of the proceeding "show cause" why the landlord has failed to meet his burden of showing by a preponderance of the evidence that the tenant remains in possession "without right".

Before about 1970, this complaint/summary judgment procedure could perhaps be considered reasonable where the facts and the law were simple: the plaintiff identifies himself as the landlord, the defendant as the tenant, shows that the tenancy has terminated, and judgment for possession should be entered evicting the tenant. If the tenant shows up in court and shows that she did pay the rent, or for some other reason the tenancy did not terminate, the court could set the matter down for a prompt hearing. This general scenario passed due process muster in 1972 according to the major Supreme Court decision that has overshadowed considerations of Due Process in L&T courts ever since, *Lindsey v. Normet, supra*.

The more modern scenario raises squarely the issue of, what must the landlord set forth in the complaint to justify entry of judgment of possession under the FED?

Think of Mrs. Brown in the seminal D.C. housing case of *Brown v. Southall Realty*.[14] Her apartment was in severely dilapidated condition when she moved in and the landlord was aware of this condition. She refused to pay rent after the first couple of months since her landlord, Southall Realty, refused to bring her apartment up to the standard of the D.C. Housing Code. For Southall Realty to claim that Ms. Brown held possession "without right" for failure to pay rent, it would have to show that the unit was in compliance with the D.C. Housing Code, and that the rent had been properly calculated. If the landlord fails to show in the complaint that the dwelling is in compliance with the housing code, he does not meet his burden of showing that the tenant is holding "without right". If the landlord alleges falsely that the unit is in compliance, then there are other remedies that the court and the tenant has, including primarily sanctions under Rule 11.

The Supreme Court has held on several occasions that the plaintiff's burden of pleading in the initial complaint is determined by the statute authorizing the cause of action being pleaded.[15] Accordingly, the FED requires

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[14] 237 A.2d 834 (D.C. 1968).

[15] Gomez v. Toledo, 446 U.S. 635 (1980) ; Parratt v Taylor, 451 U.S. 527 (1981).

a plaintiff/landlord to plead more than merely that the tenant is "without right", but must demonstrate how under the facts and law applicable to the claim that the court should reach this conclusion. Similar to FRCP Rule 56 requirements for a valid motion for summary judgment for the landlord, the FED may fairly be read to require the plaintiff to provide the court with both an affidavit made under personal knowledge, and documents whose authenticity were demonstrated to support at least the following:

1. The name of the landlord and the relationship of the landlord to the building and the apartment in question, presumably an ownership or other fee relationship superior to that of the tenant.
2. The terms under which the defendant holds or held a tenancy, and the correct name of the tenant.
3. Any lease terms relevant to the claim.
4. Facts demonstrating a breach of the lease such that the right to possession has ceased. In a non-payment case, the landlord should set forth under oath the contents of his rent records documenting the tenant's failure to pay rent for one or more months.
5. How the rent was calculated, if the building was rent controlled.
6. In a non-payment case, whether or not the tenant rent was fully or partially abated as a result of the landlord's violation of the

statutory warranty of habitability.[16]

The landlord, or one its agents having knowledge of the "facts" must make a showing in a “complaint” that the tenant's right to possession has ended.

If Southall Realty pleads all this in the complaint, then, according to the FED, the tenant must come forward at the return date hearing and "show cause" why judgment should not be entered against her. The tenant might show that she had in fact paid all the rent due or that the dwelling was operated in violation of the Housing Code beyond what the landlord had alleged and all rent should be abated. In other words, the landlord's complaint sets up a decision for the court to make, at a hearing on the "return date", which under the FED, is to be the only hearing on the case, unless the parties and the court determine otherwise. The tenant must, according to this FED provision, come forward at the return date and controvert those facts pleaded and proven in the complaint in order to head the court off from entering the judgment for possession on that day. The tenant technically under the FED statute can have as little as seven days to come

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[16] Title 14 D.C.M.R. Chapter 3. That the landlord’sburden of pleading includes compliance with the housing code would be a controversial point in the view of the landlords’ bar. Advocates for landlords would contend that under D.C. law Javins characterizes the landlord’s violation of the warranty of habitability as a counterclaim of the tenant and as a defense and hence the burden of pleading is on the tenant. The response is that the landlord cannot seriously contend that the tenant holds without right if the landlord has provided a unit that is seriously out of compliance with the housing code standards, leaving no rent due.

to court to do this on the "return date",[17] although in practice in D.C. the court clerks provide landlords about twenty days between the issuance of a summons by the clerk's office and the date approved for the return[18].

Perhaps the heightened pleading standard required by the FED in the complaint can be shown more clearly in an example other non-payment of rent. One of the nine grounds for evicting a tenant to which landlords are limited in D.C., as set forth in 42 D.C. Code §42-3505.01, is when the landlord desires to demolish the building in which the apartment is located and "replac[e] it with new construction".[19] Prior to having a cause of action for possession under the FED on this ground, the landlord must

1. Prepare a demolition plan for the building.

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[17] D.C. Code §16-1502. Provides a return date of seven days (excluding Sundays and legal holidays) of the service of the summons and complaint.

[18] Tenant defendants will not have the full twenty days, however, since they might not always be served with the summons and complaint until a few days prior to the return date.

[19] "(f) A housing provider may recover possession of a rental unit for the purpose of immediately demolishing the housing accommodation in which the rental unit is located and replacing it with new construction, if a copy of the demolition permit has been filed with the Rent Administrator, and, if the requirements of subchapter VII of this chapter have been met. The housing provider shall serve on the tenant a 180-day notice to vacate in advance of action to recover possession of the rental unit. The notice to vacate shall comply with and notify the tenant of the tenant's right to relocation assistance under the provisions of subchapter VII of this chapter.
(2) Tenants displaced by actions under this subsection shall be entitled to receive relocation assistance as set forth in subchapter VII of this chapter, if the tenants meet the eligibility criteria of that subchapter."

2. Obtain a permit for the demolition.

3. File the permit with the Rent Administrator.

4. Comply with the requirements to offer the building for sale to the tenant before obtaining the demolition permit.

5. Serve the tenant with a 180 day notice to quit and allow the notice to expire.

6. Notify the tenant of his right to relocation assistance.

The tenant may not be fairly characterized to be holding possession of the unit “without right” until these steps have been taken, documented by the landlord. The “elements” of a cause of action for possession under this provision would include full proof at a minimum of all these items. Were the landlord, for example, to file a claim for possession without obtaining the required demolition permit, the claim would be fairly held characterized by a court to be insufficient, since the tenant could not be properly characterized in the complaint as holding the property “without right”.

In other words, the FED statue requires the landlord to plead and prove in the complaint more than mere conclusory allegations that the plaintiff is the landlord, or that the tenant is the defendant, and that the landlord will be prepared to prove at a trial at some later date in the proceedings that the tenant is "detaining possession without right." A fair reading of the way the FED statute is written is that, the law and facts spelling out why the tenant lacks the right to possession must be proven in the initial pleading itself, by a statement

under oath by a person having knowledge of the relevant facts.

In fact, the actual form complaint required by the court rules does not call for this level of pleading, as discussed in the next section.

As stated, L&T Rule 1 authorizes the creation of the L&T Branch of D.C. Superior Court for the adjudication of FED claims. The Branch has evolved in the past 100 years or more to adjudicating annually tens of thousands of actions for possession based on the FED. By the 1970's there were well over 100,000 filings. Currently, the number has dropped to just under 50,000 per year. Eighty percent of cases are for non-payment of rent, the rest based on other grounds for eviction, such as other breaches of the lease.

Less than one percent of defendants appear by an attorney. Defendants in L&T court tend to be poorly educated, low income, and the number for attorneys available through free legal services programs is minuscule compared to the number of tenants needing representation.[20] The sources of law governing this area are varied and complex, involving multiple statutes, and extensive case law: there is no one, readily accessible source of law for tenants to use for help in appearing making a *pro se* appearance.

A large percentage of complaint filings result in a default judgment against the tenant. Most defaults are entered without the court requiring any *ex parte* proof of the landlord's case, similar to the requirements of Federal Rule

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[20] Lynn Cunningham, *Legal Needs for the Low Income Population in Washington, D.C.,* 5 THE UNIVERSITY OF THE DISTRICT OF COLUMBIA LAW

55, because the court has effectively for years followed the command of the FED and treated the landlord's complaint as all that is needed for the entry of judgment against the tenant. Administrative changes by the court at the time this article was completed may put in place steps to require *ex parte* proof prior to the entry of judgment by default in some categories of cases, but it has not done so yet, and it is not planning to do so in most cases.

