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The information in this manual is accurate as of April 2014, but laws often change. Please check our website, www.lsnjlaw.org, for updates to this manual or talk to a lawyer for up-to-date legal advice.

Tenants' Rights in New Jersey

*A legal
manual for
tenants in
New Jersey*



**Written and published by
Legal Services of New Jersey**



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Introduction

LEGAL SERVICES OF NEW JERSEY (LSNJ) coordinates the statewide Legal Services system in New Jersey, providing free legal assistance to low-income people in civil matters. Part of Legal Services' mission is to make people more aware of their legal rights and provide helpful information if they choose to pursue a legal case on their own. Awareness may allow you to resolve some problems on your own, without the need for a lawyer, or to make better use of a lawyer if you have one.

A Word of Caution About Using This Manual

This manual does not give advice about a particular legal problem that you may have, and it is not a substitute for seeing a lawyer when you need one. By all means talk to a lawyer if you think you need the help.

The information in this manual was last updated in April 2014, but laws often change. Please check our website, www.LSNJLAW.org, for updates to this manual, or talk to a lawyer for up-to-date legal advice.

This manual is for tenants

Information is the key to a good relationship between a tenant and landlord. This manual gives you the information you need to be a good tenant and make sure that your landlord treats you properly and fairly. The manual explains a tenant's rights and responsibilities under New Jersey laws. An informed tenant may be better able to solve problems with his or her landlord directly, without the need for lawyers or judges.

Note: Tenants in public housing and other federal- and state-assisted housing have rights in addition to those discussed in this manual.

This manual is for landlords

Although written for tenants, this manual can also be of help to landlords. The manual describes a landlord's legal duties in renting apartments or homes to tenants. Landlords who know and follow the law are more likely to have good tenants and well-kept property. Following the law is just good business.

Acknowledgments

This edition of *Tenants' Rights in New Jersey* was revised by LSNJ vice presidents Connie Pascale and Harris David. It is based on several prior editions written by Felipe Chavana, David G. Sciarra, Harris David, and Connie Pascale. Susan Perger, LSNJ director of publications and web operations, was responsible for editing, design, layout, and production. Special thanks to Tricia Simpson-Curtin, writer/editor for her help with editing and proofing.

Comments or suggestions

We hope that this manual will be helpful to you. Please let us know if you have comments or suggestions that we might use in future editions. You can write to us or e-mail us at:

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—*Melville D. Miller, Jr., President*
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Chapter 1

Know Your Rights

TENANTS IN NEW JERSEY have legal rights and responsibilities. These rights and responsibilities are stated in many different laws. This manual explains those laws and explains your rights and responsibilities as a tenant.

Read this manual carefully. Knowledge is the key to your rights! You can't protect yourself if you don't know what your legal rights are.

This chapter discusses times when you might need a lawyer, how to find one, and how to find the law if you have to represent yourself. It also explains the benefits of joining a tenants association.

Do I need a lawyer?

This manual gives information about landlord and tenant law. It cannot answer every question and it does not provide specific advice about a particular legal problem that you may have. It is not a substitute for a lawyer.

The information in this manual will help you protect your rights as a tenant. If you know your rights and responsibilities, you can avoid legal problems. You can also be better able to assert your rights with your landlord on your own, and defend yourself in court, if necessary.

Knowledge of your rights will also make you better prepared if you have to see a lawyer. If you're not sure whether you need a lawyer, by all means talk to one.

If you have to go to court, try to get a lawyer to represent you. You may find it difficult to follow the law or deal with the landlord, especially if the landlord has a lawyer. You may also find that properly preparing your case to follow the law may be difficult. If you lose your case and want to appeal, you will need a lawyer to help you.

Finding a lawyer

If you need the advice of a lawyer but cannot afford one, you may be eligible for Legal Services. Contact the Legal Services program in your area. You can find a list of programs and telephone numbers on the last page of this manual.

Legal Services of New Jersey (LSNJ) coordinates the statewide Legal Services system in New Jersey, providing free legal assistance to low-income people in civil matters. This includes disputes involving landlords and tenants. Part of Legal Services' mission is to make people more aware of their legal rights. Awareness allows people to resolve some problems on their own, without the need for lawyers. Informed people also are able to make better use of lawyers when they are needed.

You also may contact LSNJ's statewide, toll-free legal hotline, LSNJLAWSM. Apply online at www.lsnjlawhotline.org or call 1-888-LSNJ-LAW (1-888-576-5529). The hotline provides information,



advice, and referrals to low-income New Jersey residents who have civil legal problems. This service is provided at no charge to applicants who are financially eligible.

If you don't qualify for Legal Services, contact your local lawyer referral service. You can get the telephone number for the lawyer referral service in your area by contacting your county bar association.

There may also be a tenants association in your building or complex or other tenant groups in your city or town. These groups can help you find a lawyer and may know of lawyers who represent tenants at a reduced cost. Tenants associations are discussed later in this chapter.

Representing yourself

If you can't find or afford a lawyer, you can always represent yourself. In legal terms, this is called appearing in court *pro se*. If you read it carefully, this manual will help you prepare your case if you have to go to court by yourself. Take notes on what you read, and review your notes before you go to court. Be prepared!

The Supreme Court of New Jersey is very concerned that tenants who represent themselves are treated fairly. The Court has implemented procedures to assure that this occurs, and that tenants understand their rights. **Cite:** *Community Realty Management v. Harris*, 155 N.J. 212 (1998). These procedures are described in more detail in Chapter 12 on page 76.

Finding the law

You may want to read a law that is discussed in this manual to better understand the law or to prepare your case for court. If you need to read a law, there are several places you can go to find law books.

Check your local public library first. You may find everything you need right there. Some colleges and county courthouses have law libraries. The State Library and the two New Jersey law schools have extensive law libraries that are open to the public.

Getting the assistance of a librarian

Librarians are very helpful in pointing out where the books and statutes are located. They will also help if you are having difficulty finding the statutes and cases for which you are looking.

The State Library is located at:

185 West State Street
P.O. Box 520
Trenton, NJ 08625-0520
Library phone: (609) 292-6220
www.njstatelib.org

Rutgers Law School–Newark is located at:

123 Washington Street
Newark, NJ 07102
Library phone: (973) 353-5675
<http://law-library.rutgers.edu>

Rutgers Law School–Camden is located at:

217 North Fifth Street
Camden, NJ 08102
Library phone: (856) 225-6172
<http://lawlibrary.rutgers.edu>

Finding landlord-tenant laws

This manual uses the word **Cite:** followed by numbers, letters, and names to refer to laws. A cite tells you the book in which the law is located. You can then read the law yourself by finding the cited book.

Landlord-tenant laws are made in several ways in New Jersey. Proposed laws, or bills, when passed by the State Legislature and signed by the governor, become laws and are called *statutes*. Some statutes require state government agencies to adopt laws called *regulations*. Laws are also made by judges when they decide court cases involving landlords and tenants.

Statutes are printed in a set of green books called *New Jersey Statutes Annotated* (N.J.S.A.). These books are numbered and have “titles.” There are many “chapters” in each book, and many “articles” in each chapter. A cite to one of these laws is: N.J.S.A. 2A:18-53 (N.J.S.A. title 2A, chapter 18, article 53).

Tenant laws are in several N.J.S.A. books. To find out which N.J.S.A. book and chapter has the law you want, first look in the N.J.S.A. index. The N.J.S.A. general index for letters G-M lists various tenant laws under the heading “Landlord and Tenant.” This list gives the cites or book numbers where you can find the law you want.

Finding new or recent laws. New or recent landlord-tenant laws may be in the “pocket parts” of the N.J.S.A. book. The pocket parts are found at the back of each book. Even if the law you want is in the regular N.J.S.A. book, you should always check the pocket part to see if any changes to the law have been made. The pocket parts are updated every year.

Finding regulations. Some landlord-tenant laws require the New Jersey Department of Community Affairs (DCA) to issue regulations for carrying out the law. DCA and other state agency regulations are located in a set of dark blue binders known as the *New Jersey Administrative Code* (N.J.A.C.).

Finding case law. Landlord-tenant law is also made by judges when they decide court cases involving disputes between landlords and tenants. This law, or case law, is located in two sets of books called *case reporters*. Reporters contain court decisions that explain why the judge decided for or against a tenant. Decisions by courts where landlord-tenant disputes are first heard (trial courts) and decisions by the appellate court are located in a set of light green books called *New Jersey Superior Court Reports* (N.J. Super.). Decisions by the Supreme Court of New Jersey, the highest state court, are located in the cream-colored books called *New Jersey Reports* (N.J.). A cite to a decision in either reporter starts with the names of the people or companies who were in court against each other. After the names, the number of the book where you can find the court decision is listed.

For example, *Marini v. Ireland*, 56 N.J. 130 (1970), refers to a Supreme Court

decision where the landlord—Marini—sued his tenant—Ireland. The decision is found in the 56th volume of *New Jersey Reports*, starting at page 130. The year of the decision is 1970. The cite to trial or appellate court decisions in the *New Jersey Superior Court Reports* is N.J. Super. An example of a Superior Court cite is *Drew v. Pullen*, 172 N.J. Super. 570 (App. Div. 1980).

Finding local laws. Landlord-tenant laws are also made by city, borough, or township governments, such as rent control laws and standards for maintaining rental property, or property maintenance laws. Laws made by local governing bodies are called *ordinances*. For example, the New Brunswick rent control law is located in a book called *Ordinances of the City of New Brunswick*. To find out if your city or township has passed a landlord-tenant law, you can call your city or township hall. Your local public library and the law libraries mentioned above also may have copies of the ordinances.

