

Rule 10. Discovery

(a) Except as provided in subsection (b) and (d), there shall be no discovery without leave of court.

(b) *Ledgers and other documentary evidence of rent payment history.*

(1) *Plaintiff's obligation to bring to court and produce upon request.* In any case involving an allegation of nonpayment of rent, the plaintiff shall bring to every court hearing, including the initial hearing and any mediation session, copies of all rent ledgers within the plaintiff's possession, custody, or control that tend to show the defendant's payment or nonpayment of rent owed throughout all periods of time in which the defendant's rental payments are alleged to be delinquent, i.e., back to the most recent point in time at which there was a zero balance. A plaintiff who has not maintained a rent ledger for the premises shall bring to court other materials, such as bank statements and rent receipts, that establish the defendant's payment history for the time periods in dispute. Upon request of the defendant or the court, the plaintiff shall promptly produce all ledgers and other materials the plaintiff has brought to court pursuant to this subsection.

(2) *Sanctions for plaintiff's failure to produce.* If the plaintiff fails upon request to produce any or all of the materials described in subsection (b)(1), then the court, on the oral or written motion of a party, or on its own initiative, may enter an order requiring the plaintiff to produce such materials and, until the materials have been produced, may grant a continuance, decline to enter a protective order, or vacate, suspend, or modify an existing protective order.

(3) *Order for production by defendant.* At the initial hearing or any subsequent hearing, the court, on the oral or written motion of the plaintiff, or on its own initiative, may enter an order requiring the defendant to produce copies of all materials within the defendant's possession, custody, or control, including rent receipts, cancelled checks, and money order receipts, that tend to establish the defendant's payment or nonpayment of rent owed throughout all periods of time in which the defendant's rental payments are alleged to be delinquent.

(4) *Sanctions for noncompliance with court order compelling production.* A failure by a party to comply with an order compelling production pursuant to subsection (b)(1) or (3) may subject that party to sanctions as set forth in SCR Civil 37(b). In no event, however, may a default or a judgment for possession be entered as a sanction for a defendant's failure to produce materials as required by an order compelling production entered pursuant to this section. In the event the court enters a dismissal as a sanction for the plaintiff's noncompliance with a court order compelling production entered pursuant to this section, the dismissal will be without prejudice unless the court specifies that a dismissal with prejudice is warranted.

(5) *Limitations.* Nothing in this section shall be construed to require a party to create a rent ledger or any other document that does not already exist.

(c) *Cases scheduled for trial in the Landlord and Tenant Branch.* Upon the filing of a written motion requesting permission to engage in discovery, accompanied by the discovery requests to be propounded, for good cause shown, and with due regard for the summary nature of the proceedings, the Court may authorize a party to proceed with discovery pursuant to SCR Civil 26 through 37. In addition to the protective orders

provided in SCR Civil 26(c), the Court may shorten the time within which a party is required to perform any act or make any response in connection with discovery.

(d) *Cases certified to the Civil Actions Branch.* When a case is certified to an individual calendar in the Civil Actions Branch, limited discovery is permitted as a matter of right. The limited discovery shall consist of a request for production of no more than 10 documents and 10 interrogatories, including subparts, unless otherwise ordered by the Court for good cause shown. All requests for additional discovery must be by written motion and unless consented to by the parties, must be accompanied by the discovery requests to be propounded.

COMMENT

Section (b) has been added to the Rule. It is intended to assist the court and parties in resolving cases fairly and expeditiously at the initial hearing or thereafter. It is not intended to require the plaintiff to present documentary evidence of the defendant's nonpayment of rent at trial, although such evidence, if competent, would likely be relevant and may be a significant part of the plaintiff's proof.