

Eviction of The Residential Tenant by The Commercial Landlord

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A landlord renting its property for a residential use should be aware that the lease is not easily terminated by a landlord, although tenancies may be terminated when a statutory basis exists and procedural requirements are followed. While at one time the law was unsympathetic to residential tenants, it has been the reverse for many decades in light of a change in public policy. As one court has stated: "Residential tenants are viewed as a special class of individuals for whom the legislature has articulated a need for special protection" Gamble v. Connolly, 399 N.J. Super., 130, 144 (Law Div. 2007).

In recognition of the statutory protection afforded residential tenants, an attorney can guide a landlord through the procedural steps that must be utilized to evict such tenants and provide advice regarding the substantive grounds for termination of a residential tenancy. Given the technical requirements described in this Article for eviction of a residential tenant, a landlord is penny wise and pound foolish to utilize a lease without attorney review of its form, or to attempt to evict a residential tenant without legal advice.

Eviction of a commercial tenant is governed by different rules. Usually the terms of the commercial lease govern, although there are circumstances where the courts have extended protection to a commercial tenant beyond the terms of its lease. This topic is outside the scope of this Article.

A brief review of the basic tenets of residential landlord-tenant law under New Jersey law suggests its complexity and the difficulty in evicting a residential tenant.

The Lease. The Plain Language Act N.J.S.A. 56:12-1 et seq. requires that the lease be written in plain language. However, the parties are free

to define the terms of the lease agreement so long as it does not violate law or contravene public policy. Gamble v. Connolly, *supra*, at 138.

The Anti-Eviction Act. The Anti Eviction Act, N.J.S.A. 2A:18-61.1 et seq. ("Act") protects most, but not all, residential tenants against eviction. For example, the Act does not protect the tenant in an owner-occupied building with not more than two rental units.

Procedural requirements. Eviction procedures are tricky. A landlord must dot each and every "i" in an eviction proceeding. In the event of a procedural error, such as in the giving of the notice to the tenant, the eviction action likely will be dismissed by the Court. See Prospect Point Gardens Inc. v. Timoshenko 293 N.J. Super. 459 (Law Div. 1996).

Notice. The notice period required to be given to a tenant to end a tenancy varies with the basis for termination. The required notice to quit that must be provided ranges from no notice to three (3) years prior notice. The notice period depends upon the basis for eviction, such as disorderly conduct, nonpayment of rent (no notice to quit), habitual late payment of rent, permanent retirement of the building, personal use by the landlord, violation of lease covenants or rules or regulations, or another statutory basis. N.J.S.A. 2A:18-61.1 to 61.2. If the lease gives the tenant greater notice rights, the notice period prescribed by the lease will control.

Different types of statutory notice are required, such as Notice to Cease (a warning notice), Notice to Quit and Demand for Possession. A Notice to Cease is required in such cases as violation of lease covenants, rules and regulations, disorderly conduct or habitual late payment of rent.

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The manner in which notice must be provided when based upon lease violations is demonstrated by the following example: Assume that a residential tenant pays the rent as required, but plays loud music late at night. The landlord has received complaints from other tenants. What should the landlord do? The landlord should send a Notice to Cease, which is a warning notice to the tenant to cease the disorderly behavior. This gives the tenant an opportunity to cure. There is no set statutory period in which the tenant is required to cure. It has to be a reasonable period under the circumstances. If the tenant fails to discontinue the disorderly conduct, the landlord's next step is to send a Notice to Quit to the tenant followed by a filing of an eviction proceeding.

Lease Renewal. A landlord is required to offer to renew a residential lease in most cases. N.J.S.A. 2A:18-61.3.

Basis for Lease Termination. A landlord may evict a tenant if the situation at hand fits within one of the statutory bases. These cases are fact sensitive. By way of generalization and subject to various caveats and exceptions, termination of a residential tenancy is permitted on the following grounds:

(a) A tenant may be evicted for various acts that might be characterized as bad acts or tenant fault. This includes non-payment of rent, habitual late payment of rent, and disorderly conduct (such as, an assault upon the landlord or another tenant, theft of property from the building containing the premises, use of the premises for prostitution or conviction of a tenant for drug use).

(b) The tenant has willfully or by reason of gross negligence caused or allowed destruction, damage or injury to the premises.

(c) After written notice to cease violation of rules and regulations governing the premises or substantial violation or breach of the

covenants and terms of the lease, provided such covenants or terms are reasonable and were in the lease at the beginning of the term.

(d) Personal occupancy of the premises by a prospective buyer of the premises or occupancy by the landlord of the premises, which landlord must be an individual and not an entity, such as a corporation or limited liability company. Realty LLC v. Law, 406 N.J. Super. 423 (App. Div. 2009).

(e) The landlord seeks to permanently board up or demolish the premises under certain conditions to correct substantial violations affecting the health and safety of tenants where it is not feasible to do so without removing the tenant, or the landlord wishes to permanently retire the building from residential use.

(f) Refusal of tenant to accept reasonable changes in the terms and conditions of the lease upon renewal.

Conclusion. This Article has briefly reviewed basic principles of New Jersey landlord-tenant residential law, generally noting the bases and procedures to evict tenants from leased premises. As the foregoing illustrates, a landlord must follow the letter of New Jersey law to end a residential tenancy. A successful eviction is possible when the correct procedural steps are taken, and the landlord brings an action founded upon one of the statutory bases for lease termination under New Jersey law.

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