Thus, the complaint filed by the landlord is the sole ground upon which the court adjudicates the landlord's claim for possession.

Most tenants who do appear in court are shepherded by court clerks and procedures to enter into a consent decree following brief "negotiations" with the landlord's attorney. Without an attorney of her own to advise her, and without complete written or oral guidance about what the law is governing her case, the tenant is left to negotiate in the foyer of the courtroom with an experienced attorney who specializes in this area of the law and who makes a living from his or her extensive knowledge of the landlord and tenant practice and procedures. The tenant's primary source of information about the landlord's claims is the written complaint in her case.

Thus, again, the nature and quality of the landlord's initial filing, i.e., the complaint alone, provides the sole basis for the court's entry of judgment for the landlord, and normally the sole source of information to the tenant about the nature of the landlord's claims.

REVIEW, No. 1, 21, Fall, 2000.

NOTICE PLEADING STANDARD FOR CIVIL COMPLAINTS

The familiar standard for what constitutes an acceptable complaint under the federal rules of civil procedure, and under the parallel D.C. regular civil procedure rules as well, is "notice pleading", a much lower standard than the heightened pleading seemingly required by the FED. FRCP Rule 8 requires a "short and plain statement" of the court's jurisdiction, and a "short and plain statement of the claim showing that the pleader is entitled to relief," and a demand for relief. If the federal complaint pleader leaves out an important allegation, or makes allegations that are too vague for the defendant to understand, the defendant may move to dismiss the complaint under Rule 12(b), or make a motion for a more definite statement under Rule 12(e). If the pleader or his attorney alleges facts which cannot be substantiated, or omits any legal basis for his claim, or alleges legal theories that are worthless, the court may issue sanctions under Rule 11. Complaints filed by *pro se* plaintiffs are given generous interpretations by courts, out of an understanding that lay persons cannot be expected to follow the sophisticated niceties of pleading expected of members of the bar.[21]

Judgment is not entered on the basis of the complaint alone, since the role of the complaint is to inform the defendants of the claims pending, and to lay a basis for pre-trial discovery and preparation for trial. The court will enter judgment only on the basis of default by the defendant, a motion for summary

judgment under Rule 56, or after a trial. How the regular civil rules handle judgment by default is particularly relevant here, since, as stated, most L&T judgments in D.C. are entered by default. Under Rule 55 (a), the court clerk enters a "default" when the defendant fails to answer or otherwise respond to the complaint, but then the plaintiff must apply to the court for a judgment by default, unless the claim is for a "sum certain". The court then normally holds an *ex parte* hearing to examine the plaintiff's legal claims, and the bases for its factual allegations.[22]

By contrast, the L&T Court requires plaintiffs to use a form complaint that at least arguably falls well short of even the notice pleading standard for certain types of claims, and then enters judgment based solely on the complaint, with no *ex parte* proof required of the landlord..[23] Before examining whether this procedure comports with due process, the L&T Court Form complaint will be reviewed in more detail.

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[21] *See, e.g., Castro v. U.S.*, – U.S. – , 124 S. Ct. 786 (2003).

[22] *Cf.*, D.C. Superior Court Rule 55-II.

[23] L&T Rule 11. ("...the Clerk shall enter judgment for the plaintiff as demanded in the complaint, if the plaintiff is present... and the defendant is [not] present..."). L&T Rule 14(a)(1). (A judgment for possession may be entered: (1) by the Clerk in favor of the plaintiff if the defendant fails to appear at the 9:00 a.m. roll call."). As of this writing the L&T Court rules committee is considering modifications that will require ex parte proof when the tenant has previously appeared in the action, and certain other categories of cases. Conversation with Eric Angel, Esq. D.C. Legal Aid Society, July 6, 2004,

D.C.'s FED Complaint.

While the FED statute seemingly provides for a show cause proceeding based on a quite specific factual showing under a seriously heightened pleading standard by the plaintiff/landlord in order to set up a proceeding that results in a judgment on the return date for the landlord, the D.C. Superior Court focuses its procedure on the possibility of entering the judgment on the return date aspect of the FED, while precluding compliance with the heightened pleading standard otherwise required by the FED. These rules mandate that all plaintiffs filing in the court must use a simple one-half page complaint on letter size paper. A copy is provided as an attachment to this article. L&T Rule 3 requires the use of the L&T Form 1.[24] No other form may be used. The same page that contains the complaint also contains the summons. A line by line review of Form 1 reveals a series of choices for the landlord to check off, written in the most telegraphic language.

The caption of the form requires the pleader to enter a name above a line labeled "Plaintiff/Landlord." A second line is labeled "Defendant/Tenant." Addresses of each are required.

After the caption, and a title for the pleading, and an affidavit identifier, a blank line invites the plaintiff/pleader again to give a name, and then offers

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Washington, D.C.

[24] *See,* Form 1, attached hereto. There is no statutory basis as such for the use of Form 1. (L&T Rule 3 provides: "A Landlord and Tenant action shall be commenced by delivering to the clerk a complaint, verification, and

three choices for checking off so that the pleader can indicate whether he is the landlord, a licensed real estate broker, or the landlord's agent: "( ) the landlord and/or ( ) licensed real estate broker or ( ) the landlord's authorized agent of the house, apartment or office located at ....., Washington, D.C." The form does not meet the FED requirement that the person filling out the complaint show that he has "knowledge of the facts", and there is no such statement or showing on the complaint to this effect, although such knowledge might be inferred if the pleader is the landlord himself.

The form does not require the plaintiff to show what in any clear detail the relationship he or she has to the landlord and how he is authorized to file this action, if the pleader is not the landlord. Form 1's failure to require the plaintiff (other than the landlord) to prove up who he is and that he is authorized to bring the FED action by an appropriate party has implications both for failing to inform the defendant of these allegations, and for the court's jurisdiction to hear the matter, i.e., the issue of how the plaintiff has standing to bring an action is ignored. Although the Superior Court is an Article I court under the Constitution (DC is a federal entity, not a state entity), the DC Court of Appeals has held repeatedly that parties bringing actions in the court must show that they have standing to bring the action filed as if the court were an Article III court.[25] The Form 1 complaint, unless it is filed by the landlord himself who identifies

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prepared summons, in the form prescribed in Landlord and Tenant Form 1....").

[25] E.g., *Friends of Tilden Park, Inc v District of Columbia and*

himself as such, normally fails to show that the party bringing the action has standing to bring it. There is no space or provision on the form for the plaintiff who is not actually the landlord to do so. It is hard to imagine a plaintiff who filed a conventional civil action getting away with simply identifying himself as "plaintiff" without making some clear showing as to what stake he had in case or controversy brought before the court in his case. For example, the complaint allows a licensed real estate broker to file as a plaintiff, but there is no clear showing in Form 1 concerning for whom the broker is acting or why the broker might enjoy standing to file an action on his own.[26] Moreover, while tenants are permitted to file actions to evict their subtenants, there is no wording on the form complaint that covers tenants suing subtenants. Instead, a tenant-plaintiff would have to list himself as the landlord/plaintiff.

No allegation is made about the plaintiff having a "superior right to possession" to that of the defendant that is the basis of the FED claim. At best, the "superior right to possession" is implied, based on the person claiming to be the landlord checking the "landlord" box, and the later portion of Form 1 stating that the tenant is in possession “without right”. The Form does not state that the defendant's "right to possession has ceased", as the FED statute requires, nor

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Clark Realty Capital, 806 A.2d 1201 (D.C. 2002).

[26] The form provides an option for the agent to check off that he or she is the “landlord’s” agent, but this then begs the question of who the landlord is.

does it reference the nine carefully defined legal bases for eviction.[27] The complaint arguably fails in any clear way to set up, argue, or establish the fundamental element of the cause of action authorized by the FED statute, namely, "superior right to possession", as illustrated above.

Form 1 provides the plaintiff with a series of options which are intended to be different, possible causes of action in the form: choice A is non-payment of rent; choice B is "tenant failed to vacate after a notice to quit has expired" and finally, choice C, "for the following reason (explain fully)". Each choice presents its own problems in terms of accurately reflecting the current state of landlord and tenant law in D.C. and providing the tenant defendant with some notice about the claims raised against her and to the court about the basis for the judgments it is entering.