Federal law. Federal laws and federal court decisions affect New Jersey tenants who live in public housing or other federally subsidized housing. Federal law applies to tenants receiving rental assistance under the federal program known as Section 8. Federal law also prohibits certain types of discrimination in the rental of housing.

This manual includes cites to federal statutes and court decisions. These cites allow you to find federal statutes, regulations, and court decisions at the law library.

Tenants associations

Tenants associations are groups of tenants in a single building or in a town that work to improve the conditions in rental housing. Tenants associations also work to protect and increase the legal rights of tenants. The New Jersey Tenants Organization (NJTO) works to improve state laws affecting tenants' rights. In fact, most of the New Jersey laws protecting tenants were passed as a result of the efforts of NJTO and other tenant organizations.

The importance of local tenants associations

Tenants associations are very important because many laws affecting tenants are made every year by city or town councils. These important laws cover rent control, property maintenance, and housing inspection.

It is important for tenants to work together, on a building-, block-, neighborhood-, and town-wide basis, to address these issues. Tenants can also work together to try to rid apartment complexes of illegal drugs or to find ways to deal with landlords who don't follow the law. Find out what tenants groups exist in your area, and get involved with them. To find out if there is a tenants association in your city or town, contact the New Jersey Tenants Organization at:

389 Main Street
Hackensack, NJ 07601
(201) 342-3775
Fax: (201) 342-3776
E-mail: info@njto.org.
www.njto.org



Chapter 2

Finding a Place to Rent and Moving In

NEW JERSEY HAS A serious shortage of safe, decent, and affordable rental housing. This housing is especially scarce for tenants who receive public assistance, such as disability, old age benefits, or welfare. For low-income people and families, affordable rental housing in good condition can be hard to find.

Finding a place to rent with a Section 8 voucher

Some landlords refuse to rent to tenants who have Section 8 vouchers. New Jersey law makes it illegal to refuse to rent housing solely because a tenant will pay rent with rental assistance, such as Section 8 or welfare. **Cite:** N.J.S.A. 10:5-12(g); *Franklin Tower One, L.L.C. v. N.M.*, 157 N.J. 602 (1999). If you have a Section 8 voucher or some other subsidy and a landlord refuses to rent to you, you should immediately contact a lawyer or the New Jersey Division on Civil Rights. For further details, see Chapter 16, *Housing Discrimination*, on page 94.

Finding a place to rent through real estate or rental referral agencies

Tenants often seek help in searching for an apartment or house to rent. This chapter explains your rights when you use real estate or rental agencies to find housing.

Rental referral agencies

Tenants looking for housing sometimes go to rental referral agencies, also called apartment locators or apartment finders. There have been many complaints about some of these agencies. For example, many of these agencies charge between \$75 and \$125 just for a list of apartments for rent. These lists are often copied out of the local newspapers. Sometimes, people are referred to apartments that are already rented or to apartments that don't even exist.

Rental referral agencies must follow certain regulations. **Cite:** N.J.A.C. 11:5-1:32. The most important of these regulations are discussed below.

- The agency must provide you with a written contract. The contract must accurately state the services to be provided and the fee to be charged. It must also state the length of the contract and the actions you must take to use the service. The contract must state the policy for refunds.
- The agency is prohibited from advertising or referring you to non-existing addresses or properties that the agency has not checked for availability.



**New Jersey law
requires rental
referral agencies
to follow certain
regulations.
The most
important are
discussed here.**

- The agency cannot refer you to a rental property unless it has the permission of the landlord or the landlord's agent to refer prospective tenants. Where the agency has obtained a landlord's oral consent to refer tenants to the property, the agency must get the landlord's written consent within 24 hours.
- The agency must regularly check with the landlord to see if the apartment remains available by checking all the units advertised in a newspaper each day the ad appears and by checking all units to which tenants are referred every three working days.
- The agency must tell you when they last checked the unit for availability. Agencies may not refer you to any apartment not checked within the previous seven calendar days. The regulations require agencies to have enough telephone lines and workers to receive and answer phone calls from their clients.
- The agency cannot charge you more than \$25 before you obtain housing unless:
 - the fee charged is deposited promptly in the agency's escrow account and held until the agency performs all of the services in your contract, or
 - the agency posts a cash security in an amount approved by the New Jersey Real Estate Commission.
- An agency must keep copies of all contracts between consumers and the agency for one year. It must also keep copies of written statements showing that landlords gave the agency permission to refer tenants and that the agency checked that rental units were available before referring tenants.
- An agency must post the regulations in their offices and give consumers a copy on request.

Ask questions about the referral service before you use an agency. Ask to examine their contract and look through their agreements with landlords. Make sure the agency lists available apartments and does not simply copy ads from newspapers. To make a complaint about a referral agency, contact the New Jersey Real Estate Commission at:

New Jersey Real Estate Commission
20 West State Street
P.O. Box 328
Trenton, NJ 08625-0328
(609) 292-8300
www.njdobi.org/consumer.htm

Real estate agents

You can also get help finding an apartment from real estate agencies. These agencies will not ask you for money unless they are going to take you to see a specific apartment. Agencies that actually rent and sell homes and apartments can be a big help in finding a place to live. Do not confuse real estate agencies with apartment finder or rental locator agencies, which do nothing for your money except give you a rental list.

Finding housing on your own

Try looking in the neighborhood for rental signs. Look in the newspaper and ask friends to help you. If you are looking for an apartment, it is a good idea to get the newspaper at the earliest possible time of the day so that you can try to get to the apartment before anyone else. You should never rent an apartment you haven't seen.

Moving in

Moving in marks the real beginning of your relationship with your landlord. This is the moment at which you first occupy your rental unit. This is a good time to make sure the apartment or house is safe and in good condition and, if it is not, to make an agreement with the landlord to make any necessary repairs.

The condition of the apartment when you move in is also important when you move out. Some landlords try to blame tenants for damages that were there when the tenant moved in. This will allow the landlord to keep all or part of your security deposit if he can show that you damaged the apartment. There are steps you can take to get the landlord to repair anything that is broken when you move in and to keep the landlord from blaming you for the damage later on.

Inspect the property

Before you move in, make sure that the apartment has received a certificate of occupancy (C.O.) from the town housing inspector. Not all towns have laws requiring a certificate of occupancy. Call your town inspector to find out if the town has such a law. Also, check the following:

- **Bathroom**—Check the water pressure and hot water, and look for leaks. Make sure that the toilet works. Check for loose tiles on the walls and floor, and look for bugs or signs of bugs.
- **Kitchen**—Check the water pressure, leaks, hot and cold water, stove, and refrigerator, if any; look for bugs.
- **Ceiling**—Check the ceiling and walls for water leak stains, dampness, loose plaster, holes, or cracks.
- **Windows**—Check the locks, screens, glass, and frames.



In the kitchen, check the water pressure, hot and cold water, and look for leaks.

- **Floors**—Look for rotten wood, loose tiles, splinters, water stains, and cigarette burns.
- **Electricity**—Make sure that the light switches and fixtures work. Take a lamp and try all of the outlets, and look for hanging or open wires. It is sometimes not possible to check the working condition of electrical switches and outlets because the power may have been shut off in the apartment.
- **Heat**—Turn on the heating system and make sure that it works properly, even if you rent in the summer.
- **Basement**—Look for rat holes, dirt, trash, leaks, loose wires, broken windows, crumbling walls, and termites.
- **Smoke detectors**—Check for installation and make sure they work properly.
- **Doors**—Check for dead-bolt locks and peepholes on the entrance door.
- **Paint**—Look in all rooms to make sure paint is fresh; check for dangerous, chipping lead paint. (See *Lead paint and lead poisoning* on page 30.)

After you have checked each of these items, make a list of what is broken or in poor condition. Ask the landlord or superintendent to sign the list. If they refuse, get one of your friends or neighbors to sign and date it. It is a very good idea to take pictures. You can also talk to other tenants who already live there. For example, if you are renting in the summer, they can tell you if there's enough heat in the winter.

Get promises to repair in writing

Ask the landlord to make all necessary repairs immediately. However, you should not accept the landlord's spoken promise. It is very important to get the landlord to write out what he or she promises to fix and when. Any promises made by the landlord that are not in writing, with the date and the landlord's signature, are difficult to enforce. If you try to enforce a spoken promise, it will be your word against the landlord's. A written agreement also protects you later on if the landlord tries to say that you were the one who caused the damage.



Any promises made by the landlord that are not in writing, with the date and the landlord's signature, are difficult to enforce.

If you cannot get the landlord to sign a written agreement or statement, then you should send your list of defective conditions in a letter to the landlord. Explain in the letter that you expect that the landlord will make the repairs. Send the letter by certified mail, return receipt requested. Keep a copy of the letter and the return receipt for use later. If you can, take pictures of the defective conditions and hold on to them. You will need these documents should the landlord seek to wrongfully evict you or keep your security deposit. 🏠

Chapter 3

Security Deposits

Changes to the Law Give Tenants More Protection

The Rent Security Deposit Act

MOST AGREEMENTS TO RENT housing, or leases, require you to pay the first month's rent before you move in. Most leases also require you to pay a security deposit. The New Jersey security deposit law, the Rent Security Deposit Act, specifies how a landlord must collect, maintain, and return a security deposit. **Cite:** N.J.S.A. 46:8-19. Under this law, a security deposit is money that belongs to the tenant but is held by the landlord in trust. A security deposit is made to protect the landlord against the tenant's failure to follow his or her responsibilities as stated in the lease. This includes nonpayment of rent, or damage done to the apartment by the tenant, other than ordinary wear and tear. Read your lease carefully before you sign it. The lease should state clearly where the landlord will hold your security deposit and under what conditions it will be returned to you when you move out. The security deposit law now says that a landlord can't take any money from the tenant's security—for repairs, rent due, or anything else—while the tenant still lives in the apartment or house.

