

Rule 12-I. Protective Order

(a) ENTERING A PROTECTIVE ORDER.

(1) In General.

(A) *Requesting a Protective Order.* Any party may move for the entry of a protective order on the initial return date or at any time thereafter.

(B) *Entering a Protective Order.* A protective order may be entered only after a hearing at which the court finds that the equities merit the entry of an order or by consent of the parties in accordance with Rule 12-I(c). If entered, the protective order must require the defendant to deposit money into the court registry instead of paying rent directly to the plaintiff. A protective order may be prospective only and, except in accordance with Rule 12-I(d), must not require the defendant to deposit money for periods prior to the entry of the order.

(C) *Protective Orders in Cases Without Allegations of Nonpayment of Rent.* In a case that does not include an allegation of nonpayment of rent, the court may enter a protective order over the defendant's objection only if, after inquiry by the court, the defendant declines to stipulate that the plaintiff's acceptance of rent from that date forward is without prejudice to the plaintiff's ability to prosecute the action.

(2) Motions and Hearings.

(A) *Requesting a Protective Order by Oral Motion.* If the parties are present in court, a request for the entry of a protective order may be made by oral motion.

(B) *Requesting a Protective Order by Written Motion.* Any other motion for the entry of a protective order must be made in writing in accordance with Rule 13.

(C) *Hearing on Motion for Entry of a Protective Order.* If the amount or other terms of the proposed protective order are in dispute, the court must permit both parties to make arguments regarding the amount or other terms of the protective order and, if the court deems it appropriate, to present evidence in support of their arguments. The court must state on the record the reasons for its ruling on the request for a protective order.

(D) *Continuing the Hearing.* The court may continue the hearing on a motion for a protective order for a reasonable period of time to permit the parties to prepare arguments and evidence for presentation to the court.

(3) *Instructions to Defendant.* On the entry of a protective order, the clerk must immediately provide the defendant with a completed L&T Form 8 that includes written instructions regarding the amount, due dates, and form of payments, as well as the location and business hours of the clerk's office.

(b) MODIFYING A PROTECTIVE ORDER.

(1) *Motion to Modify Protective Order.* On motion and a showing of good cause, any party may seek modification of a protective order at any time after its entry. Unless the court determines otherwise, the motion must be made in writing, in accordance with Rule 13.

(2) *Hearing on Motion to Modify Protective Order.* If the requested modification to the protective order is in dispute, the court must permit both parties to make arguments regarding the modification and, if the court deems it appropriate, to present evidence in support of their arguments. The court must state on the record the reasons for its ruling on the request for a modification of the protective order.

(3) *Continuing the Hearing.* The court may continue the hearing on a motion for modification of a protective order for a reasonable period of time to permit the parties to prepare arguments and evidence for presentation to the court.

(c) PROTECTIVE ORDERS BY CONSENT. Parties, whether self-represented or represented by counsel, may enter into, vacate, or otherwise modify protective orders by consent, with the approval of the court.

(d) CONTINUED CASES. In any case that is continued from the initial return date for ascertainment of counsel, for a hearing on the amount of the protective order, or for any other reason, the court may, for such time as is reasonable, defer ruling on a motion for a protective order until counsel, if any, has been retained, until a hearing has been held on the amount of the protective order, or until the other reason for the continuance has been addressed by the court. At the time the continuance is ordered, the court must inform the parties that, unless otherwise ordered by the court, a protective order, whenever entered, will be retroactive to the date on which it was first requested in open court.

(e) FORM OF PAYMENT. Payment into the court registry must be made by any combination of cash, money order, certified check, attorney's escrow account check, or other form of payment approved by the Budget and Finance Division. Any money order, certified check, or attorney's escrow account check must be made payable to "Clerk, D.C. Superior Court."

