

THE ULTIMATE GUIDE TO NEW JERSEY LANDLORD LAW

Protecting the Landlords

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Making a living with rental properties is a very lucrative business. Flexible schedules, meeting new people, choosing the people you work with, having your mortgage paid off with rent... Sound familiar? However, because this is an enterprise that requires you to work with people, I am certain you are probably wary of being

bogged down by a bad tenant. With a wide variety of unscrupulous characters out there who strive to take advantage of the law, and sue their landlords over the most unfair of issues, this eBook should help you learn how to protect yourself before any such mishaps take place.

Disputes between landlords and tenants are common. One party often tries to take advantage of the other, not realizing that there are laws in place to protect both landlords and tenants alike. As a landlord, you are well aware of the variety of problems that can crop up in your line of business. However, being aware of the law and having an experienced lawyer back you up can alleviate the nuisance that such tenants cause. In my experience, even a firmly worded letter from an attorney can make a huge difference.

COMMON ISSUES LANDLORDS FACE

Most landlords perform checks on applicants before going ahead and presenting them with a lease. This is something that I encourage all landlords to do. Background checks and credit checks are vital to getting to know your tenant before you allow them to establish residence on your property. However, these screenings are not fool-proof, and you may still find yourself stuck with a tenant who seems like they just stepped of *World's Worst Tenants*.

However, before you despair, remember that you are not alone and that landlord-tenant law exists to protect landlords from such people. Common issues that landlords should be wary of because of their propensity to escalate into bigger issues are:

- » right to enter apartment
- » failure to pay rent
- » disorderly conduct
- » property damages
- » late rent payments
- » lease violations
- » notices to quit and notices to cease orders
- » eviction for non-payment
- » loud music and other noise

TYPES OF TENANCIES IN NEW JERSEY

The state of New Jersey recognizes three categories of tenants, including commercial tenants and two categories of residential tenants. New Jersey statute N.J.S.A 2A:18-53A generally addresses tenants who occupy owner-occupied premises that have no more than two rental units in addition to the one in which the owner resides. Those tenants have far fewer rights than the majority of tenants.



Tenants who fall under N.J.S.A 2A:18-61.1, which is called the Anti-Tenancy Eviction statute (and with good reason) are much better protected because the essential purpose of that statute is to protect tenants from unwarranted evictions.

In owner-occupied tenancies, the landlord can simply terminate a tenancy once the lease term has been completed. In the case of a month-to-month tenancy, for example, the landlord can serve the tenant a 30-day notice and terminate the tenancy.

Under the Anti-Tenancy Eviction statute, however, as long as the tenant pays rent in a timely manner and does not violate the other terms of the lease, they cannot be evicted. In other words, the mere fact that a landlord simply does not like the tenant and does not want to continue to be their landlord is not a sufficient reason to evict the tenant. The tenant can only be evicted for just cause – and that must be a clear violation of the lease or failure to pay rent.

LEASES

If you do not know this already, a lease is typically a contract or an agreement by virtue of which one party (you, the landlord) conveys property to another (your tenant) for a specified time, in return for a periodic payment of rent. While it is possible to draw up your own lease, it is always wiser to have an attorney take a look at it before your tenant signs it.

Written Lease vs. Verbal Agreement

Obviously, a verbal agreement is one which has not been reduced to writing and, except for cases regarding payment of rent which the landlord can generally substantiate by keeping written receipts showing the manner in which payment of rent is made, such leases are virtually unenforceable in a Landlord-Tenant Court.

If he has not insisted upon a written lease, a landlord's attempts to evict a tenant for other violations – meaning those which the landlord imposes as violations of the tenancy – will encounter serious challenges.

What to Consider When Creating a Lease

It is essential that a landlord draft his lease very carefully because the purpose of that lease is to provide clear protections for the landlord. Absent a lease, a tenant is not obligated to abide by any rules or regulations other than the timely payment of rent, so it is a big mistake for any landlord not to have a lease. Many landlords hold to the erroneous belief that a lease somehow helps the tenant; however, that is absolutely false.

As a landlord, it is important that you make sure your lease includes specific language that prevents such conduct as having pets, if that is a clause you require your tenants to fulfill. You may also prohibit other behaviors such as smoking or the playing of loud music at times that are after normal hours.

You can even set forth clear timetables to govern when the rent is to be collected. Also, if the rent is going to be late, the lease must clearly state when the late period begins. Late charges must be clearly stated in the lease – and they have to be deemed to be additional rent. An additional rent clause must be included in every lease because, without an additional rent clause, you cannot seek to recover those charges in Landlord-Tenant Court as part of the rent. It is very important to set forth your expectations of your tenants in unambiguous and specific language.

