Statement of Jim Jones regarding House Bill 138

February 20, 2019
House Judiciary, Rules and Administration Committee
Hon. Thomas Dayley, Chairman

Chairman Dayley and honorable members of the Committee

I have serious concerns about the provisions of HB 138 that would: (1) expand the expedited eviction procedure to include cases where “any amount” is claimed to be due by the landlord; (2) allow the determination of damages in an expedited proceeding; (3) deny jury trial for damage issues; and (4) interfere with court scheduling by adding more expedited cases to court calendars.

Before explaining my concerns, it should be made clear that I am not speaking on behalf of the court system. I did not take senior status as a judge because I wanted to be able to speak freely on this type of issue without implicating the courts. These are strictly my own views.

The expedited eviction procedure in Idaho Code section 6-310 was enacted into law in 1974, the year after I started my law practice in Jerome. It was designed to quickly remove a tenant who was not paying rent. That is why the expedited procedure was exclusively limited to actions to recover possession of rented property. If a person was not paying rent, it would be rather apparent one way or the other. There was no need for each side to do a lot of legwork preparing to prove or disprove that single issue. Because of the limited nature of the inquiry at the trial, it was not a problem for either side to prepare within the 12-day trial setting prescribed by section 6-310(2).
During my practice in Jerome in the nineteen-seventies, I represented people on both sides of the expedited procedure and it was fair to both.

From 1974 to the present, section 6-311E has prevented landlords from using the expedited procedure where damages are also being pursued. If a landlord seeks damages, that issue must be litigated in a regular civil action where both parties can seek information from the other side and have adequate time to prepare their case for trial. Damage claims are much more fact intensive than a simple eviction, do not entail the urgency of gaining possession of property, and are not subject to being fairly determined in a rushed case. There is no reason to give this particular type of damage suit priority over all other types of cases.

HB 138 repeals section 6-311E and, for the first time, allows a landlord to seek recovery of damages in the short-fuse expedited procedure, including rent claimed to be owing, “any other amount” the landlord claims to be due, “waste” (damage to the premises) and even treble damages. This gives the landlord a powerful upper hand to obtain a recovery because he or she can line up evidence and witnesses prior to filing suit and be fully prepared for trial. The tenant would essentially be caught by surprise, having just days to try to gather witnesses and evidence.

The summons and complaint served on the defendant need not specifically identify the damages sought at the expedited hearing and the short time frame does not allow for the defendant to obtain that information from the landlord through the normal discovery rules. This poses a serious due process problem for the defendant.

The ability to use the tenant’s failure to pay “any other amount due” as a ground for initiating a quick eviction and claim for damages lends itself to abusive practices. If the lease includes provisions requiring the tenant to pay various charges--water, sewer, lawn mowing, light bulb replacement, appliance repair, ect.--failure to pay even a nominal amount could provide grounds for seeking eviction and damages, even if the validity of the charge may be in dispute. Either pay up or risk eviction.

In my recent work on landlord-tenant issues, I have learned it is not uncommon for some of the Boise area property managers to take advantage of tenants of modest means. I represented one family that was wrongfully sued for over $4,000 in alleged damages to the property they rented. The property had been in shabby condition when these folks moved in and was actually cleaner when they left. The landlord wanted them to pay for a complete painting job, new carpet, a new refrigerator, new blinds, and numerous other amounts claimed to be due under the lease or as “waste” to the property.

This family had not been evicted, but was pursued in an action for damages that went through regular court processes. That allowed the collection of an attorney fee in the amount of $1,000. The family could not afford an attorney and did not know how to defend the suit so a default judgement of more than $5,000 was entered against them. The family’s credit was damaged and their sole wage-earner’s paychecks were garnished to apply to the judgment.

We were able to get the default judgment overturned but I learned this type of abusive practice occurs more than one would think. It would certainly proliferate under the provisions on HB 138. Any landlord or property manager in his or her right mind would use this expedited eviction/collection procedure, rather than the existing procedures where the parties are on more equal legal footing.

Most landlords are reasonable and willing to work with good tenants. On the other hand, most tenants want to do the right thing. There are certainly tenants who do not and there needs to be a procedure for quickly removing them from a property. Idaho Code section 6-310, as currently written, has worked well in that regard for 45 years. It would be fair to add a provision allowing an award of attorney fees to the prevailing party in an expedited eviction. However, allowing the recovery of a range of monetary damages in a flash trial where the defending party has little chance to prepare will result in substantial injustice.

The courts have generally asserted the right to establish their own procedures, such as controlling the exchange of information in discovery proceedings and the scheduling of court proceedings. If there is a rush to use the new landlord-friendly, fast-track eviction/collection procedure, as would be expected, it could upset court scheduling of all cases. There is absolutely no valid reason to give landlord-tenant damage cases priority over all other civil cases. I am no longer on the Court, but if I were, I would be concerned with the potential disruption of court calendars. If a sizable number of cases have to be tried on a crash 12-day basis, it would certainly cause chaos.

Also troubling is the denial of a jury trial on the damage issues. Article I, section 7 of the Idaho Constitution states, “The right of trial by jury shall remain inviolate.” Where a landlord is only seeking recovery of possession of real property for failure of the tenant to pay the agreed rent, the right to jury trial might not apply. This type of case, which courts have regarded as “sounding in equity,” has not historically involved a jury trial. However, Idaho courts have upheld the right to trial by jury where damage issues are to be determined. The courts have regarded these as “actions at law,” which have historically entailed a right to jury trial. The denial of the right to jury trial on the damage issues in a combined eviction/damages suit could be violative of our Constitution.

On the positive side, Section 14 of HB 138, which gives crime victims the right to have new locks installed and to terminate a lease early in certain instances, is a good idea. It is worthy of support, but the remainder of the bill is problematic.