The Rent Security Deposit Act applies to all rental units, including tenant-occupied, single-family homes. The only exception is for rental units in owner-occupied buildings that have no more than two units other than the owner-landlord's unit. However, the law does apply even to tenants in these small, owner-occupied buildings if the tenant sends a 30-day written notice to the landlord stating that he or she wants the landlord to comply with the law's provisions.

Limit on amount of deposit

The most a landlord can collect as a security deposit is one and one-half times the monthly rent. **Cite:** N.J.S.A. 46:8-21.2. There are no exceptions to this limit. Sometimes a landlord will try to collect more security money from a tenant at the time the landlord raises the tenant's rent, in order to have the security keep pace with the rent increase. The law now says that the most additional security money that a landlord can get in any one year is 10 percent of the current deposit. **Cite:** N.J.S.A. 46:8-21.2.

Ask for a receipt when you pay the security deposit. The receipt should include the date, the landlord's signature, and the amount of the security deposit paid. The receipt should show that this money is for a security deposit.



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Also, make sure that your written lease states that you have paid a security deposit and includes the amount of the deposit.

Notice of security deposit

The Rent Security Deposit Act requires the landlord to put your security deposit in a separate bank account that pays interest. The landlord must tell you in writing the name and address of the bank where the deposit is being kept, the amount of the deposit, the type of account, and the current interest rate for that account.

The security deposit law says that this notice has to be given to the tenant in writing within 30 days after the tenant gives the deposit to the landlord. The law says that the landlord must also give the notice not just within 30 days of getting it from the tenant, but *every year* at the time the landlord pays the interest to the tenant (see *Interest on your security deposit* on page 13). And a new landlord must also give the notice within 30 days of buying the property. The notice must be given to the tenant within 30 days after the landlord has moved the deposit from one bank to another, or from one bank account to another (unless the change in the bank or account takes place less than two months before the annual interest payment). Finally, the law required *all* landlords to give their tenants a new notice—telling them where the deposit is, how much it is, and how much interest it is earning—by the end of January 2004.

Cite: N.J.S.A. 46:8-19(c).

Your right to use the security deposit as rent

The law also says that if the landlord does not put the security money in a proper bank account, or does not give a proper written notice to the tenant every time the law says he or she has to, ***then the tenant can give a written notice to the landlord telling the landlord to use the whole deposit (plus seven percent interest per year) to pay the tenant's rent.*** (But be sure to read the next paragraph, which talks about a special situation.) This notice should be sent to the landlord by certified mail, return receipt requested, and you should keep a copy. The money can be used to pay future rent or any back rent the tenant owes. Once a tenant legally tells the landlord to use the security deposit as rent, the landlord can't ask the tenant for another deposit as long as the tenant lives in the apartment or house. **Cite:** N.J.S.A. 46:8-19(c); *Delmat v. Kahn*, 147 N.J. Super. 293 (App. Div. 1977).

Note: There are two exceptions to the rights described in the paragraph above.

- If a landlord does not obey the law that says he or she must pay the interest on the security deposit every year (or if the landlord does not use the interest to pay part of the tenant's rent), or
- If the landlord does not give a notice about the deposit to the tenant every year,

the tenant can use the deposit to pay past or future rent due. But before the tenant can do this, the tenant must give or send the landlord a letter giving the landlord 30 days to pay the interest or give the annual notice. (This notice should also be sent by certified mail, return receipt requested, and you should keep a copy.) **Cite:** N.J.S.A. 46:8-19(c).

There are two other important points about the notice of security deposit:

- If you have a written lease, read it carefully. Landlords will often put the name and address of the bank where your security is deposited, along with the other information required by law, right in the lease. This is sufficient notice under the law.
- Even if the landlord sends you the notice within 30 days, the landlord still violates the law if the notice is not true. If you receive the notice, call the bank to find out if the money has been deposited. If the money was not deposited, you can tell the landlord in writing to use the security deposit to pay your rent just the same as if the landlord had not sent you a notice at all.
Cite: *Princeton Hill Associates v. Lynch*, 241 N.J. Super. 363 (App. Div. 1990).

Interest on your security deposit

The Rent Security Deposit Act requires landlords who rent 10 or more apartments to place tenants' security deposits in either an insured money market fund or a federally insured bank account. The account must pay a rate of interest set at least quarterly and equal to the average rate of interest paid by the bank on money market accounts.

These higher interest accounts must be in New Jersey-based institutions. **Cite:** N.J.S.A. 46:8-19(a).

The law requires landlords who rent fewer than 10 apartments to place security deposits in bank accounts that pay at least the regular rate of interest. **Cite:** N.J.S.A. 46:8-19(b).

Whichever type of account your security deposit is in, *all* of the interest earned on it is yours. The law no longer allows the landlord to keep any amount to cover his or her administrative expenses. **Cite:** N.J.S.A. 46:8-19(a).

The law now requires that the interest earned on the deposit must either be paid to you in cash every year or subtracted from the amount of rent you owe on the renewal or the anniversary of the lease. This must be done either when your lease is to be renewed or on January 31 each year. (The landlord must give you a written notice that he or she will be paying you on January 31 of each year instead of the date your lease is renewed.) **Cite:** N.J.S.A. 46:8-19(c).

Whichever type of account your security deposit is in, *all* of the interest earned on it is yours.

Getting your security deposit back

The Rent Security Deposit Act states what a landlord must do with your security deposit when you move out, even if you move out before your lease is over. Within 30 days after you move out, the landlord must return your security deposit and interest, less any rent you owe or any charges for repairing damage that you have done to the property. If the landlord deducts any amounts for damages or rent, he or she must give you a complete list of the damages he or she claims you did to the property and the cost of repairs. The landlord must send you the list of damages by registered

or certified mail, and the landlord must return to you any money left over from your security deposit. **Cite:** N.J.S.A. 46:8-21.1.

The landlord can only charge you for property damage that is more than *ordinary wear and tear*. Ordinary wear and tear means damage that takes place from the normal, careful use of the property. Examples of normal wear and tear are faded paint on the walls, loose tile in the bathroom, window cracks caused by winter weather, or leaky faucets or radiators. Examples of damages that might not be ordinary wear and tear are large holes in the walls caused by nailing up decorations, cigarette burns on floors, or a broken mirror on the bathroom cabinet.

Landlords cannot charge cleaning fees to tenants who leave their apartments broom clean. Landlords often try to deduct such fees, as well as fees for painting.

There are steps you can take to prevent a landlord from charging you for ordinary wear and tear, cleaning, or painting. Before you move out, ask the landlord or superintendent to personally inspect the apartment. Then ask that person to sign a note stating that you left the apartment clean and undamaged. If you cannot get the landlord or superintendent to inspect the unit, have a friend do so. Ask your friend to take photographs, and sign and date them. If you have a friend do this, make sure the friend can go to court with you if necessary. If you end up in court, the judge will not accept a letter from your friend as evidence.

Going to court to get back your security deposit

If, after 30 days, the landlord has not returned your security deposit, you can file a complaint against the landlord in Small Claims Court. The Rent Security Deposit Act states that if the court finds that a landlord wrongfully refused to return all or part of a tenant's security deposit, the court must order the landlord to pay the tenant double the amount of the security deposit if it is not returned at all, or double the amount that the landlord wrongfully deducted from the deposit.

When you file your Small Claims Court complaint, make sure you ask for double the amount of the deposit. (**Note:** Even if you forget to ask for double the amount of money when you fill out your complaint, the court still must give you double because the law requires it.) **Cite:** N.J.S.A. 46:8-21.1; *Gibson v. 1013 North Broad Assoc.*, 172 N.J. Super. 191 (App. Div. 1980); *Hale v. Farrakhan*, 390 N.J. Super. 335 (App. Div. 2007). If some of the deposit was returned, be sure to ask for double the amount that you feel the landlord should not have deducted from your deposit. **Cite:** *Cottle v. Butler*, 257 N.J. Super. 401 (Law Div. 1992). If you go to Small Claims Court, also write on the complaint the words "together with interest and costs of the suit." This means that you will get the interest and the money that it costs you to file the complaint (\$20 plus mileage). The court should also award you reasonable attorney's fees if you hired an attorney.

Note: You can sue for up to \$5,000 in Small Claims Court, and you can sue in the Special Civil Part where different rules apply. If your landlord owes you more than \$5,000, you can still sue in Small Claims Court if you are willing to give up anything over \$5,000. **Cite:** P.L. 2003, c.188 (section 6).

Also note: If your security deposit was provided by the Board of Social Services or some other government agency, and the landlord is wrongfully trying to keep it, the

law says that the landlord not only has to give the deposit back to you, but he or she may also have to pay the agency a penalty of between \$500 and \$2,000. The law says the Attorney General, the Department of Community Affairs, or some other state agency can sue to help you get your deposit back and to collect the penalty. **Cite:** N.J.S.A. 46:8-21.1; P.L. 2007, c. 9.