If a Tenant Breaks the Lease

A landlord whose tenant breaks a lease may avail of several remedies. First, the landlord can file a Civil Action against the tenant in which he seeks payment of rent that would have been paid if the tenant had complied with the lease.

The landlord must, however, fulfill his obligation to mitigate the damages. For example, if a tenant breaks a lease with several months remaining in the stated lease term, the landlord cannot simply sue the tenant for the rent that he would have paid. The landlord must first make reasonable efforts to rent the premises, and he must be able to document those efforts.

Once the landlord makes and documents that effort – but his efforts prove unsuccessful – he can seek to have the tenant pay all the monies to which he would have been entitled under the lease, if the lease had not been broken.



RENT

To be absolutely clear, rent is a sum of money put forth in the lease that a tenant is required to pay to you on dates which are also specified in

the lease. Rent is paid in exchange for a property that the landlord provides to tenants.

If Tenant Only Pay Part of the Rent

In cases where a tenant pays only a portion of the rent that is due, the landlord should definitely accept that rent. The landlord should then immediately seek proper counsel and file an eviction complaint against the tenant.

When the landlord has included a clause in his lease which designates all enforcement payments as additional rent, that landlord will be able to recover – in addition to the rent that is owed – any late charges and fees, such as attorney fees and court costs the landlord was required to incur in the process of bringing the tenant to court and successfully recovering outstanding rents.

If Tenant Refuses to Pay Rent

The most common tenancy action that takes place in Landlord-Tenant Court involves non-payment of rent.

If the landlord has included an additional rent clause as part of his lease, that landlord can file suit to evict the tenant in Landlord-Tenant Court. He may also seek to recover all of his related legal costs, as well as any late charges.

In attempting to defend his position, the tenant must provide an adequate reason as to why the rent was not paid. Adequate reasons include such things like a lack of access to the premises, or damage or defects in the property in a manner that would cause a reasonable person to withhold the payment of rent. Unless a tenant can show such a reason, the tenant is going to be evicted.

In such cases, a judgment for eviction will be entered in favor of the landlord, and the landlord may proceed to have the tenant locked out of the premises. All landlord-tenant matters are heard in the County Superior Court, in the Special Civil Part Section of the respective county court.

EVICITION

Because different counties carry widely different caseloads, the length of time required to evict a tenant varies widely. In Northern New Jersey, where Hudson, Essex, and Union Counties have the state's densest populations, just getting a court date for an eviction complaint can typically take up to two or three weeks.

In less populated counties, where the number of evictions is much lower, that time can be reduced to as little as ten days.

How Much an Eviction Costs a Landlord

Depending on the reason the eviction is being sought, the associated costs can vary substantially. While most landlord-tenant evictions are based on non-payment of rent, others are based on specific lease violations.

Depending on the circumstances, a tenancy eviction can cost as little as \$750 or as much as several thousand dollars. The total depends on such factors as the complexity of the matter or whether it's a commercial eviction or a residential eviction.

Required Notice Prior to Evicting a Tenant

The length of time for tenant notices may be different depending on the reason the landlord is pursuing an eviction.

For instance, no notice is required in the case of non-payment of rent where the tenant has simply failed to pay rent. An eviction complaint may be filed with the Landlord-Tenant Court immediately and a non-paying tenant can be evicted forthwith.

If your tenant has engaged in conduct that violates the lease, your first requirement is to send them a Notice to Cease. That Notice advises the tenant that they are in violation of the lease, sets forth the specific lease provision they've violated, and advises them that they will receive a Notice to Quit and be evicted from the property if they continue to violate the lease. If, the tenant continues to

violate the lease after having received a Notice to Cease, the landlord may send a Notice to Quit.

The time period contemplated in a Notice to Quit is usually 30 days. After that time – if the tenant remains in the apartment or on the premises – the landlord can file a conviction complaint in Landlord-Tenant Court.

In certain instances, other than non-payment of rent, a landlord need not wait 30 days, while in some other scenarios a 60-day notice is required. For example, destruction of the landlord's property has occurred because the tenant has recklessly or negligently damaged the landlord's property, the tenant could possibly be issued a three-day Notice to Quit. If the tenant continues to remain in the premises after that notice is filed, the landlord can promptly file an eviction complaint.

Using a Process Server for an Eviction

Once a landlord has been successful in obtaining a Judgment of Possession – in other words, the court orders the tenant to leave the premises – all New Jersey eviction cases preclude the landlord from availing himself of self-help in order to remove a tenant from his property. Instead, he must retain the services of a court constable.

The court constable is the individual who is authorized to conduct the actual lockout of the tenant, post the Warrant of Removal, and subsequently perform the physical eviction. The landlord is prohibited from conducting self-help evictions in the state of New Jersey.