Choice A, regarding non-payment of rent exhibits, or, more accurately, conceals, several problems, although it is the simplest. As stated, Choice A fails to state what the lawful rent is or how it is calculated, but instead limits the allegation simply to how much back rent is allegedly owed. When the early FED statutes were first enacted in the mid-nineteenth century, there was no rent control in D.C. and such a bare allegation of unpaid rent might have been

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[27] Grounds for eviction are set forth in D.C. Code 42- 3505.01. Examples include: violation of an obligation of the tenancy coupled with failure to correct the violation after being warned to do so; performing an illegal act in the unit; the landlord needs to use the apartment for himself; the landlord needs to renovate the unit; and the landlord plans to demolish the unit.

sufficient.[28] Choice A, provides neither the tenant nor the court with notice about what methodology was used to calculate the rent sued for and the issue of the accuracy of the rent calculation is ignored. Moreover, choice A fails to show the tenant or the court that the landlord has any factual basis for a claim, such as records from a rent receipts accounting mechanism. To add confusion, other non-rental "fees" of unspecified origin may be added into the rent line. While D.C. case law is fairly clear (to practicing attorneys) about what fees can and cannot be sued for, choice A makes no provision for the plaintiff to show clearly how it made a choice about which fees to include and in what amounts. Defendants are put on notice that there is some issue about rent and/or fees, but not provided with a basis for preparing for trial on the return date on these issues. The essential factual predicates for showing that the tenant is holding the premises "without right" cannot be shown in the form complaint.

Choice B on Form 1 purports to set forth a claim that is based on the tenant's failure to vacate the premises following expiration of a valid notice to quit, and requires the plaintiff to attach a copy of the notice to quit. This would be the choice for the demolition example given above. Unlike the rest of the complaint, and in contravention to the requirement of the FED statute, the

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[28] In D.C. a tenant may be evicted for failure to pay even minor amounts of back rent. However, equity of redemption doctrine requires the court to state the amount of rent which the tenant must pay in order to exercise redemption. *Translux Radio City Corp. v Service Parking Corp.*, 54 A.2d 144 (D.C. Mun. App. 1947). On the other hand, the landlord could simply sue for a set amount in the eviction action, and worry about collecting any balance due in

contents of the notice do not need to be "verified under oath" by someone with a knowledge of the facts.[29] The complaint does not require the plaintiff to show when or how the notice to quit was served on the tenant, although some notices may show this.

The third choice is "C": "For the following reason: (explain fully)", with one and a half lines available for the explanation. A more reasonable 'explanation' such as, "because the lease has expired" might survive review by the initial filing clerk at the courthouse. Yet under D.C. law, expiration of a residential lease is not a ground for termination of a tenancy, except in a few certain well defined circumstances.[30] A judge with knowledge of real estate law in D.C. might refuse to enter judgement by default against the tenant on this ground, except that judges do not review most complaints prior to entry of default judgement, as discussed.

L&T form complaints in D.C. arguably do not even meet notice pleading requirements of FRCP Rule 8. Most defendants represented by attorneys in more common civil cases would respond to the L&T form complaint with a motion for a more definite statement, or to dismiss.

In short, the current form complaint procedures fail to comport with the D.C. FED statute. The D.C. FED procedures are problematic just within the

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a later civil action.

[29] D.C. Code § 42-3505.01.

[30] D.C. Code §§ 42-3503.01 et. seq.

local statutory framework. No reasonable judge in a regular civil case would grant judgment simply on the basis of the statements that landlords or their agents and attorneys are constrained to provide on these lines. A motion for summary judgment under Rule 56 in a civil case on this kind of record would be normally be denied.

The Form 1 complaint appears to fail to meet the requirements of the FED statue which the court rules requiring it purport to implement. Does the complaint form alone, or in combination with entry of default judgment, comport with the requirements of due process?

POINT II

DUE PROCESS AND COMMENCEMENT OF FED ACTIONS

FED procedures have faced court challenges in other jurisdictions in the past for failing to meet due process standards. The most notable challenge, now over 30 years old, was based on the ground that Oregon state FED statutes which provided for a short turn around with which such "summary" cases were brought to issue, was unfair because a defendant had insufficient time to prepare a defense for the hearing.[31] A second challenge in the same lawsuit was grounded on limitations imposed on what defenses and counterclaims tenant/defendants could raise, thus impairing the ability to protect their interests fairly in the action for possession, even though they could raise these defenses and claims in separate lawsuits.[32] The Supreme Court rejected both challenges and found that the FED procedures from Oregon withstood due process scrutiny. No claim was made that the Oregon form complaint by itself was invalid. Since it came down in 1972, the holding of *Lindsey* has overshadowed general perceptions about the overall constitutionality of FED procedures in general.[33]

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[31] *Lindsey v. Normet*, 405 U.S. 56 (1972).

[32] *Ibid.* In the same decision, the Court held that a requirement that the tenant post a bond pending an appeal violated due process.

[33] A third challenge to widely used FED procedure which did

This article challenges that shadow. Over thirty years of development in landlord and tenant law and in the Supreme Court's own analysis of what courts must provide to comply with due process, strongly suggest that *Lindsey* is no longer good law today. The famous statement in *Lindsey*, that the "Constitution has not federalized the substantive law of landlord and tenant relations," is usually taken to mean that FED procedures are simply not susceptible to further constitutional attack, and must be left for reform to the tender mercies of state and local legislatures and local court committees which are normally dominated by the landlord/plaintiffs' bar.

A return to the fundamentals of modern due process doctrine guides the next stage of this analysis.

THE MATTHEWS/DOEHR TEST.

Mathews v. Eldridge[34] sets forth a 'now familiar' three part test for determining what procedures need be supplied to comport with due process before a party may be deprived of a property interest by a governmental entity. *Mathews* concerned a federal agency's deprivation of disability benefits from a

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succeed, addressed the then normal practice of serving the summons and complaint on the tenant by simply posting them on the door of the apartment. This practice was held to be insufficient notice, and mailing by certified mail was held to be required to supplement notice by posting. *Greene v. Lindsey*, 456 U.S. 444 (1982).

[34] 424 U.S. 319 (1976)

private citizen through federal agency administrative procedures.[35] In *Connecticut v. Doehr*,[36] the Court applied the *Mathews* test and addressed the issue of what procedures were required to afford due process before a private party plaintiff could obtain a civil court attachment on another private party's house. In other words, although the Court in *Doehr* did not discuss or address its holding in *Lindsey*, it has laid out a three part test, quite similar to the *Mathews* test, for the due process standards with which a state civil courts, and by implication, L&T courts, must comply.

In *Doehr* the Supreme Court rejected Connecticut state court procedure that allowed the plaintiff to impose a pre-judgment attachment on the defendant's house based simply on an affidavit stating that plaintiff believed in good faith he was entitled to judgment on his claims and that he had been harmed by the defendant.[37] The Connecticut court procedure provided no notice to the defendant in advance of the attachment paper which was issued by the state court clerk's office itself upon *ex parte* application by the plaintiff. The Court found that, particularly in a case involving a tort claim arising from a fistfight, where the facts could easily be in dispute, such an *ex parte*, prejudgment attachment was outside the bounds of what due process permits because the risk of erroneous deprivation of defendant's property was

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35 *Id.*

36 501 U.S. 1(1991).

unreasonably high within the context of those procedures.[38] Specifically, the Court held that the risk of erroneous deprivation was too serious where the attachment is based merely on the plaintiff's belief that his complaint has merit, and, of course, the plaintiff might be wrong in that belief.

THE INTERESTS AT STAKE IN AN FED PROCEEDING.

Vital interests of the housing provider and of the tenant highlight the importance of avoiding erroneous deprivation of either. The first and third elements of the *Doehr* analysis call upon the reviewing court to consider the interests of each side in the controversy. As stated above, the seriousness of the interests of the landlords' and tenants' in the dwelling units in dispute is sufficiently clear that these issues need not be reexamined here.

The Lindsey Court approached its analysis by assuming that all parties knew what was going on when the landlord seeks possession, and, so, FED procedures could be simple, quick, and one side's issues segregated from the others in order to determine the issue of possession promptly.[39] These seem unlikely in light of D.C. complex law governing evictions.

The sufficiency of notice is the key issue to be examined here.

