IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF RESIDENTIAL SUMMARY EVICTION ACTIONS AND NOTICES DURING COVID-19.

ADKT 0567

FILED

OCT 06 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER ADOPTING THE TEMPORARY RESIDENTIAL SUMMARY EVICTION MEDIATION RULES

WHEREAS, on August 31, 2020, Chief Justice Kristina Pickering and Justice James Hardesty filed a petition requesting the Nevada Supreme Court to adopt rules relating to mediation of summary residential evictions and to amend the Nevada Justice Court Rules of Civil Procedure respecting summary eviction notices.

WHEREAS, this court solicited public comment on the petition and a public hearing was held in this matter on September 22, 2020, and thereafter invited additional public comment; and

WHEREAS, the adoption of the Temporary Residential Summary Eviction Mediation Rules is appropriate; accordingly,

IT IS HEREBY ORDERED that the Temporary Residential Summary Eviction Mediation Rules shall be adopted and shall read as set forth in Exhibit A.

IT IS FURTHER ORDERED that the adoption of the Temporary Residential Summary Eviction Mediation Rules shall be effective on October 15, 2020. On August 31, 2020, Governor Sisolak entered Declaration of Emergency Directive 31 ordering that the Supreme Court may exercise its inherent authority as a separate branch of government to waive the provisions of NRS 2.120 requiring 60 days between

the notice of entry of new rules and its implementation for the purpose of adopting new rules to implement SB1. The clerk of this court shall cause a notice of entry of this order to be published in the official publication of the State Bar of Nevada. Publication of this order shall be accomplished by the clerk disseminating copies of this order to all subscribers of the advance sheets of the Nevada Reports and all persons and agencies listed in NRS 2.345, and to the executive director of the State Bar of Nevada. The certificate of the clerk of this court as to the accomplishment of the above-described publication of notice of entry and dissemination of this order shall be conclusive evidence of the adoption and publication of the foregoing rule adoption.[1]

Dated this 6TH day of October, 2020.

Pickering, C.J.
Pickering

Gibbons, J.
Gibbons

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Stiglich, J.
Stiglich

Cadish, J.
Cadish

Silver, J.
Silver

[1]Nothing in these rules is intended to terminate or prevent any voluntary mediation program that has been organized to resolve landlord and tenant disputes prior to any court involvement.

cc: All District Court Judges
All Justices of the Peace
Hon. Diana L. Sullivan, Justice of the Peace, Las Vegas Township and President, Nevada Judges of Limited Jurisdiction
Barbara Buckley, Executive Director, Legal Aid Center of Southern Nevada
Jim Berchtold, Directing Attorney, Consumer Rights Project
Eric Dobberstein, President, State Bar of Nevada
Kimberly Farmer, Executive Director, State Bar of Nevada
Clark County Bar Association
Washoe County Bar Association
First Judicial District Bar Association
Elko County Bar Association
Douglas County Bar Association
Administrative Office of the Courts

EXHIBIT A

ADOPTION OF TEMPORARY RESIDENTIAL SUMMARY EVICTION MEDIATION RULES

Rule 1. Applicability. This rule applies to summary eviction actions filed pursuant to NRS 40.253. The justice court may in its discretion refer summary eviction actions filed pursuant to NRS 40.254 to mediation under this rule.

Rule 2. Definitions.

(a) "Mediation" in this context means a process in which a neutral third party facilitates a confidential discussion between the landlord and tenant to explore alternatives to court-ordered summary eviction. It is an informal and nonadversarial process with the objective of helping the landlord and tenant determine, together, whether they can reach a mutually acceptable and voluntary agreement to resolve their dispute. The role of the mediator includes, but is not limited to, helping the parties to identify issues and resources and explore settlement options, as well as fostering direct communication and collaborative problem solving.

(b) "Mediation Administrator" or "Administrator" means the person or entity designated by the supreme court to be responsible for administering the summary eviction mediation program throughout the state.

Rule 3. Information to be included on the justice court website. The justice court must post in its clerk's office and provide on its website, if one is maintained, information in both English and Spanish concerning the availability of:

(a) An existing mediation program;

(b) Known government-sponsored rental assistance programs;

(c) An electronic option for filing the tenant's affidavit, if available; and

(d) Civil legal aid programs, court self-help centers, or similar programs in the jurisdiction that may be able to assist the tenant with completing and filing a tenant's affidavit.