When your building is sold

If your apartment building or rented house is sold, the law makes it clear that the new owner must get the tenants' security deposits, plus interest, from the old owner. The law plainly states that the *new* owner is responsible to each tenant for the full amount of the tenant's deposit, plus interest, *whether or not the new owner actually got the deposits from the old owner*. **Cite:** N.J.S.A. 46:8-20 and 21.



When your building is sold, the new owner must get the tenants' security deposits, plus interest, from the old owner.

What if you are displaced?

If you are forced to move because of fire, flood, condemnation, or evacuation, the landlord must return your security deposit plus your portion of the interest earned on it within five days. Before returning your money, the landlord may deduct any charges you owe under the lease agreement. This includes any rent you owed when you were displaced. The security deposit must be made available to you during normal business hours for 30 days, in the city in which the property is located. With the money, the landlord must give you a detailed statement of interest earned by the deposit and a list of any deductions. If the municipal clerk agrees, the landlord can turn your money over to the clerk. The city clerk must then make it available to you.

Within three business days after the owner is notified of the displacement, the owner must give you written notice by personal delivery or by mail to your last known address, stating where and when your security deposit will be available. The owner must send a duplicate notice to the relocation officer, if the city has one, or to the city clerk. When your last known address is that from which you were displaced, and the mailbox at that address is no longer usable, the owner must also post such notice at each outside entrance of that property. If you do not ask for the money within 30 days, the owner must redeposit it in an interest-bearing account in the same bank from which it was withdrawn.

If you move back into the same property later, you must immediately return to the landlord one-third of the security deposit. You must return another third within 30 days and the last third within 60 days from the date you moved back in. If you do not repay the security deposit, the owner may bring an eviction action against you for nonpayment of rent. **Cite:** N.J.S.A. 46:8-21.1.



Chapter 4

Leases

What is a lease?

A LEASE IS A CONTRACT (agreement) between a landlord and a tenant for the rental of an apartment or house. A lease can be an oral (spoken) agreement or it can be in writing. Most leases in New Jersey, whether oral or written, are not the result of bargaining between the landlord and the tenant—the landlord knows that there is more demand for rental housing than there are units to rent, so the landlord can set the lease terms. The person who wants to rent the apartment must then accept the lease as offered by the landlord.

Sometimes, landlords will try to include unreasonable or unfair terms in the lease. For example, a lease may require a tenant to get the landlord's permission to have overnight guests or visitors. This rule is unreasonable. A tenant has the right to have friends or relatives visit for a few days without getting permission from the landlord.

In New Jersey, every lease must be written in “plain language.” This means that the lease must be written in a “simple, clear, understandable, and easily readable way.” **Cite:** N.J.S.A. 56:12-2.

Before signing a written lease, read it carefully. *Do not sign a lease with blank spaces.* Make sure that the terms in the items in the lease are the same as those you and the landlord agreed to when you discussed renting the unit. If you do not understand something in the lease, don't sign it. Tell the landlord you first want to take it to a friend or lawyer who will help you to understand it. If you do sign a lease, be sure you get a copy. This will prevent the landlord from making changes afterward.

If your lease is spoken, make sure you discuss with your landlord all of the responsibilities you have and all of the responsibilities the landlord has. It is important that you understand what you must do before you make a final agreement with the landlord.

Common lease terms

Most leases, whether spoken or written, have several requirements or terms in common. In addition, the law requires certain conduct by landlords and tenants under any lease, even an oral lease. This section reviews some of the more common lease requirements and discusses how the law treats them.

The term of the lease

A lease will contain a term (a length of time that you agree to rent the property). It is usually a month, six months, or a year. If your lease has no set length of time, the term is automatically a month if the rent is paid on a monthly basis. This means that your agreement runs from month to month. **Cite:** N.J.S.A. 46:8-10. Just because you



A lease will contain a term (a length of time that you agree to rent the property).

have a month-to-month lease does not mean that the landlord can get you out at the end of any month. You don't have to leave just because the term of your lease is up. The law contains special rules for evicting tenants. See Chapter 5, *Ending or Breaking Your Lease*, on page 24 for more about this.

The rent payment

The lease will state the amount of rent you agree to pay monthly for the house or apartment. This means that if you sign a one-year lease for \$500 a month, you are entering into a contract for \$500 for 12 months, or \$6,000.

You should always pay your rent by personal check or money order. This way you have a receipt for each payment. You should not pay rent with cash unless you get a signed receipt! Be careful if you use money orders. Sometimes a landlord will claim that he or she did not get your money order. You will then have to ask the bank to find out what happened to it. This can cause you problems if the landlord tries to evict you for nonpayment of rent. In that situation, you will need proof to show the judge that you did pay the rent. Therefore, ***always get a signed receipt from your landlord for each rent payment, even when you pay by money order. Always keep copies of all of your rent receipts.***

The security deposit

The lease may require a security deposit. If a security deposit is required, the written lease should state that it was received and indicate the amount. Security deposits are discussed in Chapter 3, *Security Deposits*, on page 11.

Late charges

Many leases require a late charge if the rent is not paid by a certain date of the month. This charge is supposed to cover the money lost by the landlord as a result of the late payment. Courts will enforce late charges if they are reasonable and spelled out in writing in the lease. The landlord cannot evict based upon nonpayment of late charges unless there is an agreement stating that late charges are to be considered part of the "rent." **Cite:** *447 Associates v. Miranda*, 115 N.J. 522 (1989). In Section 8 housing, a landlord cannot sue to evict for nonpayment of late charges whether they are called rent or not. See *Community Realty Management Company v. Harris*, 155 N.J. 212 (1998). Similarly, a public housing authority cannot evict for nonpayment of late charges even if they are called rent. **Cite:** *Housing Authority of the City of Atlantic City v. Taylor*, 171 N.J. 580 (2002); *Hodges v. Feinstein*, 189 N.J. 210 (2007).

Late charges are also not allowed if the tenant did not pay the rent on time because the landlord failed to make needed repairs. Under the Anti-Eviction Act, a tenant who repeatedly pays rent after its due date can be sued for eviction provided that the landlord gives the tenant proper notices. See Chapter 9, *The Causes for Eviction*, on page 56. In addition, there is a new law that states when rent must be paid and when landlords can charge a late fee. This statute does not apply to all tenants. It applies

Always get a signed receipt from your landlord for each rent payment, even when you pay by money order.

only to apartments rented by senior citizens receiving Social Security Old Age Pensions, Railroad Retirement Pensions, or other government pensions in the place of Social Security Old Age Pensions, and by recipients of Social Security Disability Benefits, Supplemental Security Income (SSI), or welfare benefits under Work First New Jersey. **Cite:** N.J.S.A. 2A: 42-6.1 and 6.3.

The law states that a landlord must allow a tenant a period of “five business grace days” to pay the rent. If a tenant pays the rent in the five-day period, the landlord may not charge a late fee. In counting the five business days, do not include Saturday, Sunday, or a national or state holiday.

If the landlord knows, or should know, that your monthly income regularly does not arrive by a certain day, he should pick a later date that is fair to both of you.

Attorney’s fees

Some leases require a tenant to pay the landlord’s attorney’s fee if the landlord has to use a lawyer to take the tenant to court. If your lease has such a term, and the landlord takes you to court for eviction and wins the case, you will be responsible for paying a “reasonable” fee for the landlord’s attorney. **Cite:** *Community Realty Management v. Harris*, 155 N.J. 212 (1998); *University Court v. Mahasin*, 166 N.J. Super. 551 (App. Div. 1979).

Sometimes a landlord will demand attorney’s fees in an eviction action and seek to evict if the tenant cannot pay them. However, in order to do this:

- There must be a written lease, and
- The lease must state that attorney’s fees are “additional rent” or “collectible as rent.”

If there is no written lease that describes attorney’s fees as “rent,” you cannot be evicted for failing to pay attorney’s fees. **Cite:** *Community Realty Management v. Harris*, 155 N.J. 212 (1998).

However, even if there is such a lease provision, the law may limit the amount of your rent due, and the landlord may not be able to evict you for failure to pay attorney’s fees. For example, a public housing authority cannot evict a tenant for nonpayment of attorney’s fees, even if the lease calls the attorney’s fees additional rent. **Cite:** *Housing Authority of the City of Atlantic City v. Taylor*, 171 N.J. 580 (2002); *Hodges v. Feinstein*, 189 N.J. 210 (2007). If you live in other housing that receives federal assistance, such as Section 8 housing, you should also argue that the amount of your rent is only what the housing agency handling your Section 8 says it is—that is, it is only the rent amount stated in your lease. Also, if you live under rent control, you should argue that the rent control ordinance limits your rent, and that adding in attorney’s fees as extra or additional rent would exceed the rent control limits. **Cite:** *Housing Authority of the City of Atlantic City v. Taylor*, 171 N.J. 580 (2002); *Community Realty Management Inc. v. Harris*, 155 N.J. 212 (1998); *Ivy Hill Park Apartments v. Sidisin*, 258 N.J. Super. 19 (App. Div. 1992).