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[37] 501 U.S. at 11.

[38] 501 U.S. at 14

[39] 405 U.S. at 65 (" Tenants would appear to have as much access to relevant facts as their landlord....").

SUFFICIENCY OF NOTICE IN D.C. FED ACTIONS

The risk of erroneous deprivation of defendant's property can be unreasonably high if the defendant is not adequately informed of the proceedings that may result in the seizure of his property. Moreover, the notice aspect of Due Process doctrine is sufficiently significant to have merited its own line of cases.

The mantra recited in a multiplicity of cases involving the notice aspect of due process[40] comes from *Mullane v. Central Hanover Trust*:

> An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.[41]

As discussed in Point I above, D.C. evictions are commenced by the service on the tenant-defendant of the one half page Form 1 complaint. Does this extremely cursory form provide the tenant with adequate notice under Due Process requirements, putting aside the Form's apparent lack of compliance with the FED provisions? Is notice to the court of the content of the complaint sufficient for entry of default and consent judgments against tenants?

The form complaint contravenes several aspects of due process doctrine

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[40] Due Process requirements unquestionably apply to FED proceedings. *Green v Lindsey, supra; Lindsey v Normet, supra; Frank Emmet Realty v Monroe, supra; Richmond Tenants Org v. Kemp,* 956 F.2d 1300 (4th Cir. 1991)

pertaining to adequate notice.

Lack of Any Notice to Defendant.

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[41] 339 U.S. at 314.

First, in many situations the form complaint fails to provide defendants with any notice at all. Erroneous deprivation can arise from a complete lack of any notice to a defendant,[42] since Due Process requires that notice of some kind must be provided to the defendant.[43] The form complaint's fails to require the landlord to provide the tenant with any of several items: notice of the statutory or case law basis of the landlord's claim;[44] the identity and standing of the plaintiff; the jurisdictional basis of the court over the claim alleged; and, when and how the lease/contract was breached. No place for statutory citation is provided in the form, nor is it required in the notice to quit which must be attached to the complaint in notice cases. The other items are not addressed in the form complaint. On the one hand, the tenant may be left guessing and confused about, for example, what are the legal bases, if any, for the claims against her, and hence not understand how or whether to respond to the notice. On the other hand, the L&T court enters judgments by default as a matter of standard practice without ever determining whether the

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[42] *Richmond Tenants Org v Kemp*, 956 F.2d at 1308. (public housing tenants whose homes were seized under a federally sponsored "asset forfeiture" project intended to rid properties of unlawful drugs successfully challenged the seizure of their homes because the seizures occurred without any prior notice to the tenants).

[43] Naturally efforts must be taken so that written notice of the proceedings must reasonably be calculated to reach defendant physically. *Mullane* itself addressed this issue. 339 U.S. at 314. In 1982 the Supreme Court applied *Mullane* explicitly to require enhanced efforts to achieve service of process in eviction actions. *Green v Lindsey, supra*. In 1988, the D.C. Court of Appeals required the landlord to take reasonable steps to serve process on a tenant whom the landlord knew was residing in Colorado. *Frank Emmet Realty v. Monroe, supra*. This does not mean that in every case, notice must be guaranteed in fact to reach the defendant, but that reasonable efforts under all circumstances will be made to see that written notice reaches the defendant. See also, *Joint Anti-fascist Refugee Committee V. Mcgrath*, 341 U.S. 123 (1951).

[44] *Phillips Petroleum Co. v Shutts, et al*, 472 U.S. 797 (1985). *Richmond Tenants*

landlord/plaintiff has a legal basis for its claim or the other elements just named.[45] While it is true that the Form 1 complaint and summons by itself is likely to be sufficient to inform a tenant at a minimum of the actual pendency of an FED action, notice to the defending party must provide more than that there is a hearing concerning something affecting the defendant's property.[46] In other words, even though procedures may be available under SCR Rules 11 and 12(b)(6) and 12 (e) for an FED defendant represented by an attorney to move a court to test the validity of the claims alleged in the form complaint, the court through a defective form has all but forbidden the landlord/plaintiff from informing the tenant-defendants prior to the hearing to be held on the return date allowed by the FED about significant aspects of the claims raised against her.

In sum, the form complaint fails to provide any notice whatsoever of significant portions of the landlord's claims.

Informing Defendant of the Nature of the Claims Made

Second, courts have held in a variety of settings and in a variety of ways that the erroneous risk standard requires that the defendant be informed of the nature of claims affecting

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Org. v. Kemp, 956 F.2d 1300 (4th Cir. 1992).

[45] Final Report of the D.C. Bar Public Services Activities Corporation Landlord and Tenant Task Force, August, 1998. Unpublished. Copy in the possession of the author. ("L&T Task Force Report")

[46] *See e.g., Memphis Light, Gas & Water Division et al. v. Craft et al*, 436 U.S. 1 (1978); *City of West Covina v. Perkins*, 525 U.S. 234 (1999). Moreover, the language of the summons and complaint gives no notice about whether the tenant may raise any defenses or counterclaims to the eviction claims. A governmental entity is not required to explain to an affected party what procedures are available for that party to protect or recover her property, so long as the sources of the law are available to the party receiving the notice. The tenant has no means of determining what sources of law the landlord is relying on to support his or her claim and no means of determining the process for raising defenses or counterclaims.

their interests in order to allow them to decide how and when to take action to protect those interests, including appearing at a hearing. [47] Form 1does not permit the landlord to inform the court or the tenant of the nature of the claims against her and allow her to prepare for the return date hearing, and thereby significantly increases the risk of erroneous deprivation of the tenant's interests. Many tenants simply default, since they are not informed about the claims against them and are thereby left confused about how to respond.[48]

If the tenant actually shows up in court on the return date, risk of erroneous deprivation imposed by the defective form complaint can be either exacerbated or attenuated, depending on what happens on that first "return" day. The tenant might obtain an attorney, and the problems with the initial notice are vitiated through the usual court processes for testing the validity of the pleadings, i.e., discovery and pre-trial preparation. But in the vast majority of cases the tenant is

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[47] *Phillips Petroleum v. Shutts*, 472 U.S. 797, 812 (notice to absent class members must describe the action and the plaintiffs' rights in it); *Hamby v. Neel*, 368 F.3d 549 (6th Cir. 2004) (misleading information on application form for Tenncare violated notice requirement of Due Process); *Christopher v. Ken Davis Holding Co.*, 249 F.3d 282 (5th Cir. 2001); *Cuffee v. Sullivan*, 842 F.Supp. 1219 (D.Mo. 1993)(notice must be of such a nature as reasonably to convey the required information); *Graham v. Barnhart*, 2002 U.S. Dist. LEXIS 16958 (D.Kan. 2002); ; *Sullivan v. Barnett*, 139 F.3d 158 (3d Cir. 1998); *Cooper v. Makela*, 629 F.Supp 658 (D.N.Y. 1986); *Otto v. Texas Tamale Co.*, 219 B.R. 732 (Bankr. D.Tex. 1998); *Farmer v Admin. Dir. Of the Court, State of Hawaii*, 94 Haw. 232 (2000). One court cited to a requirement that notice must inform parties of "what is occurring". *Ibid*, at 739. Another holding required that the plaintiff inform defendant of his right to present evidence at the hearing, *Harlan Bell Coal v. Lamar*, 904 F.2d 1042 (6th Cir. 1990) and another of the duty of the plaintiff to inform defendants of their right to present objections at the hearing. *Kephart v Apfel*, 45 Fed. Appx. 606, 2002 US App. LEXIS 17253 (9th Cir. 2002).

[48] *Mullane* makes this point about the party being notified having to make a decision about whether to respond or not, as well. 339U. S. at 314 ("This right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to

effectively shepherded by the court clerks out into a lobby area for a one on one meeting with the attorney for the landlord, to work out a "settlement". Tenants have only the complaint as notice of the claims against them and no means to judge the validity of those claims and make a decision about whether and how to enter into a compromise with those claims. The form complaint, in bare notice pleading fashion, simply tells the tenant that there is some kind of a claim pending, bu not the details of the claim. Normally the tenant simply agrees to sign a consent judgment and agrees to move out of the premises within a few weeks, or agrees to pay the unabated back rent on top of current rent, even if the tenant may have substantial defenses.[49] If a tenant were informed of the precise details of the claim, she could have a better chance to think through and present what her objections to the claim might be.