(f) LATE AND PARTIAL PROTECTIVE ORDER PAYMENTS. Payments due under a protective order must be made on or before the dates specified in the order. The clerk's office must accept for deposit any protective order payment, even if it is a partial payment and even if it is not timely made, without prejudice to the plaintiff's right to file a motion for sanctions in accordance with Rule 12-I(g).

(g) SANCTIONS FOR UNTIMELY, PARTIAL, OR MISSED PAYMENTS.

(1) *In General.*

(A) *Motion for Sanctions.* If a defendant fails to make one or more payments required by a protective order or makes one or more untimely or incomplete payments, the plaintiff may file a written motion, in accordance with Rule 13, seeking sanctions against the defendant.

(B) *Hearing on Motion for Sanctions.* In determining whether to impose any sanction for untimely, incomplete, or missed payments, the court must hold a hearing on the motion and consider, among any other facts or arguments raised by the parties, the extent of and reasons for the defendant's noncompliance and any prejudice the plaintiff would suffer were the requested sanction not imposed.

(C) *Available Sanctions.* If the court determines that a sanction should be imposed, the sanction may include those sanctions generally available to the court for noncompliance with court orders, including but not limited to striking the defendant's jury demand or counterclaim, precluding certain defenses, and entering a judgment for possession in favor of the plaintiff. No money judgment may be entered on the underlying claims as a sanction for noncompliance with a protective order.

(2) *Judgments for Possession.*

(A) *Nonpayment of Rent Cases.* In a case based on the defendant's alleged nonpayment of rent, the court may not enter a judgment for possession as a sanction for the defendant's failure to comply with a protective order without first requiring the

plaintiff to present proof of liability and damages. The plaintiff may present proof of liability and damages on the same day that the motion for sanctions is scheduled for hearing or may ask the court to schedule a hearing for a later date. If the hearing is scheduled for a later date, the clerk must send written notice to all parties. In its discretion, the court may permit the plaintiff to present proof of liability and damages by sworn affidavits, provided that the plaintiff has attached to its motion seeking sanctions against the defendant the affidavits on which it seeks leave to rely. Affidavits must be made on personal knowledge, set forth such facts as would be admissible in evidence, and show affirmatively that the affiant is competent to testify to the matters stated in the affidavit. Sworn or certified copies of all papers or relevant parts of papers referred to in an affidavit must be attached to the affidavit or served with it. The court may not enter a judgment for possession unless the court is satisfied with the proof presented. Any judgment is subject to the defendant's right to redeem the tenancy and avoid eviction.

(B) *Cases Without Allegations of Nonpayment of Rent.* The court may not enter a judgment for possession as a sanction for the defendant's failure to comply with a protective order in any case in which the complaint does not allege the defendant's nonpayment of rent as a basis for the entry of a judgment in favor of the plaintiff. On motion of the plaintiff, however, the court, on a finding that the defendant has failed to comply with the terms of a protective order, must consider any appropriate sanction other than the entry of a judgment for possession, including advancing the trial date and, in a case that has been certified to the Civil Actions Branch under Rule 6 pursuant to the defendant's demand for a jury trial, striking the defendant's jury demand.

(C) *Cases Involving Allegations of Nonpayment of Rent and Other Allegations.* Where the defendant has failed to comply with a protective order in a case that involves allegations of nonpayment of rent and allegations on which the plaintiff seeks the entry of a judgment for possession that is not subject to the defendant's right to redeem the tenancy and avoid eviction, the court may, on the plaintiff's motion, and in accordance with Rule 12-l(g)(1):

(i) dismiss the allegations that do not relate to nonpayment of rent and enter a judgment for possession under Rule 12-l(g)(2)(A), subject to the defendant's right to redeem the tenancy;

(ii) allow the plaintiff to proceed under Rule 12-l(g)(2)(B) with respect to all of the allegations in the complaint; or

(iii) enter a judgment for possession under Rule 12-l(g)(2)(A) on the claim of nonpayment of rent, subject to the defendant's right to redeem the tenancy, and, as to the plaintiff's allegations other than nonpayment of rent, consider any appropriate sanction other than the entry of a non-redeemable judgment for possession, including advancing the trial date and, in a case that has been certified to the Civil Actions Branch under Rule 6 pursuant to the defendant's demand for a jury trial, striking the defendant's jury demand.

