

Bankruptcy Law Meets Eviction Law

[On behalf of Dornish Law Offices, PC](#) | Mar 1, 2008 | [All, Landlord-Tenant](#)

By Bradley S. Dornish, Esq.

There was little in the Bankruptcy Reform Law of 2005 to be excited about, except if you were a credit card company. But tucked away in that law was a provision which has proven beneficial to landlords in certain eviction actions; Section 362 of the law provides the automatic stay which stops all actions against the debtor in state court the moment the Bankruptcy is filed. The amended law now provides in Section 362(b)(22) that the absolute stay does not apply to continuation of eviction actions by landlords who have already obtained final judgments for possession against tenants before the tenant files for Bankruptcy, unless the tenant follows very strict procedures under the law.

Those procedures require the tenant, under subsection(l)(1) of section 362, first to pay to the bankruptcy court with the filing of the Bankruptcy Petition, all rent which would become due during the 30 days following the filing of the bankruptcy. Next, the tenant has to certify to the landlord and the court in writing, “under penalty of perjury” that under PA landlord tenant law, there are circumstances under which the tenant would be able to cure the monetary default which gave rise to the judgment for possession. That certification is easy to make when the eviction is solely for nonpayment of rent, but difficult to make if there is some non-monetary default, like damage to the property, violation of a no pet clause, or a misrepresentation in the rental application.

The first certification and payment are not the big benefit to landlords, however. The Bankruptcy Law next provides that within thirty days after filing the bankruptcy petition, the debtor must also file a certification under penalty of perjury, that the debtor “has cured, under applicable non-bankruptcy law applicable in the jurisdiction, the entire monetary default that gave rise to the judgment under which possession is sought by the lessor.” This creates an unusual situation in Pennsylvania, where a magisterial judgment for money can be appealed for thirty days, while a magisterial judgment for possession can only be appealed for ten days. Following the above quoted language of the Bankruptcy Law, if a tenant fails to appeal a judgment for possession in ten days, and that judgment

becomes final, but appeals the money judgment against him within the thirty days allowed, and thereafter files for Bankruptcy protection, he has to pay the amount of the money judgment even though it is on appeal, to stay in the property during the bankruptcy.

Is that a fair result for the landlord and tenant? Should there be another interpretation of the bankruptcy law for Pennsylvania's split judgment on possession and money damages?

These are questions which the Bankruptcy Court for the Western District of Pennsylvania is attempting to answer. The exact situation where a tenant failed to appeal as to possession, but appealed the money judgment and filed for Bankruptcy occurred in a case I am handling. Neighborhood Legal Services represented the tenant, and filed an action to enjoin the clerk of the Bankruptcy Court from sending out the required letter authorizing the tenant to be removed from the property for failing to pay the amount of the monetary judgment. Neighborhood Legal argued that since the money judgment was on appeal, the tenant shouldn't have to pay at all to stay in the property during the Bankruptcy under the above quoted language.

Judge Fitzgerald of the Bankruptcy Court denied the injunction against the clerk, but asked the Neighborhood Legal Services lawyers, our office, and the trustee of the bankruptcy court to get together with other landlords' groups and housing authorities, and come up with a joint proposal or, if that proves impossible, alternative proposals for court procedures to be followed in such cases. The procedures accepted by the Court will apply to all such cases in the Western District, and potentially in Bankruptcy Courts throughout Pennsylvania.

We are hosting Landlords, Housing Authorities, Neighborhood Legal Services lawyers and the trustee in meeting this month to work on such a proposal, and I will keep ACRE and PROA member groups updated on our progress toward these important procedures.

(Created March 2008)