The failure of the form complaint to inform the defendant of the claims made leaves the defendant guessing about how to respond to the claims, while the landlord's attorney is advantaged with knowing exactly what he or she is seeking from the court.

Timeliness of the Required Response Affects the Risk

A third aspect of adequacy of notice is its timeliness. Under the *Mathews/Doehr* calculus, what is a reasonable time to respond would depend on the variety of factors involved in the normally applicable procedures.[50] The FED statutory rule of one seven-day-size fits all, based on

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appear or default, acquiesce or contest.")

[49] This settlement negotiation process enjoys a very poor reputation among tenant attorneys in D.C. Conversation with Jonathan Smith, D.C. Legal Aid Society, July 6, 2004. See also, L&T Task Force Report, *supra*, footnote 42.

[50] Numerous courts have held that notice must provide a "reasonable time" for parties to prepare their defenses and enter an appearance. *Christopher v. Ken Davis Holding Co.,*

the pre-*Javins* legal system, arguably will not withstand scrutiny when the claims raised by the landlord and the defenses and counterclaims available to the tenant, are derived from now complex areas of the law. While the *Lindsey* Court rejected a claim challenging this time frame argument against the backdrop of early, greatly simplified housing law in effect in that era, the short time frame for the tenant to appear in court for a final hearing in response to the form complaint gives rise to a serious risk of erroneous deprivation when there is a complex of substantial defenses and counterclaims which tenants in D.C. may now raise. Short circuiting the time to prepare for court will usually lead the tenant to be unable to prepare, and again, an unreasonable and unnecessary risk of erroneous deprivation arises. Current Due Process doctrine does not likely countenance the short time frame for notice provided under a literal reading of the FED and the Form 1 complaint. Even currently, in those cases where the tenant is represented and has filed an answer with counterclaims, the court does not require trial within seven days, out of recognition that even experienced attorneys will need many days to begin to prepare a defense, research the many sources of applicable law, identify witnesses, and review documents from the landlord. More like a year is the time line leading up to a full jury trial, following pre-trial discovery. Presumably with a shorter time frame, an unusually detailed and explicit complaint would be required, setting forth the factual basis for the landlord's claim and the law underlying it. The form complaint does not provide such detailed notice and, hence, would likely not pass muster for lack of timeliness.

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249 F.3d 282 (5th Cir. 2001); *U.S. v. McCall*, 1999 U.S. App. LEXIS 18507(6th Cir. 1999); *Laconia Savings Bank v. U.S.*, 116 F. Supp. 2d 248 (D.N.H. 2000)(three weeks publication notice in forfeiture proceeding); *Miles v. D.C.*, 354 F.Supp. 577 (D.D.C. 1973);; *Cooper v. Makela*, 629 F.Supp 658 (D.N.Y. 1986); *Otto v. Texas Tamale Co.*, 219 B.R. 732 (Bankr. D.Tex. 1998).

DEFAULTS BASED ON A BARE COMPLAINT MIRROR ATTACHMENTS BASED ON THE BARE AFFIDAVITS IN DOEHR.

Doehr rejected the taking of property, even preliminarily, where plaintiff's allegations were not subjected to testing by any court procedures. Here, the numerous default judgments based on the landlord's sworn complaint obtained in D.C. L&T court are strikingly similar to the taking of real property based on the pre-trial procedure of a mere filing of a conclusory affidavit by the plaintiffs and rejected by *Doehr*.[51] No judge ever tests the validity of plaintiffs allegations of fact and law prior to the entry of a many L&T judgments. As noted above, defaults in regular civil proceedings generally must be followed by an *ex parte* proof hearing before a judgment may be entered under Superior Court Rule 55, unless the claim is for a sum certain. The lack of *ex parte* proof following entry of judgment in a complex L&T case arguably resembles the similar procedures rejected in *Doehr.* A default judgement is clearly viewed differently under Due Process scrutiny than a pre-judgment attachment, since, by defaulting the defendant has impliedly consented to the allegations in the complaint.[52] Nonetheless, the lack of any testing of the plaintiffs allegations by the court seriously risks the erroneous taking of property.

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[51] "Permitting a court to authorize attachment merely because the plaintiff believes the defendant is liable, or because the plaintiff can make out a facially valid complaint, would permit the deprivation of the defendant's property when the claim would fail to convince a jury, when it rested on factual allegations that were sufficient to state a cause of action but which the defendant would dispute, or in the case of a mere good-faith standard, even when the complaint failed to state a claim upon which relief could be granted. The potential for unwarranted attachment in these situations is self-evident and too great to satisfy the requirements of due process absent any countervailing consideration." 501 U.S. at 13-14.

MANDATING USE OF FORM 1 IS A TAKING OF TENANTS' DEFENSES AND CAUSES OF ACTION.

Finally, the court rules mandating the use of Form 1 extinguish or seriously degrade important tenant rights under the FED and the eviction controls legislation, which would give rise to a different kind of takings violation under the Fifth Amendment than lack of notice. When court procedures themselves extinguish or degrade a substantive defense or cause of action belonging to a party, those procedures are subject to challenge under the doctrine enunciated in *Logan v. Zimmerman Brush,* and under the three part *Matthews/Doehr* test.[53] As one commentator said in analyzing what procedures may be necessary to provide adequate notice to absent members in a class action lawsuit, "a chose in action is a constitutionally protected property interest. A court, therefore, must provide procedures consistent with due process to protect that interest."[54]

The landlord has a cause of action for breach of contract (the lease), when his tenant defaults on the rent or otherwise breaches the contract. The D.C. legislature has provided a statutory framework for enforcing that cause of action in a summary fashion through the FED. At the same time, in an effort to balance the speed of the proceeding which benefits the landlord against the need for adequate opportunity for the tenant to contest the claims, the legislature has

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[52] *E.g., Johnson v Berry*, 658 A.2d 1051 (1995).

[53] *Logan v. Zimmerman Brush*, 455 U.S. 422, 434 (1982) ; *Phillips Petroleum v. Shutts*, 472 U.S. 797 (1985). Steven T.O. Cottreau, Note: the Due Process Right to Opt out of Class Actions, 73 N.Y.U.L. Rev. 480 (1998).

provided the tenant certain significant protections within the FED and the eviction controls legislation, particularly the FED requirement that the summary proceeding be based on a significantly heightened pleading standard which is arguably the equivalent of summary judgment procedure, as discussed above. By degrading or severely diluting this statutory protection through the use of the highly cursory Form 1 complaint, the Superior Court has arguably extinguished or diluted this important tenant protection, and placed the tenant's own defenses and counterclaims against the landlord at substantial risk of erroneous loss. In other words, the court's mandate of the use of the Form 1 complaint causes the tenant to lose the protection of knowing the full extent of the landlord's claims , especially within the tight time frame provided in the statute. Tenants have been granted a right under the FED not to have their right to possession terminated in a summary proceeding except upon the basis of a detailed, verified showing by the landlord through a person "having knowledge of the facts". The L&T Rules mandating use of Form 1 contravene that right in a manner that subjects the tenant's defenses and counterclaims to an unacceptably high risk of erroneous deprivation in the ensuing proceeding.[55]

REFORM OF THE FED AND FORM COMPLAINT

What revisions of Form 1 and of the FED provisions would satisfy these Due Process concerns?

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[54] *Id*, Cottreau, *supra*, at 512. (Footnotes omitted)

[55] In addition to contravening the *Logan* doctrine, the L&T Rule mandating the use of Form 1 violates D.C. Code § 11-946, which is commonly interpreted by the D.C. Courts to forbid the Superior Court from modifying substantive rights through court rules. *Matter of*

First, revision of the form complaint could use notice pleading tailored to individual cases as found in regular civil cases. While various court and bar committees have wrestled over many years with trying to come up with a new form complaint or series of form complaints, none have succeeded. The law is simply too complex: there are approximately eight possible causes of action for possession authorized under the eviction controls statute. The requirement for the use of a single form complaint could be abolished in favor of the more standard notice pleading. When a landlord truly needs immediate relief, the landlord should file a notice pleading complaint and then file a motion for preliminary relief and for summary judgment.