(3) *Cases That Have Been Certified to the Civil Actions Branch.*

(A) *Striking the Jury Demand.* If the court strikes the defendant's jury demand in accordance with Rule 12-l(g), then the case must be certified back from the Civil Actions Branch to the Landlord and Tenant Branch, and the court must vacate all discovery, mediation, pretrial conference, and trial dates pending in the Civil Actions Branch and, with notice to the defendant, set the case for a non-jury trial in the Landlord

and Tenant Branch on the earliest available date deemed fair to all parties in light of the totality of the circumstances.

(B) *Imposing Other Sanctions*. If the court decides not to strike the defendant's jury demand in accordance with Rule 12-l(g), then the court must immediately attempt to contact the judge in the Civil Actions Branch to whom the case has been assigned and inform the assigned judge of the circumstances; the assigned judge must, in turn, consider whether to advance the date for a jury trial or otherwise modify the scheduling order. If, having decided not to strike the defendant's jury demand, the court is unable to reach the assigned judge, then the court, with notice to the defendant, must set the case for a status conference before the assigned judge on the earliest available date; at the status conference, the assigned judge must consider whether to advance the date for a jury trial or otherwise modify the scheduling order.

COMMENT TO 2019 AMENDMENTS

This rule has been amended consistent with the stylistic changes to the civil rules. Also, in response to *Crockett v. Deutsche Bank Nat'l Tr.*, 16 A.3d 949 (D.C. 2011), subsection (g)(2)(B) was amended to make clear that a judgment for possession may not be entered as a sanction for a defendant's failure to comply with a pretrial payment order in any case in which the complaint does not allege the defendant's nonpayment of rent as a basis for the entry of a judgment in favor of the plaintiff, i.e., that a judgment for possession is unavailable as a sanction in a case lacking a nonpayment of rent claim regardless of whether there is a contractual landlord-tenant relationship between the parties, and regardless of whether the defendant is or is alleged to be a "tenant" within the meaning of the Rental Housing Act.

This rule does not foreclose the court, in a case in which there is no landlord-tenant relationship between the parties (e.g., where the defendant is alleged to be a squatter, terminated employee, permissive occupant, or foreclosed homeowner), from fashioning an equitable remedy to protect the legitimate interests of both parties and to maintain a proper balance during the litigation. See *Bell v. Tsintolas Realty Co.*, 430 F.2d 474, 482 (D.C. Cir. 1970); *Davis v. Rental Assocs. Inc.*, 456 A.2d 820, 823 (D.C. 1983). Such a remedy may include payment for the fair use and occupancy of the property, while the litigation is pending, in the form of a bond, a periodic payment, or both. See *Lindsey v. Prillman*, 921 A.2d 782, 785 (D.C. 2007) ("[W]e decline to say that a periodic-payment protective order can never be contemplated for use outside the typical landlord-tenant context . . ."). However, "[p]rotective orders, by their very nature, are designed to govern a contractual landlord-tenant relationship, and their utility is questionable when the litigants lack such a relationship." *Crockett*, 16 A.3d at 952. See *Walker v. Smith*, 499 A.2d 446, 450 (D.C. 1985) ("Moreover, in the absence of the traditional landlord-tenant relationship, with privity of contract, the validity of [a] protective order is open to serious question."). The amount of any payment required in such a case must be strictly limited to the value of the use and occupancy of the premises. *Crockett*, 16 A.3d at 953 n.8 ("[T]he only conceivable reason to enter a protective order in [a case that does not involve parties with a landlord-tenant relationship] would be to protect the [plaintiff's] interest in the value of the use and occupation of the home during the pendency of litigation.").