



The Judiciary, State of Hawai'i

Testimony to the Senate Committee on Commerce, Consumer Protection, and Health

Senator Rosalyn H. Baker, Chair

Senator Stanley Chang, Vice Chair

Monday, February 11, 2019, 9:30am

State Capitol, Conference Room 229

By

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WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 1154, Relating to the Landlord-Tenant Code.

Purpose: In a summary possession proceeding brought by a landlord against a holdover tenant: requires the court to address the complaint for summary possession during the first court appearance of the parties; prohibits a writ of possession from allowing the tenant more than fifteen days to vacate the premises; and specifies that the court shall expedite the proceeding so that the landlord is not unduly prejudiced by the delay.

Judiciary's Position:

The Judiciary respectfully opposes this measure.

Fair and timely case resolution are essential components of the administration of justice. To this end, the District Courts require the flexibility to manage and schedule their cases and caseloads. Currently, in the District Court of the First Circuit, when a summary possession case is served the case is set for a return date. At this return hearing, which are set every day in the Honolulu Division and once a week in the rural divisions, the defendant tenant is required to appear or file a written answer. If the tenant does not appear or file an answer a default is taken and a judgment for possession and writ of possession are granted effective immediately. If the tenant appears, they are given an opportunity to respond, they may agree to move out or deny the allegations in the complaint. If the case will need to proceed to trial then the case is set for



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pretrial (only in the Honolulu Division) or trial (in the rural courts). This pretrial date is necessary for the Honolulu Division as it is the Division with the most cases on Oahu.

The pretrial process allows both parties time to negotiate a settlement between themselves or with the assistance of a mediator thereby reducing the need for trial. This process not only allows the Honolulu District Court to be efficient and process cases timely, but also allows parties the opportunity to resolve their dispute without undergoing the expense of prolonged litigation. The neighbor island District Courts also have similar processes.

The proposed measure would require summary possession trials to take place at the return hearing date. While this may expedite the process, it may impose further hardship on both parties. Due to housing being a critical issue, summary possession cases already undergo an expedited process. Once the tenant is served with the Complaint and Summons, a return hearing is set five days after date of service. Most parties are not prepared to go to trial on the return hearing date and would not have had sufficient time to subpoena witnesses, prepare exhibits or consult with legal counsel. This would require plaintiff landlords to have all their exhibits and witnesses at the return date which is costly both in time and money. This added expense may be avoided if at the return date the tenant fails to appear or agrees to vacate the premises.

Trials for summary possession must adhere to the rules of evidence and take time to allow for witness testimony, presentation of evidence and arguments. There are a limited number of judges and court space to accommodate trials for all summary possession cases at the initial hearing date. For example, the Third and Fifth Circuits civil calendars are set for one-half day for each District Court each week. These calendars address temporary restraining orders, "regular claims" civil which include landlord-tenant cases, and small claims. The proposed measure would result in a congested court calendar and limit the court's ability to hear cases fully and in a timely manner.

While the intention of this legislation to expedite the process is appreciated, it may have the unintended consequence of imposing burdens on those seeking to access our judicial system. We therefore respectfully oppose this measure, but welcome an opportunity to discuss alternative ways to improve the summary possession process.

Thank you for the opportunity to testify on this measure.