Second, a significant reform would be to conform L&T practice to the standard practice in the other parts of the civil division with regard to default judgments. That is, before a judgment may be entered by default, the landlord should be put to his proof under Rule 64 at an *ex parte* hearing. The judge would examine all the facts and law underling a claim before adjudicating the matter. Some observers might ask, how could the court conduct such an examination on the 40,000 or so default judgments that are currently entered by the L&T Branch? Perhaps the best response is that many of them are likely cases filed primarily to pressure tenants into paying back rent. Faced with real procedures that in fact comport with due process, perhaps most of the 40,000 cases would not be filed in the first place. Landlords would have to find other means to collect back rent. The Superior Court would get out of the business of putting a rubber stamp on claims about which it has no clue as to the validity of the law and facts upon which they are based. Due process standards contemplate courts being about the business of adjudicating cases, not operating eviction mills and collection agencies.

C.A.P., 356 A.2d 335 (D.C. 1976).

Of course, not every defective complaint presents the court with a Due Process violation that could be challenged by a lawsuit brought in federal court. D.C. Superior Court, like federal court, provides defendants, who are fortunate enough to have an attorney, through court rules with protections against defective and uninformative complaints. As stated, procedures set forth under SCR Rules 7 through 12 allow a defendant to test the sufficiency of a complaint with a motion under SCR Rule 12(b)(6), and if the complaint exhibits frivolous allegations, or allegations set forth for purposes of delay or harassment, or lack any basis in the law, the court may sanction the party plaintiff and even the party's attorney under Rule 11. However, not just an individualized defective complaint is addressed here, but a court-mandated form applied in the context of almost universally pro se tenants, and in the context of a high percentage of default judgments.

Any Due Process challenge to the Form 1 complaint and its use in the L&T Branch must address not only the form itself, but the court procedures surrounding its use.

POINT III.

THE RISK OF ERRONEOUS DEPRIVATION ARISING FROM SEGREGATING TENANTS' CLAIMS FROM LANDLORDS' CLAIMS

The Supreme Court held in *Lindsey v Normet* that a "limitation of the litigable" issues in FED cases complied with the requirements of due process.[56] There defendants challenged, *inter alia,* the Oregon procedure "... to limit the triable issues in an FED suit to the tenant's default and to preclude consideration of defenses based on the landlord's breach of a duty to maintain the premises". This limitation, defendants contended, denied due process of law because tenants were being evicted for failing to pay rent for defective premises, when under Oregon law, the rent that was the basis of the eviction action should have been abated, and because the landlord was seeking to evict the tenant in retaliation for reporting housing code violations. According to the defendants, the rental payments should have been suspended while the alleged wrongdoings of the landlord were litigated. The Court held that it saw " no constitutional barrier to Oregon's insistence that the tenant provide for accruing rent pending judicial settlement of his disputes with the lessor."[57] Stated more precisely, the Court held that states such as Oregon were permitted to provide for tenants to raise a variety of counterclaims and defenses to a landlord's action for possession, but that the due process clause did not require the state to permit this in the same proceeding as the FED.

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[56] 405 U.S. at 66

[57] *Ibid.*

To reach this conclusion, the Court did not engage in a *Doehr* form of analysis, but relied primarily on two much older cases based on a long-standing principle of real property law, namely, that an action for possession of a piece of property should be resolved prior to adjudicating a dispute about title to that property. *Grant Timber & Mfg. Co. v. Gray*, 236 U.S. 133 (1915)(14th Amendment does not conflict with allowing a suit for possession of land to be resolved before a claim of title is heard). *Bianchi v. Morales*, 262 U.S. 170 (1923)("The United States, the States, and equally Porto Rico, may exclude all claims of ultimate right from possessory actions, consistently with due process of law."). The main reason, apparently, was that real property law had worked that way for generations, and nothing about due process commanded a different result. The Court recognized that Oregon law permitted defendants in FED actions to raise a number of types of counterclaims, but held that there was nothing in due process doctrine that would require the Court to "federalize" the law of real property by reading the due process clause to require a state to do so.[58]

Interestingly, the Court included in its analysis the observation that under American Law a party should always be permitted to raise whatever defenses it may have.[59] The Court found that real property law had at that time certain characteristics that permitted the landlord to obtain a prompt determination from a court as to the issue of possession before any other claims or issues

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[58] "The Constitution has not federalized the substantive law of landlord-tenant relations, however, and we see nothing to forbid Oregon from treating the undertakings of the tenant and those of the landlord as independent rather than dependent covenants." p 20-21.

[59] "Due process requires that there be an opportunity to present every available defense." American Surety Co. v. Baldwin, 287 U.S. 156, 168 (1932). See also Nickey v. Mississippi, 292 U.S. 393, 396 (1934)." 405 U.S. at 67

pertaining to title could be raised. The Court ignored the fact that the Oregon defendants were not raising claims pertaining to title, but were making what at that time were entirely new sorts of counterclaims, namely, based on breaches of the warranty of habitability.

The dissent sharply criticized the majority's holding by suggesting a line of analysis that foreshadows in many ways the *Doehr* analysis.[60]

Nearly contemporaneously with *Lindsey*, the Court issued a number of decisions which could be read call into the question the majority's views on due process in that case. The same Court that rejected the notion in *Lindsey*, held in a number of contexts that allowing one party access to court relief before the defending party had access to a hearing on the matter violated due process. These cases include: *D. H. Overmyer Co., Inc., of Ohio et al. v. Frick Co.*, 405 U.S. 174 (1972) (heavy burden of proof of waiver of due process required before a confession of judgment could be entered); *Fuentes v. Shevin*, 407 U.S. 67 (1972)(rejecting writ of replevin of personalty based merely upon *ex parte* application; rejecting summary extra-judicial process of pre-judgment seizure); *Lynch v. Household Finance Corp. Et Al.*,405 U.S. 538 1972) (questioning pre-judgment garnishment procedures); *Sniadach v. Family Finance Corp. Of Bay View, et al.*, 395 U.S. 337 (1969)(reviewing summary pre-judgment remedies; seizure occurs prior to owner having any chance to contest). In these decisions, the Court expressed an unwillingness to allow a party making a claim to gain access to relief from a court without the defendant having a fair chance to offer a defense to the claim. None of these decisions addressed directly the extent to which court procedures can segregate plaintiff's claims from defendant's counterclaims and

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[60] 405 U.S. at 81.

defenses.

Since the decision in *Doehr* in 1991, lower courts commonly follow the principle that a defendant must be permitted to have a fair opportunity to present its side of a dispute over property before a court may give substantial relief to the plaintiff. *Keystone Builders, Inc., v. Floor Fashions of Virginia, Inc., et al,* 829 F. Supp. 181(1993) (reviewing compliance of Virginia state court pre-judgment attachment procedures with *Doehr* standard). *Pawnbrokers & Secondhand Dealers Ass'n, Inc. v. City of Fort Lauderdale,* 699 F. Supp. 888 (S.D. Fla. 1988) (police seizure of property in possession of a pawnbroker without notice and a hearing violated due process) ; *Landers v. Jameson*, 2003 Ark. LEXIS 649 (2002)(state pawnbroker statute violated due process by allowing claimant of pawned item to obtain possession merely upon filing of an affidavit requesting the item).

Would the "limitation of litigable issues" approved in *Lindsey* survive due process scrutiny today? Should the Lindsey holding be read to simply to requiring the tenant to pay or escrow any rent due the landlord, pending ajudication of the matter?

D.C. courts long ago mitigated this very problem in FED cases by promulgating a court rule mandating that the court hear tenants' counterclaims based on breach of the warranty of habitability together with the landlords' claims. The governing rules of the D.C. Superior Court Landlord and Tenant Branch limit the kinds of claims and defenses that a tenant may raise in response to an FED action, but do allow such counterclaims. Rule 5(b) of the Rules provides:

> (b) Counterclaims. In actions in this branch for recovery or possession of property in which the basis of recovery is nonpayment of rent or in which there is joined a claim for recovery of rent in arrears, the defendant may assert an equitable defense of recoupment or set-off or a counterclaim for a money judgment based on the payment of rent or on expenditures claimed as credits against rent or for equitable relief related to the premises.

> No other counterclaims whether based on personal injury or otherwise, may be filed in this branch. This exclusion shall be without prejudice to the prosecution of such claims in other branches of the court.