Rule 4. Information to be included in the landlord notice. In addition to the requirements of JCRCP 101 and NRS 40.253(3), a notice served pursuant to NRS 40.253(1) or (2) must:

(a) Advise the tenant(s) of the availability of:

(1) An existing mediation program;

(2) Government-sponsored rental assistance programs; and

(3) An electronic option for filing a tenant's affidavit.

(b) A landlord may comply with the notice requirements of paragraph (e)(1) by including in the notice in bold type the following: "Tenants are advised that the [_____] Justice Court has information on its website concerning the availability of mediation, government-sponsored rental assistance, and electronic filing for the tenant affidavit, among other matters. A tenant may access this information at [insert link here]."

(c) In jurisdictions where the justice court does not have a website, a landlord may comply with the notice requirements of paragraph (e)(1) by including in the notice in bold type the following: "Tenants are advised that information concerning the availability of mediation and government-sponsored rental assistance may be accessed at [insert link here to administrator's information page, then require admin. to post this info.]."

(d) In addition to the requirements of NRS 40.254(1)(c), a notice served pursuant to NRS 40.254(1) must advise the tenant of the availability of any electronic option for the filing of the tenant's affidavit.

Rule 5. Procedure for requesting mediation.

(a) A tenant may request mediation of a summary eviction action by stating that request in the affidavit filed by the tenant in the matter pursuant to NRS 40.253(3). Such request must include:

(1) A preferred method of mediation, i.e., whether in person, by telephone, or by videoconferencing;

(2) The name of the tenant(s) who will be participating in the mediation;

(3) Accurate contact information for each participating tenant, including address, telephone number, and email address for receiving notices from the court and mediator;

(4) Whether an interpreter is required and the language needed;

(5) A statement indicating whether the tenant has previously applied for rental assistance and, if so, identifying the entity or entities to which application was made, and whether such application was approved, denied, or pending; and

(6) A statement as to whether the tenant has previously entered into a repayment plan with the landlord for rental arrearages.

(b) A landlord may request mediation of a summary eviction action by stating that request in the complaint for eviction filed by the landlord in the matter. Regardless of whether the landlord requests mediation, the complaint for eviction must include:

(1) A preferred method of mediation, i.e., whether in person, by telephone, or by videoconferencing;

(2) The name of the individual who has authority to settle the case and will be participating in the mediation; and

(3) Accurate contact information for the individual with authority to settle the case, including address, telephone number, and email address for receiving notices from the court and mediator.

Rule 6. Court order setting summary eviction hearing when mediation requested. If the landlord or tenant requests mediation of the summary eviction action, immediately upon the filing of the complaint by the landlord the court will serve a written order to the landlord, tenant, and Administrator that:

(a) Sets the date, time, location, and method of the summary eviction hearing, which date shall be no sooner than 30 days after the filing of the complaint;

(b) Provides the contact information of the Administrator, landlord, and tenant and requires the landlord and tenant to contact the Administrator immediately if the listed contact information has changed or another method of contact is preferred;

(c) States that the Administrator will assign a mediator who will notify the parties of the date, time, location, and method of the mediation;

(d) Directs the landlord and tenant to register with the online portal maintained by the Administrator, if one is established;

(e) Notifies the landlord that failure to participate in mediation may result in dismissal of the summary eviction action; and

(f) Notifies the tenant that failure to participate in mediation will result in the summary eviction hearing proceeding as scheduled.

Rule 7. Assignment of mediator and scheduling of mediation. No later than 2 working days after receipt of the order from the court, the Administrator shall randomly select and assign a mediator to preside over the mediation and shall notify the selected mediator of the assignment. The Administrator may direct a mediator to group mediations relating to a single landlord.

(a) The Administrator shall maintain a list of mediators available to hear eviction mediations. The list shall include mediators appointed by the Nevada Supreme Court to serve as mediators.

(b) Mediators must meet the following qualifications:

(1) Be an experienced mediator who has participated in a training program consisting of at least 40 hours of classroom and role playing and who has conducted 10 mediations as a co-mediator or sole mediator; and

(2) Participate in a training program of at least 2 hours consisting of education in evictions, landlord-tenant law, and such other topics as determined necessary by the Administrator or the court.

(c) No later than 3 working days after notification of selection by the Administrator, the assigned mediator shall send notice to the landlord, tenant, Administrator, and interpreter, if one has been requested, of the date, time, location, and method of mediation by email, regular mail, or the online portal maintained by the Administrator, if one is established. The mediator shall consider the tenant's and the landlord's stated preferences with respect to the form the mediation takes but the ultimate decision is up to the mediator.