In an eviction case, if the judge finds that you are responsible for paying a reasonable fee for the landlord’s attorney, you can be evicted if you do not pay that amount on the day of the hearing. Sometimes a landlord will ask a judge to evict a tenant even though the tenant paid the rent owed before the court date, but failed to include the

attorney's fees with the rent payment. If the landlord tries to do this, the tenant should argue that the landlord, by accepting rent, gave up or "waived" the right to evict for not paying attorney's fees. **Cite:** *Carteret Properties v. Variety Donuts, Inc.*, 49 N.J. 116 (1967). However, it is up to the court to decide whether in fact the landlord did give this up. Therefore, it is always important to go to court unless the tenant obtains a statement in writing that the landlord is dismissing the case. Also see *Waiver—the landlord knew about it but continued the tenancy* on page 71.

Rules and regulations

A lease will often have rules that the landlord wants the tenant to follow. Lease rules require you to conduct yourself in a certain way, or they state that you can't do certain things in your apartment or in the common areas of your building or complex. For example, your lease may contain rules about using a washing machine in your apartment; about your responsibility to pay for electric, gas, heat, or other utilities if not included in the rent; about how you are to dispose of trash; and how you must use common facilities, such as laundry rooms or playgrounds.

Accepting rules and regulations. Before entering into a lease, you should make sure that you are willing to follow the rules and regulations. These include the rules in your written lease and those required by law. If you do not follow the requirements, you can be evicted under the Anti-Eviction Act for breaking a rule, as long as the rule is reasonable. See Chapter 9, *The Causes for Eviction*, on page 56.

Care of the property

A lease will usually state that you are responsible for any damage done to the property by your children, guests, or pets if it is more than "normal" wear and tear. The law requires tenants to be responsible for the proper care of the landlord's property even if your written lease contains nothing about this or if you have an oral lease. Under the Anti-Eviction Act, you can be evicted for destroying the landlord's property. See Chapter 9, *The Causes for Eviction*, on page 56.

Notice of repairs

Most leases state that the tenant is responsible for giving the landlord prompt notice of any repairs that need to be made to the property. Tenants have a legal responsibility to notify the landlord of needed repairs, even if there is no written lease. There are several reasons why you should promptly report any defect, particularly such problems as water leaks. These problems can cause additional damage if they are not corrected right away. By giving notice of such problems, you can also avoid any attempt by the landlord to claim that you must pay for the additional damage. You can also avoid giving the landlord a claim against all or part of your security deposit. You should make sure that, when possible, you give notice in writing, keeping a copy for your records.

Most leases state that the tenant is responsible for giving the landlord prompt notice of any repairs that need to be made.

Orderly conduct

Under any lease, whether written or spoken, you cannot interfere with the rights of other tenants. This means that you and your family members, guests, and pets cannot act in ways that disturb the peace and quiet of other tenants and neighbors. Under the Anti-Eviction Act, you can be evicted for being disorderly, making too much noise, and disturbing other tenants.



If your landlord says that it's okay to have a pet, make sure that you get permission in writing.

Pets

A written lease usually will state whether the tenant is allowed to have a pet. If your landlord says that it's okay to have a pet, make sure that you get his or her permission in writing. Many landlords do not permit pets, and the lease will have a "no pets" clause in it.

What happens if a tenant has a pet but the property is sold to a new owner-landlord who wants to prohibit pets? When the tenant's lease expires, the new landlord might try to offer the tenant a new lease with a no pets clause. The law now prohibits a new owner-landlord from forcing tenants to give up pets that they were allowed to have by the previous owner. If a tenant has a pet because the old landlord gave permission for the pet, the new landlord must allow the tenant to keep the pet. However, the new landlord can prohibit new tenants from having pets and can try to force an existing tenant to get rid of any pet that is causing problems for other tenants. **Cite:** *Royal Associates v. Concannon*, 200 N.J. Super. 84 (App. Div. 1985) and *Young v. Savinon*, 201 N.J. Super. 1 (App. Div. 1985).

Controlling pets. If you are allowed to have a pet, you must maintain control over it. If you allow your pet to damage the property or interfere with the rights of other tenants, your landlord can demand that you control your pet or remove the animal from the building. Your failure to control your pet also could lead to your eviction under the Anti-Eviction Act.

Pets in public and elderly housing. There are special rules regarding pets for senior citizens who live in rental housing for the elderly. A New Jersey law allows all residents of senior citizen housing projects to have pets. **Cite:** N.J.S.A. 2A:42-104. Federal law also allows the elderly and disabled to own and keep common household pets in federally assisted elderly rental housing. **Cite:** 12 U.S.C. § 1701n-1. In addition, all tenants of public housing have the right to have one or more pets as long as their owners meet reasonable conditions established by the housing authority. **Cite:** 42 U.S.C. § 1437z-2. New Jersey law also gives residents of all senior citizen projects the right to have pets. **Cite:** N.J.S.A. 2A:42-103. This law applies to buildings containing three apartments or more, condominium projects, and cooperative buildings, as long as all of the apartments are for senior citizens. A senior citizen is defined as a person 62 years of age or older and includes the surviving spouse of a senior as long as he or she is at least 55 years old.

Under the law, the landlord cannot refuse to renew a tenant's lease because the tenant owns a pet. The landlord can make reasonable rules concerning the care and control of pets by tenants and can require a tenant to give away any offspring that the tenant's pet has, within eight weeks of their birth. The landlord cannot require that the pet be spayed or neutered.

The law also allows a landlord to demand that a tenant get rid of a pet if:

- The tenant does not follow the reasonable rules adopted by the landlord, and this causes a violation of any health or building code.
- The tenant does not take good care of the pet.
- The tenant does not control the pet, such as keeping a dog on a leash when taking the animal out for a walk.
- The tenant does not clean up the pet's waste when asked to do so by the landlord.
- The tenant does not keep his or her pet from making waste on the sidewalks, doorways, hallways, or other common areas in and around the complex.

Entering the tenant's dwelling unit

All leases, whether written or oral, give the tenant "exclusive possession" of the dwelling unit. This means that only the tenant, or members of the tenant's household, or people the tenant allows in the house or apartment, have the right to be there. The landlord does not have the right to come into the house or apartment whenever he or she wants. In a written lease, the landlord's duty to not enter the tenant's house or apartment is called the *covenant of quiet enjoyment*. This covenant (promise) means that the tenant has control over who can or cannot come into his or her apartment or house. **Cite:** *Ashley Court Enterprises v. Whittaker*, 249 N.J. Super. 552 (App. Div. 1991).

When can a landlord enter? The law allows the landlord or the landlord's workers to go into the tenant's dwelling only in a few special situations:

- If the tenant invites or asks the landlord or one of the landlord's workers to come in.
- If the landlord needs to inspect the apartment, but only:
 - at reasonable periods of time—every day is unreasonable, every few months might be okay;
 - at a reasonable time of day—4 a.m. is unreasonable, 4 p.m. might be okay, depending on whether the tenant will be home at that time; and
 - only after giving the tenant reasonable notice that he or she is coming to inspect. Reasonable notice usually means a written notice. It also usually means that the notice must be given at least one day before the



The law allows the landlord or the landlord's workers to go into the tenant's dwelling to do maintenance or make repairs. For non-emergencies, they can only enter at a reasonable time and after giving reasonable notice.

landlord wants to come in. For buildings containing three apartments or more, there is a regulation requiring one day's notice before a landlord can come into an apartment to make an inspection or do repairs. **Cite:** N.J.A.C. 5:10-5.1(c).

- If the landlord or one of the landlord's workers needs to go into the apartment to do maintenance or make repairs. If the repairs are not an emergency, they can only enter the house or apartment at a reasonable time and after giving reasonable notice.
- If the landlord or the landlord's workers need to go into the house or apartment to do emergency repairs. Under this circumstance, the landlord may not have to give one day's notice—or even any notice—if the emergency is really serious or dangerous, for example, the apartment is on fire or water is rushing out of a broken pipe and pouring through the floor. But even in the case of an emergency, the landlord should try to give some notice if he or she can, even if the notice is just a phone call.

What if the landlord won't stay out? If the landlord or one of the landlord's workers enters your house or apartment and does not have your permission or does not have one of the other reasons discussed above, he or she is breaking the law. You should send a letter by certified mail to the landlord complaining about what happened. Keep a copy for your records. You can also call the police or go to the police station or local court and file a complaint for "trespass" or "harassment" against the person who entered without your permission. You might be able to file a trespass or harassment complaint because, even though your landlord owns the building, he or she has given you the right to possess the apartment.



Maintaining order

A lease requires the landlord to make sure that each tenant respects the rights of other tenants. If one tenant is disturbing the other tenants by playing loud music at night or destroying the property, it is the landlord's responsibility to make that tenant stop. **Cite:** *Gottdiener v. Mailhot*, 179 N.J. Super. 286 (App. Div. 1981). But in order for the landlord to be held responsible for any damages suffered by the tenants, one of the tenants must tell the landlord about the situation. **Cite:** *Williams v. Gorman*, 214 N.J. Super. 517 (App. Div. 1986), cert. denied, 107 N.J. 111 (1987).

Renewal of the lease

Many written leases will have a section explaining how you can get a new lease when your current lease ends. The lease may, for instance, state that unless the lease is ended by either the landlord or the tenant, it will automatically be renewed for another year.

But a yearly lease that is not renewed automatically becomes a month-to-month lease when the year in the lease ends. **Cite:** N.J.S.A. 46:8-10.

A month-to-month lease will renew itself automatically for another month unless the tenant or the landlord acts to end the lease. This rule applies even if the lease agreement is oral and not in writing. **Cite:** N.J.S.A. 46:8-10.