A fresh review of the status of the law in this area may encourage attorneys representing tenants to approach decisions about which counterclaims to make with more confidence, knowing that the due process clause plays a larger role in this area than was countenanced in the *Lindsey* decision.[61] Judges hearing FED actions may approach adjudication of certain kinds of tenant counterclaims and defenses with a fresh perspective, if the role of current due process doctrine is set forth more clearly than it was in *Lindse*y. Application of the *Mathews/Doehr* three part test to the D.C. FED limitation on counterclaims and defenses, indicates that any extreme form of limitation may cause undue risk of erroneous deprivation of tenant's property in some situations.

Part one of the four part test: the tenant/defendant's interest.

Consideration of the first part of the test, "the private interest affected by the [civil proceeding]", will need to take into account the strong tenant's interest in continuing legal possession of her dwelling during the pendency of the FED action and her claims. Because the dwelling at stake in the proceeding is usually the only home available to the defendant, and most defendants do not have the financial ability to obtain alternative decent, safe, and sanitary housing while the claims for both sides are litigated, the tie between the tenants access to her housing and her ability to litigate her claims is usually extremely close. Hence, court treatment of the sequencing of its handling of claims and defenses on both sides is of extreme importance to the

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[61] Generations of tenant defense attorneys in D.C., including the author, have followed the notion that only a breach of the warranty of habitability by the landlord could be

tenant.[62] In many cases, the tenant's very ability to litigate effectively is severely compromised by the loss of her home before her claims are finally determined by the court.

The *Lindsey* Court passed quickly over the seriousness and finality of the grievous loss that many low income tenants suffer as a result of an eviction, as the dissent noted. Analysis of the procedures applied in the L&T Branch should take into account the enormous risk that most tenants face in litigation that may result in the loss of their homes, particularly low income tenants[63].

Second test: "the risk of erroneous deprivation through the procedures used and the probable values of additional or alternative safeguards."

As stated, the *Lindsey* Court held that some segregation of issues in an eviction proceeding comported with due process.

Are there cases under D.C. law where a court's refusal to hear, concurrently with landlord's claim for possession, certain tenant counterclaims and defenses would raise an unreasonably high risk of erroneous deprivation of the tenant's property, in terms of the *Doehr* analysis? Several examples suggest how such segregation could cause a problem.

First, under D.C. law, a lease is void *ab initio* where conditions in the apartment are

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raised as a counterclaim by tenants.

[62] This is not to dispute that there are situations where a well to do tenant may have two or several dwellings, and where their ability to litigate would not be incommoded by the loss of possession of the disputed unit.

[63] See, e.g., Chester Hartman and David Robinson, *Evictions: The Hidden Housing Problem*, HOUSING POLICY DEBATE, vol. 14, Issue 4, p. 461. 2003 (Fannie Mae Foundation).

seriously out of compliance with the housing code at the inception of the tenancy.[64] Normally, a written lease will contain a provision waiving the landlord's duty to serve the tenant with a notice to quit terminating the tenancy, which is otherwise a condition precedent to filing an FED action. If the lease be void, the waiver of the notice is void, and the landlord's action for possession would be dismissed, since landlords rely on the waiver before filing an FED action, rather than sending the tenant a notice to quit. For a court to refuse to hear the tenant's claims that a lease is void *ab initio* would raise a very serious risk that the court would erroneously deprive the tenant of possession. The landlord under D.C. law in this situation has no claim for possession, and yet the court would be entering judgment on such a claim by refusing to entertain the tenant's counterclaim. Rule 5(b) prevents the court from entertaining this error because it allows the tenant to raise the counterclaim, and the requirement of due process is satisfied.

Second, if the landlord's claim for possession were based on tenant's failure to pay rent, and the tenant could show under D.C. law that serious housing code violations in the unit were sufficient to abate all of the rent due, the court would be entering judgment erroneously by failing to entertain the tenant's housing code defense.[65] Again, Rule 5(b) prevents this error.

These situations highlight the potential for erroneous deprivation of a tenancy, and L&T Rule 5(b) may be said to satisfy the due process standard by requiring the court to entertain the tenant's warranty counterclaims and defenses in both cases. Should the court ever consider revising L&T Rule 5 (b), its due process underpinnings would have to be carefully considered.

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64 *Brown v. Southall Realty, supra*.

65 *Javins v. First National Realty*, 428 F.2d 1071 (D.C. Cir. 1970). 14 D.C. Mun.

However, Rule 5 (b) does not allow the court to entertain many sorts of counterclaims.

As a third example, suppose that a private, absentee landlord managed his property for several years through a hired management company, but then terminated that company, and failed for a year to hire a new management company. However, a dishonest onsite property manager continued to occupy his office in the building and to collect the rent from the tenants who did not learn of the termination of the management company. After the year, the landlord hired a new management company, and sued the tenants for the year of back rent which the landlord had not collected. The tenants might claim that they had paid all the rent due, but had been duped into paying it to the dishonest former property manager. The tenants would want not only to claim that they had paid all rent due and owing, but also to join their claim for moneys paid to the property manager in the action for possession, and bring in the dishonest former manager as a third party defendant to the action. They would want to ask the court to order him to pay over the rent he had wrongfully collected to the landlord. However, the L&T Rules do not permit third party joinder under Superior Court Rule 14. L&T Rule 2. A plain reading of Rule 5(b) would prohibit the tenants from filing a cross claim against the dishonest manager, much less counterclaim against the landlord. The tenants could file an independent action against the property manager and then move to join the landlord's action for possession and the action against the property manager. The author suspects that most L&T judges would allow these suits to be joined or heard jointly, but failure to allow joinder would raise a serious risk of erroneous

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Regs § 301.1.

deprivation of the tenancies, and hence due process concerns.[66] In light of this example, Rule 5(b) does not avert all due process concerns for the court on this point.

A fourth example further highlights the due process implications of limiting counterclaims and defenses in FED actions. Suppose a pattern and practice fair housing case, where a landlord has raised the rent, without violating any rent control standards, for the African- American tenants in a building, while raising rents by much lesser amounts for white residents. An African American tenant makes two payments and then fails to continue pay the full amount of the increased rent and is sued for possession based on non-payment of rent. The tenant/defendant seeks to counterclaim based on violations of the federal Fair Housing Act and the D.C. Human Rights Act.[67] The counterclaims might be for injunctive relief against the rent increases and for actual and punitive damages against the landlord and his property manager.[68] L&T Rule 5(b) on its face would seem to prohibit the filing of such counterclaims. However, for the court not to permit these counterclaims to be heard at the same time as the landlord's claim for possession would give rise to a serious risk of erroneous deprivation of the tenancy, since the tenant could easily be evicted prior to obtaining relief on her fair housing claims, if they were filed and tried separately. Again, I suspect that most judges in the court would permit the counterclaim to be heard, or consolidate or join the cases.

In fact, in *Douglas v. Kriegsfeld Corporation*, 849 A.2d 951 (D.C. May 13., 2004),

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[66] *See, e.g., Shin v Portals Confederation Corporation*, 728 A.2d 615 (D.C. 1999) (tenant may raise as a defense any matter going to the merits of the landlord's claim).

[67] 42 U.S.C. § 3601 et seq. D.C. Code § 2-1401.01 *et seq.*

vacated, 2004 D.C. App. LEXIS 420 (August 6, 2004). the D.C. Court of Appeals, in a panel decision which was later vacated, ruled in favor of a tenant with a mental disability raising a claim against the landlord for a reasonable accommodation based on her disability under the federal Fair Housing Act. The vacated panel decision simply made no reference to L&T Rule 5(b). Perhaps the court recognized, impliedly, that the federal Fair Housing statute pre-empted the local Rule 5(b), and that the tenant was requesting "equitable relief related to the premises." Significantly, the tenant had vacated the premises prior to the Court of Appeals making its decision and prior to the Fair Housing Act claim adjudication.

The D.C. courts have effectively narrowed the applicability of Rule 5(b) in a series of cases allowing counterclaims and defenses that, while closely involved with the landlord's main claim, on their face would seem to be barred literally by the Rule. *Henry B.Y. Shin, v. Portals Confederation Corporation, et al.*, 728 A.2d 615 (D.C. 1999)(fraud counterclaim voluntarily dismissed in L&T Court was held in a later action to be barred by res judicata)(strenuous dissent by Ruiz, J.). *Barton v D.C.*, 817 A.2d 834 (D.C. 2003) (defense of racial discrimination by landlord held cognizable in L&T Court notwithstanding Rule 5(b), since any defense of general denial of liability is cognizable). *Williams v. Dudley Trust Found.*, 675 A.2d 45 (D.C.1996) (Judge sitting in L&T Branch had authority to hear L&T and related matters in context of action for possession based on failure to pay on real estate purchase contract. This case might be viewed as simply two consolidated cases, one an FED action, being heard together.). [69]

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[68] 42 U.S.C. § 3613(c).