(1) The mediator shall set the mediation for a date not later than 3 judicial days prior to the date of the summary eviction hearing set by the court.

(2) The mediator may at any time prior to the mediation continue the date of the mediation upon the request of the landlord or tenant for good cause to a date not later than 3 judicial days prior to the date of the summary eviction hearing.

(3) The assigned mediator is responsible for:

(A) Initiating the call to the parties at the phone numbers provided in the pleadings, when mediation is ordered by telephone; or

(B) Selecting the video-teleconferencing platform, paying for any video-teleconferencing fees, and sending the teleconference invitation to the parties at the email addresses provided in the pleadings, when mediation is ordered by video-teleconferencing; or

(C) Providing an office or other comparable space to conduct the mediation.

(d) At the mediation, the mediator must discuss with the parties and counsel, if any, the facts and issues involved, and assist the parties in identifying and resolving issues and exploring rent relief and other funds available to resolve the dispute and settlement alternatives. The mediator may also request that representatives of existing programs for rental or other assistance or representatives from Nevada's DETR participate in the mediation. Any such representative would be subject to the confidentiality provisions of these Rules.

(e) The mediation will continue until a settlement is reached or the parties have reached an impasse. If settlement is reached, the mediator will assist the parties in reducing their settlement agreement to writing, which

writing shall be signed by both landlord and tenant. Electronic signatures are acceptable.

(1) Settlement agreements resulting in a payment arrangement between the landlord and tenant must specify the terms of the payment arrangement to include:

(A) When, where, and how payments are to be made;

(B) The amount of payments; and

(C) The acceptable method of such payments, i.e., cash, check, or money order.

(2) Settlement agreements resulting in a tenant's surrender of the property must specify the date and time such surrender is to be complete.

(3) All settlement agreements must inform the parties that any allegations of noncompliance of the opposing party must be addressed by the court by way of a motion to enforce the settlement agreement. Such motion must be accompanied by an affidavit or declaration under the penalty of perjury setting forth the details of the noncompliance. Such motions must be served on the opposing party.

(f) At least 2 judicial days prior to the scheduled court date, the mediator must file either:

(1) A copy of the written settlement agreement with the court; or

(2) A document identifying that no settlement was reached and whether either party failed to appear.

(g) At or before the scheduled summary eviction hearing, the court must review any written settlement agreement or report of the mediator indicating whether a party failed to appear for mediation.

(1) If the landlord fails to appear at mediation, the court may dismiss the complaint.

(2) If the tenant fails to appear at mediation, the court must proceed with the hearing on the summary eviction.

(3) If the parties entered into a written settlement agreement, the court must review the terms of the agreement and determine how the case should proceed.

(h) Motions to enforce settlement agreements arising through mediation must be heard within 7-10 judicial days. After hearing, should the court issue an eviction order, the tenant is not eligible for a further stay of execution of the order.

Rule 8. Confidentiality. Statements and communications made during the mediation process, including pre- or post-mediation communications are confidential and, under NRS 48.105 and NRS 48.109, not subject to discovery or admissible in a proceeding unless all mediation participants agree in writing or a statute or court rule requires otherwise.

Rule 9. Costs and payments. Mediation shall be conducted at no cost to the landlord or tenant. Mediators and interpreters shall be paid a fee established by the Access to Justice Commission and shall prepare an invoice using the prescribed form outlining their services and submit such invoice to the Administrative Office of the Courts for payment pursuant to the form instructions.

Rule 10. Statistical information regarding mediation. Notwithstanding the requirements of NRS 40.2545, the court shall gather and maintain statistical information sufficient to determine the number of summary eviction actions in which mediation was requested and whether

requested by landlord or tenant, the number of actions submitted to mediation, the number of actions in which a settlement was reached, the number of actions in which no settlement was reached, and the number of evictions ultimately granted where no settlement was reached.

Rule 11. Sunset of the Residential Mediation Rule. This rule is created for the purpose of allowing courts to handle a potential increased caseload due to financial hardship created by the COVID-19 pandemic, to the lifting of state and/or national moratoria on certain eviction actions, and to assist and encourage landlords and tenants to resolve summary eviction actions through available rental assistance programs. This rule is effective on October 15, 2020, and unless extended by further order of the supreme court upon a showing of good cause, will remain in effect until the earlier of:

(a) The exhaustion of CARES Act funds or other funding to pay for mediators and the administration of the program; or

(b) May 31, 2021.