Changes in the lease

When your lease ends, the landlord can offer you a new lease with changes in the terms and conditions of the lease. To do this, the landlord must give you a written notice ending your existing lease and offering to enter into a new lease with you if you accept the changes. The landlord's notice must clearly spell out the changes.

A tenant's refusal at the end of a lease to accept reasonable changes in the terms and conditions of the lease can result in eviction under the Anti-Eviction Act. To be "reasonable," the changes must take into account the circumstances and interests of both the landlord and the tenant. This means that your landlord cannot make lease changes that he or she knows will cause you unnecessary hardship, unless he or she has very strong reasons for doing so. If your landlord sends you a written notice containing lease changes that you think are unreasonable, send a letter to the landlord describing the unreasonable lease changes. Your letter should also say that you will not accept the new lease unless the landlord offers to make changes that are reasonable. **Cite:** *447 Associates v. Miranda*, 115 N.J. 522 (1989).

For example, at the end of your lease, your landlord wants to change the lease by putting in late charges if your rent is paid after the fifth day of the month. The landlord knows that you do not get paid or receive your assistance check until the third or fourth day of the month, and that it will be very hard for you to get the rent money to him by the fifth. You refuse to sign the new lease, and the landlord takes you to court to try to evict you. In court, the judge should decide that the lease change is not reasonable because the landlord knows that you cannot pay the rent by the fifth of the month and should have picked a later date. 

When your lease ends, the landlord can offer you a new lease with changes in the terms and conditions of the lease.

Chapter 5

Ending or Breaking Your Lease

ALL LEASES, WHETHER WRITTEN or oral, last only for a specific period of time, such as one month or one year. This chapter explains three things about ending or breaking leases. First, it explains how to end a lease so that you can move out when the lease period is up. Second, it explains the legal consequences of breaking your lease before your lease ends and when you can move because the landlord refuses to repair serious defects in your rental unit. Third, it discusses what happens to a lease when the tenant dies.

NOTE! Before you end or break a lease, you must understand a basic rule about landlord-tenant law in New Jersey. Because of the Anti-Eviction Act, you cannot be evicted simply because your lease ends. As explained in Chapter 9, *The Causes for Eviction*, on page 56, a tenant can only be evicted if the landlord can prove one of the good causes for eviction under the law. The ending or expiration of a lease is not a good cause for eviction. This means that, however long your lease, you do not have to move just because your lease has ended. It also means that, unless you or the landlord end your lease, all yearly leases and month-to-month leases automatically renew themselves. The only exception to this rule is if you live in a building with only two or three apartments and the landlord lives in one of the apartments.

Why end a lease?

Landlords and tenants have different reasons for wanting to end a lease. As stated above, a landlord cannot evict you just because your lease is over. Because of this, the only reason for a landlord to end your lease is to offer you a new lease with different terms, such as a higher rent or new rules and regulations. By ending your lease, the landlord cannot get you to move but can require you to pay more rent or to follow new rules.

On the other hand, tenants often want to end their leases because they want to move.



To end a lease, either the tenant or the landlord must give the other a written notice before the end of the lease, stating that the lease will not be renewed.

Notice to end a lease

To end a lease, either the tenant or the landlord must give the other a written notice before the end of the lease, stating that the lease will not be renewed. If this written notice is not given or is not given in the required time, then the lease will renew itself automatically, at least on a month-to-month basis, generally with the same terms and conditions. **Cite:** N.J.S.A. 46:8-10.

Ending a yearly lease. To end a yearly lease, unless the lease says otherwise, you must give

the landlord a written notice at least one full month before the end of the lease. The notice must tell the landlord that you are moving out when the lease ends. Also, unless the lease says otherwise, the landlord must give you at least one full month's notice before the end of the lease to terminate a yearly lease so that the landlord can raise the rent or change other terms of the lease. Remember, you cannot be evicted just because the landlord ends your lease.

For example, if your yearly lease ends on June 30, you have to give the landlord a written notice before June 1 that you plan to terminate the lease on June 30. Failure to give the proper notice may result in the automatic creation of a month-to-month tenancy. In that case, you may be responsible for at least an additional month's rent. In this example, your failure to give notice may allow the landlord to charge you for July's rent and to subtract it from your security deposit.

If your lease or a notice from your landlord says that you must either sign a new lease by a certain date or else move out by the date your present lease expires, your failure to renew your lease will put the landlord on notice that you intend to move out at the end of the lease period. If you object to changes in the lease, let the landlord know. Lease changes must be reasonable. See Chapter 9, *The Causes for Eviction*, on page 56. If you then choose not to move out, you will become a month-to-month tenant. **Cite:** *Kroll Realty v. Fuentes*, 163 N.J. Super. 23 (App. Div. 1978) and *Lowenstein v. Murray*, 229 N.J. Super. 616 (Law Div. 1988). You will, however, be subject to eviction for refusing to sign a new lease.

Ending a month-to-month lease. To end a month-to-month lease, or any rental agreement that does not have a specific lease term, you must give a written one-month notice before the month starts. You can then move out at the end of the month. **Cite:** *S. D. G. v. Inventory Control Co.*, 178, N.J. Super. 411 (App. Div. 1981); *Harry's Village, Inc. v. Egg Harbor Tp.*, 89 N.J. 576 (1982).

For example, say that you have a month-to-month lease, your rent is due the first of every month, and you want to move on June 30. You have to give the landlord a written notice before June 1 saying that you will be moving out as of June 30, and you will end your lease at that time.

Moving out before the lease ends

If you move out before the end of the lease, the landlord may be able to hold you responsible for the rent that becomes due until the apartment or house is rented again, or until the lease ends.

For example, if you move out during July and your lease ends on October 31, you could be held responsible for the rents of August, September, and October. But if another tenant moves in on September 1, then the landlord may sue you only for August's rent. This does not apply if the landlord agrees in writing to let you move before the lease ends.

If a tenant moves out before the lease ends, the landlord must try to re-rent the apartment. This means that in order to recover



rent for the months left on the lease, the landlord must prove that he or she tried to find another tenant but could not. The landlord must show, for example, that he or she immediately began advertising the apartment and interviewing tenants. **Cite:** *Sommer v. Kridel*, 74 N.J. 446 (1977).

Give advance notice to the landlord. Notify your landlord in writing as soon as you know that you will be moving out before the end of your lease term. Try to get your landlord's written permission to break the lease. If your landlord refuses to give you permission and you know of people who are interested in your apartment, send their names in a letter to your landlord.

When your moving date arrives, remove all of your property from the unit and turn in the keys promptly to the landlord or superintendent. Try to have the landlord or superintendent sign a receipt for the keys, or take a friend to witness your surrender of the keys. After you move, check to see when your former apartment becomes occupied and at what rent.

You do not have to leave a forwarding address when you move. But if you want your security deposit back, you may have to give your old landlord your new address.

What if you decide not to move? Tenants sometimes notify the landlord that they are moving because they have found another apartment that is more affordable or in better condition. What can you do if the new apartment becomes unavailable or some other problem comes up that makes the move impossible? If this happens, you do not have to move out just because you gave notice. There may be other financial consequences, however. If you are concerned, you should contact Legal Services or your state or local tenants association. However, your landlord can't evict you simply because you did not leave when you said you would. **Cite:** *Chapman Mobile Homes v. Huston*, 226 N.J. Super. 405 (1988).

Claims for rent. Another important rule of New Jersey landlord-tenant law is that a landlord cannot collect rent or any money from you in a lawsuit to evict you under the Anti-Eviction Act. A successful suit for eviction can only give the landlord possession of the rental property. It cannot be combined with a claim for money. In order to sue you for rent because you broke your lease, or for damage to the apartment, the landlord must file a separate complaint for money damages, usually in Small Claims Court.

Moving out because of bad conditions

If your landlord refuses to make needed repairs to your apartment, you can move out before the lease ends and still not be held responsible for rent for the time left on the lease. It is important to have proof of the bad conditions. You can show proof by having a building inspection done and taking pictures before you move out. In this situation, the law holds the landlord responsible for breaking the lease by failing to fulfill his or her duty to provide you with safe and decent housing. This is called *constructive eviction*. Please read Chapter 6, *Your Right to Safe and Decent Housing*, on page 29, for an explanation of a landlord's duty to maintain housing in good condition.

There are certain rules that apply for a constructive eviction:

- You can break your lease under this rule if the conditions in your rental unit are so bad that it is very hard to live there. Examples of this are if you have no heat in the winter, or your health and safety are at risk. In addition, your landlord must have failed to correct the problem after receiving notice from you, which should be in writing if at all possible. **Cite:** *Marini v. Ireland*, 56 N.J. 130 (1970); *C.F. Seabrook v. Beck*, 174 N.J. Super. 577 (App. Div. 1980).
- If you move because of bad conditions before your lease ends, your landlord may sue you for rent for the time left on the lease. The landlord will almost certainly refuse to return your security deposit. You may find yourself in court either because the landlord has sued you for back rent or because you are suing the landlord for the return of your security deposit. Whether you win or lose in court will depend on how serious the judge believes the conditions were that you claim forced you to move. Judges usually allow a tenant to break the lease only when very serious conditions exist, such as no heat, no water, a broken toilet, a broken elevator, flooding, or excessive and constant disturbances.
- It is important that you give the landlord notice of the defective conditions and a reasonable amount of time to make repairs before moving out and claiming constructive eviction. Your notice should be in writing, and by certified mail, return receipt requested. Keep a copy of your notice.
- If serious conditions in your apartment force you to move before the end of your lease, you are still entitled to have your security deposit returned to you.