[69] *Cf.*, Partmar Corporation et al. v. Paramount Pictures Theatres Corp., et al., 347

On the other hand, Rule 5(b) has been applied robustly to disallow the filing of several types of counterclaims by tenants. *Millman Broder & Curtis v. D. F. Antonelli, Jr., et al.*,489 A.2d 481 (D.C. 1985)(applying Rule 5(b) to a general tort damages counterclaim). *Frank Mathis, Jr. v. Ulysses Barrett*, 544 A.2d 287, (D.C. 1988) (applying Rule 5(b) to prohibit filing a counterclaim in tort that went beyond housing code violations). *Miles Realty Co. v. Garrett*, 292 A.2d 152, 153 (D.C. 1972) (remand to trial court for dismissal without prejudice of counterclaim for damages to personalty as improperly filed in Landlord and Tenant Branch). *Weisman v. Middleton*, 390 A.2d 996, 1001 (D.C. 1978) (counterclaim for malicious prosecution would not be permitted under Rule 5(b) in a second eviction action giving rise to a claim for malicious prosecution). *Winchester Management Corp. v. Staten*, 361 A.2d 187 (D.C. 1976)(equitable defense of set-offs based on housing conditions not covered by the Housing Code not permitted since they did not go to the validity of the lease).

These cases are difficult to reconcile with each other, and the underlying issue remains, whether Rule 5(b) is adequately drafted to guide the court's decision making so as to maintain compliance with due process requirements. In other words, the D.C. courts have not yet developed a coherent doctrine on handling limitations on issues in FED actions in light of the "erroneous deprivation standard" set forth in *Doehr*.[70]

U.S. 89, (1954) (movie theaters counterclaims under anti-trust legislation).

[70] As noted, D.C. courts have applied Rule 5(b) to allow some significant categories of counterclaims, offsets, and defenses to be raised against the landlord's claims in an FED action, and hence the timing of access problem is obviated. These categories include: adequacy of service of process; the warranty of habitability; a defendant's challenge to the plaintiff's title to the property (a "plea of title" sends the case to another branch of the court); other challenges to

Rule 5(b)'s compliance with Due Process might best be preserved by the court permitting tenants to raise any defense, counterclaim, case consolidation, third party claim, or stay of an eviction action in situations where the tenant can show that a hearing on the landlord's claims in advance of a hearing on the tenant's claims will seriously prejudice the tenant's interests in possession. Entertaining such motions would be a mechanism for satisfying the second aspect of this second part of the four part *Doehr* test.

At some point, de-coupling tenant's defenses and counterclaims from the landlord's claims amounts to a pre-judgment attachment of the tenant's property. Courts may not be able easily to derive a bright line test for when such a pre-judgment attachment will occur, but there may be cases that cross that line, and a modified procedure for the court's entertaining such tenant motions would forestall the court from crossing that line.

There are extremely serious interests on both sides in L&T cases. The de-coupling of tenant's defenses and counterclaims from landlord's main claims in the context of this complexity of the law and the facts can give rise to a very high risk of erroneous deprivation in the absence of procedures to sort out the issues fairly.

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the landlord's standing to bring the action -- within certain limits; actual payment of the rent claimed as due and owing; tenant challenges to the truth of the landlord's notice claim, e.g., repeated late payment of rent by the tenant; and, the legality of rent increases. In addition, the eviction action may be stayed pending action by the D.C. Rental Accommodation Office determination of whether the rent charge complies with the D.C. rent control regime. *Drayton v Poretsky Mgt.*, 462 A.2d 1115 (D.C. 1983).

CONCLUSION

The FED process, in D.C. at least, may not withstand due process scrutiny because the Form 1 complaint fails to provide minimally adequate notice to defendants and allows landlords to obtain a judgment without the factual showing required by the FED statute and Due Process. Reform is needed to preserve due process, and provide better notice to tenants, while providing landlords with some modicum of speed in the fair adjudication of their claims.

Reform to the complaint procedures of L&T court and to the procedures preventing tenants to file uncurtailed claims and defenses are clearly not a solution to all the problems identified by Chester Hartman in his study of evictions, or to all the issues raised in Prof. Spector's analysis of the evolution of L&T law. Tenants will still be evicted unfairly at times and face a world of homelessness. But the court will be forced to operate more fairly if plaintiffs must state their cases more clearly and accurately in the initial complaint. Some tenants will have a better understanding of what to do when they come to court, and perhaps be able to respond more intelligently to claims raised in the complaints. The Court will be less inclined to enter judgments by default where the face of the complaint shows no basis for doing so.

The intellectual underpinnings of *Lindsey v. Normet* have attenuated. Perhaps, as Prof. Spector and others have suggested, it is time to lay it to rest. There exist substantial legal bases for doing so.

ATTACHMENT 1.

SUPERIOR COURT RULES OF PROCEDURE FOR THE LANDLORD AND TENANT

BRANCH

D.C. SCR-LT Appx., Form 1 (2003)

Form 1. Complaint for possession of real estate

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION, LANDLORD AND TENANT BRANCH

500 Indiana Avenue, Northwest
John Marshall Level, Room JM-255
Washington, D.C. 20001 Telephone 879-1152

L&T .....

..... vs. .....

Plaintiff/Landlord Defendant/Tenant

....

Address Address

..... Washington, D.C.

Zip Code Zip Code

COMPLAINT FOR POSSESSION OF REAL ESTATE

DISTRICT OF COLUMBIA, ss:

..... being first duly sworn, states: ( ) he or she is the landlord and/or ( ) licensed real estate broker or ( ) the landlord's authorized agent of the house, apartment or office located at ....., Washington, D.C.

The property is in the possession of the defendant, who holds it without right.

The landlord seeks possession of the property because:

A. ( ) The tenant failed to pay: $ ....., total rent due from ..... to .....; $ ....., late fees; and/or $ ....., other fees (Specify) .....

The monthly rent is $ ..... The total amount due to the landlord is $ .....

Notice to quit has been: ( ) served as required by law ( ) waived in writing.

B. ( ) Tenant failed to vacate property after notice to quit expired. (copy attached).

C. ( ) For the following reason: (explain fully). .....

.....

Notice to quit is: ( ) not required ( ) waived in writing ( ) other ...

Therefore, the landlord asks the Court for:

( ) judgment for possession of the property described.

( ) judgment for rent, late fees, other fees and costs in the amount of $ .....

( ) an order of the Court that all future rent be paid into the Registry of the Court until the case is decided.

Subscribed before me this ..... day of ....., 20...

.....
Plaintiff/Landlord or Agent

....

Notary Public My Commission expires:

SUMMONS -- TO APPEAR IN COURT

YOU ARE HEREBY SUMMONED AND REQUIRED TO APPEAR ON ....., 19.. AT 9:00 A.M. PROMPTLY, in Landlord and Tenant Court, Courtroom JM-16, 500 Indiana Avenue, N.W. (John Marshall Level) to answer your landlord's compliant for possession of the premises listed in the above complaint. If you live on the premises and you are not named as a tenant you must come to court if you claim a right to possession of the premises.

CONVOCATORIA -- DE COMPARENCIA AL TRIBUNAL

A USTED SE LE ORDENA Y EXIGE QUE COMPAREZCA EL ....., 19.. A LAS 9:00 A.M. al Tribunal de Arrendadores y Arrendatarios, Sala JM-16, Avenida Indiana #500, Noroeste (piso John Marshall) a contestar la demanda entablada por ocupacion de la propiedad aqui citada. Si usted vive en esa propiedad sin que se le mencione como inquilino, debe presentarse al Tribunal para reclamar cualquier derecho de ocupacion que tenga sobre la misma.

.....
Plaintiff's/Landlord's Attorney
Abogado del demandante/Arrendador CLERK OF THE COURT
SECRETARIO DEL TRIBUNAL

..... Costs of this suit to date are

Address/Direction Zip Code/Codigo postal Costos del jucio hasta la fecha

.....
Phone No. Unified Bar No.

Telefono No. de afiliacion
Sociedad de Abogados

.....

Date	Court Clerk's Memorandum	Judge Clerk's Initials