If you move because of bad conditions, you are still entitled to have your security deposit returned to you.

Death or disability of a tenant or a tenant's spouse

The law recognizes that death or serious illness often requires households to search for less expensive housing, including moving in with other family members. The law provides that any lease for one year or more may be ended before it expires if the tenant or the tenant's spouse dies. The landlord must be given written notice of the lease termination by the tenant or the tenant's executor or administrator, or the surviving spouse if the names of both spouses are on the lease. The lease termination becomes valid 40 days after the landlord receives written notice if (1) the rent owed up to that point has been paid; (2) the property is vacated at least five working days before the 40th day; and (3) the tenant's lease does not prohibit early termination upon the tenant's death. **Cite:** N.J.S.A. 46:8-9.2.

Property tax rebate. When a lease is terminated because of the tenant's death, any property tax rebate or credit due and owing to the tenant before the lease termination is to be paid to the executor or administrator of the tenant's estate, or to the tenant's surviving spouse. Any landlord who fails to do this becomes liable to the tenant's estate or surviving spouse for twice the amount of the property tax rebate to which the tenant was entitled or \$100, whichever is greater. **Cite:** N.J.S.A. 54:4-6.7; N.J.S.A. 54:4-6.11.

The lease may not survive the tenant's death. If the person who signed the lease dies, a recent court decision says that the remaining members of the tenant household may not be protected by the Anti-Eviction Act. **Cite:** *Maglies v. Estate of Guy*, 386 N.J. Super. 449 (App. Div. 2006). This case was appealed to the New Jersey Supreme Court, which, at press time, had not yet made its decision. Check our website, www.LSNJLAW.org, for updates on this issue.

Tenant illness or accident. Any lease for one or more years may be ended before it expires if the tenant or the tenant's spouse becomes disabled due to an illness or accident. In such a case, the tenant or spouse must notify the landlord on a disability form available from the New Jersey Department of Community Affairs. Call 1-609-633-6606 to request a copy. The form requires (1) a certification of a treating doctor that the tenant or spouse is unable to continue to work; (2) proof of loss of income; and (3) proof that any pension, insurance, or other assistance to which the tenant or spouse is entitled is not enough to pay the rent, even when added with other income. The lease termination becomes effective 40 days after the landlord receives the written notice. The property must also be vacated and possession returned to the landlord at least five days before the 40th day. **Cite:** N.J.S.A. 46:8-9.1.

Housing that is not handicapped accessible

The law permits tenants who are disabled to break their lease if the landlord, after notice, has failed to make the dwelling unit handicapped accessible to the disabled tenant or a disabled member of the household. To break your lease under these circumstances, you must notify the landlord in advance, and the notice must contain (1) a statement from your physician that you are permanently disabled, and (2) a statement that you asked the landlord to make the house or apartment accessible at the landlord's expense and that the landlord was unable or unwilling to do so. **Cite:** N.J.S.A. 46:8-9.2.



Chapter 6

Your Right to Safe and Decent Housing

TENANTS FREQUENTLY COMPLAIN THAT their landlord will not repair such things as windows, locks, toilets, faucets, and heating systems when these break from normal wear and tear. Tenants also complain that their landlords do not do routine maintenance, such as pest extermination. You have a right as a tenant to live in housing that is safe, clean, and decent. This chapter explains this right and the laws that place a duty upon your landlord to maintain your rental unit in good condition. This chapter also explains the different steps you can take to have your landlord make needed repairs and do routine maintenance.

There are several different laws that require landlords to maintain tenant-occupied rental property in safe and decent condition.

The warranty of habitability

Landlords have a duty under New Jersey landlord-tenant law to maintain their rental property in a safe and decent condition. This duty applies to all leases, whether written or oral. The duty to keep rental units safe and decent is called the *warranty of habitability*. The warranty of habitability is based upon common sense: in return for paying rent to the landlord, the landlord must make sure that the housing is fit to be occupied by the tenant.

The warranty of habitability has been held to include keeping the basic elements of your housing unit in good condition. This includes taking care of physical elements, such as the roof, windows, walls, etc.; the systems that supply your heat, hot and cold water, and electricity and gas; appliances, such as the stove, refrigerator, and dishwasher; keeping apartments pest-free and common areas clean; and providing security against crime, such as locks on doors and windows to deter break-ins.

Housing and property maintenance codes

There are several codes adopted by the state or local governments that establish standards for maintaining rental property. There are trained personnel who inspect rental properties to enforce the codes and who are available to take complaints about code violations from individual tenants.

Multiple dwelling code

Landlords of buildings with three or more units must meet the standards in the New Jersey Hotel and Multiple Dwelling Health and Safety Code, or “multiple dwelling” code. This code is contained in regulations issued by the New Jersey Department of Community Affairs. **Cite:** N.J.A.C. 5:10-1.1.



Landlords have a duty under New Jersey landlord-tenant law to maintain their rental property in a safe and decent condition.

This code has detailed and specific rules that cover everything, including locks, window screens, ventilation, pests, plumbing, painting, garbage, living space, and so on. You can find these regulations in your courthouse library or public library, or you can call the Department of Community Affairs, Bureau of Housing Inspection, in Trenton at (609) 633-6210 to purchase a copy.

Local property maintenance code

Most towns and cities also have their own housing or property maintenance codes. These codes usually apply to all buildings or apartments, not just multiple dwellings. Single-family houses and two-family houses are covered by these codes. Call your city hall or municipal building and ask for the building inspector or housing inspector if you have any questions or problems, or would just like to see a copy of the local housing code.

Heat requirements

If your lease requires the landlord to provide heat, the landlord must give you the amount of heat required by the state codes and the local town or city ordinance. Under the state housing codes, from October 1 to May 1, the landlord must provide enough heat so that the temperature in the apartment is at least 68 degrees from 6 a.m. to 11 p.m. Between the hours of 11 p.m. and 6 a.m., the temperature in the apartment must be at least 65 degrees. **Cite:** N.J.A.C. 5:10-14 *et seq.* and N.J.A.C. 5:28-1.12(m). Local health codes cover parts of the year not covered by housing codes.

The housing inspector or board of health in your town enforces the heat requirements in the state and local codes. Larger cities have special no-heat hotlines that are set up especially to handle complaints. The inspector can file a complaint in court on your behalf, or you can file your own complaint. The landlord must then appear in court and explain why he or she is not providing heat. The court can impose stiff penalties, including fines or jail sentences.

Lead paint and lead poisoning

Lead poisoning is a dangerous health problem for many tenants, especially children. Lead poisoning is the presence of too much lead in the body. Children and unborn babies are particularly at risk of harm from lead poisoning since their bodies and nervous systems are still developing. Lead poisoning can cause serious physical and mental harm to adults and children. Don't wait to do something about it if you think you or your children may be exposed to lead in your apartment or home.

Poisoning by lead paint

A person can be poisoned by eating lead or breathing lead dust. Tenants—especially children under 6—are frequently poisoned by the paint in their apartment or house. Until 1978, lead was used in house paints. In older buildings, there is usually a lot of lead paint. Peeling or cracking paint in older houses and apartments can be dangerous. Outside paint can also have lead in it. Peeling paint on the outside of houses or porches can fall on the ground.

Children like the taste of paint chips, and they chew on window sills and paint chips that fall on the floor. Babies, toddlers, and preschool-age children like to put

things into their mouths. In houses with peeling or cracking lead paint, lead dust can get on children's hands, pacifiers, and toys. When children put their hands, pacifiers, or toys into their mouths, they can swallow lead dust and poison themselves.

Lead can enter your or your children's bodies by breathing air with lead dust in it. Scraping paint off walls or vacuuming up paint chips from floors can spread lead dust around the house. Lead can poison an unborn child if the mother breathes lead dust.



When children put their hands, pacifiers, or toys into their mouths, they can swallow lead dust and poison themselves.

Lead can also be present in dirt. For many years there was lead in the paint used for the outside of houses. When the paint deteriorated, or the houses were demolished, the lead built up in the surrounding soil. Lead does not decay or dissolve; it stays in the dirt until it is removed. Children should not eat dirt or play in bare soil.

Testing for lead poisoning

There is a blood test that shows if you or your children are lead poisoned. By law, all children under age 6 should be tested for lead. **Cite:** N.J.S.A. 26:2-137.4. Children from ages 9 to 36 months who live in older housing are at highest risk for lead poisoning. If you have a child under 6 years old who has not been tested, speak to your doctor.

Your doctor can do the blood test. There are also many childhood lead poisoning prevention projects that test children for free. Hospital clinics may also test blood for lead. Children participating in the Medicaid program must be tested for lead poisoning for free. For information on testing, call your local health department.

Removing or abating lead paint

If your home has lead paint that is creating a hazard, you can use all of the ways described in this chapter to force your landlord to remove it, such as withholding your rent or asking for a rent abatement.

Lead poisoning is a serious health hazard. If you or your children test for high levels of lead in your blood, there may be lead paint in your apartment or home or the dirt outside. You should immediately get advice and help from Legal Services on how to force your landlord to remove the lead paint as quickly as possible. You can also contact a private attorney to discuss whether or not you can sue your landlord for damages for harm caused by lead paint.

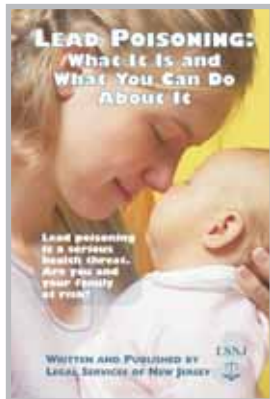
Because lead poisoning is so harmful, there are other laws that you can use. The law prohibits using lead paint in many things, including the inside or outside of apartments or houses. And lead paint that is already there should be removed or covered so that it doesn't poison anyone. Dirt that is contaminated with lead should be removed. The law says that hazardous lead paint on inside or outside walls of a house or apartment is a "public nuisance" that must be removed by the landlord. **Cite:** N.J.S.A. 24:14A-5; N.J.S.A. 55:13A-7.

The local health department must investigate violations of lead paint laws and force the landlord to remove lead paint. If anyone in your family is tested and has a high level of lead in their blood, you should call the health department and ask them to inspect your home immediately.

If the health department finds that a child under age 6 has a high blood lead level, then the health department will test the inside of the home for lead. If there is no lead hazard inside the home, the outside of the building will be tested. If no lead hazard is found on the inside or outside walls, the local health department will test the surrounding dirt. When there is a lead hazard identified, the health department must order the owner of the building to remove the lead hazard. To correct the problem, the owner can cover the surface with hard material or remove the lead paint and repaint with non-lead paint. In some circumstances, tenants will be placed in another location at the owner's expense while the owner corrects the lead hazards in the rental unit.

The health department will give tenants or occupants a copy of its notice to the owner so that they know what the health department has ordered the owner to do.

Support for low-income landlords



Legislation passed in 2004 provides for loans up to \$150,000 and grants to landlords, based on financial need. The Lead Hazard Control Assistance Fund is a pool of grants and low-interest loans set aside for landlords who cannot afford the costly process of removing lead-based paint from aging buildings. (This legislation also created a fund to relocate lead-poisoned children and established a registry of lead-safe housing in the state.)

Legal Services of New Jersey publishes a handbook, *Lead Poisoning: What It Is and What You Can Do About It*. The handbook is available in English and Spanish. You can find the handbook on Legal Services of New Jersey's website at www.LSNJLAW.org.

Window guards

Landlords of multiple dwelling units are required, at the tenant's written request, to install and maintain window guards in the public halls and in the apartment of any tenant who has a child 10 years old or younger who lives in the apartment or who is regularly present in the apartment for a substantial amount of time. **Cite:** N.J.S.A. 55:13A-7.13. The law requires landlords to give tenants an annual notice that tells tenants that they can make a written request to have window guards installed. This notice must also be contained in the lease. The cost of installing window guards may be passed on to the tenants, but landlords are not allowed to charge more than \$20 per window guard. Note that window guards are not required on any first-floor windows or on any windows that give access to a fire escape. Owner-occupied buildings and some other buildings, such as seasonal rentals, are also exempt from this requirement. **Cite:** N.J.S.A. 55:13A7.13b. Please note that units used by migrant or seasonal workers in connection with any work or place where work is being performed are

not considered “seasonal rentals.” These landlords are also required to inform tenants and install window guards in compliance with the law. **Cite:** N.J.S.A. 55: 13A-7.13b(2). If you have small children and have not been notified about window guards, you may want to talk to a lawyer to find out if you are covered by this law.

Updated rules require larger window guards and annual inspections

Under new rules beginning in 2006, landlords are required to inspect window guards twice each year to make sure they are working properly and to record the inspections in a log for that purpose.

Tenants may complain to the Commissioner of the New Jersey Department of Community Affairs to enforce the law, and they may impose penalties and fines under the Hotel and Multiple Dwelling Law. **Cite:** N.J.S.A. 55:13A-1. Any tenant who wishes to have a window guard removed will have to submit a written request to his or her landlord.

How to get your landlord to make repairs

The law gives you several ways to assert your right as a tenant to safe and decent housing and to make your landlord repair defective conditions in your rental unit. You have the legal right to:

- Call in the building or health inspector,
- Use your rent to make repairs,
- Withhold your rent, and
- Take legal action.

Note: If you live in a building that was built with the help of state funding, the landlord must hold a meeting for all the tenants every three months, so that the tenants can discuss complaints they have about conditions in the building. (A meeting would not have to be held if a majority of the tenants voted not to hold it.) **Cite:** N.J.S.A. 55:14K-7.3; P.L. 2007, c. 8.

Using the housing and health codes

As discussed in the preceding section, rental units must meet city and state housing and health codes. The codes list the requirements that the landlord’s property must meet so that it can be approved as a safe or “standard” building. The codes deal with heat, plumbing, security, roofing, pests, and other serious defects like weak walls.

If you feel that the conditions in your apartment or house are defective, unlivable, or dangerous, tell your landlord. If your landlord fails to make the repairs in a reasonable period of time, call the local building inspector and ask him or her to inspect the property as soon as possible. If you can, be present when the inspector

If you feel that the conditions in your apartment or house are defective, unlivable, or dangerous, tell your landlord.

does the inspection so that you can point out all of the problems. Ask for the inspector's name, and ask him or her to send you a copy of the report.

If the needed repairs present a sanitation problem, such as a sewage leak, call the city or county board of health. Ask for an inspector to check the condition. When the inspector comes, get his or her name.

If the inspector finds code violations, he or she will send a letter to the landlord listing the code violations. This letter will advise the landlord that a reinspection to check whether the repairs have been made will take place on a certain date.

Some housing and health code inspectors do not send the tenant a copy of the inspection reports or inform the tenant of the results of the inspection. As a tenant in the property, you have a right to receive a copy of these reports, and you should make sure to ask that copies of all reports be sent to you.

Reinspecting a housing unit. If your housing unit fails inspection, it must be re-inspected by the housing or health code inspector. You might find that a reinspection does not take place. If this happens, you should call the inspector and inform him or her that the landlord has not made the required repairs.

If, on reinspection, the inspector finds that the landlord has not made the repairs, another inspection will be scheduled. If violations are still not corrected, the building inspector should then give a summons to the landlord to appear in municipal court. If found guilty, the landlord can be fined.

Enforcement of housing and health codes is not always taken seriously by local government officials. Few landlords are brought to municipal court for violations of the property maintenance code, and even fewer are ever fined in court. Tenants must aggressively insist that inspections and reinspections be done thoroughly and in a timely manner and that inspectors take landlords who don't comply with the code to court.

Condemning or closing a building. The housing and property maintenance codes allow inspectors to declare a house or apartment building "unfit for human habitation" if there are serious defects in the rental unit or building. These defects must pose a threat to the health and safety of the tenants. A collapse in the structure of a building or an absence of heat or hot water are the types of situations that may warrant declaring a building unfit. By declaring the building unfit, the inspector can order you to leave your rental unit and close the building.



Inspectors can declare a house or apartment building "unfit for human habitation" if there are serious defects in the rental unit or building.

There have been cases where an inspector has condemned a building even though the defective conditions were not serious enough to force tenants to leave the building. For example, a landlord seeking to convert a building into condominiums could get the tenants out of the building with the inspector's help, thereby avoiding the requirements of the condominium conversion laws.

Cite: *49 Prospect Street v. Sheva Gardens*, 227 N.J. Super. 449 (App. Div. 1988). If you suspect that the housing inspector or your landlord is trying

to illegally force you out of your home, you should get advice from a lawyer. (See *Finding a lawyer* on page 3.)

If the building inspector tells you in writing to move because the building has been declared unfit, you might be entitled to relocation assistance from the local government. Relocation assistance includes help in finding a new place to live, moving expenses, and up to \$4,000 in assistance towards buying or renting a house or apartment. **Cite:** N.J.S.A. 52:31B-1 *et seq.* and N.J.S.A. 20:4-1 *et seq.* (See *Relocation assistance* on page 82.)

Using the board of health to get heat. Many local boards of health have the power to make repairs to heating systems so that you can receive heat. Your local government must have enacted an ordinance that gives the board of health this power. Even with an ordinance, the board of health can act only if the temperature outdoors is below 55 degrees. To get action, you must call the board of health and tell them that you tried to get the landlord to fix the heat. The board will then wait 24 hours before they have someone make the repairs. **Cite:** N.J.S.A. 26:3-31(p) and *Jones v. Buford*, 71 N.J. 433 (1976).

What if the heating oil runs out? Some New Jersey cities have programs to provide an emergency delivery of oil, at government expense, when tenants have no heat because the landlord did not buy oil. The city then collects the money directly from the landlord. Check with your local government to find out about such programs.

Using the rent to make repairs: repair and deduct

Under certain conditions, tenants can use the rent money to make the repairs. After making the repairs, the tenant subtracts the cost of the repairs from the rent instead of paying it to the landlord as rent. This is called *repair and deduct*. There are certain rules for repair and deduct that you must follow:

- The conditions that are in need of repair must be serious enough to affect the tenant's health or well-being.
- The tenant must first give the landlord proper notice stating that repairs are needed and then give the landlord a reasonable amount of time to make the repairs. The notice should be in writing and sent by certified mail, return receipt requested.
- After waiting a reasonable amount of time, the tenant should have the repair done and pay for it with all or part of the rent money.
- The cost of the repair must be reasonable.
- The tenant then should deduct the cost from the next rent payment and give the landlord a copy of the receipt for the repair. **Cite:** *Marini v. Ireland*, 56 N.J. 130 (1970).

Under certain conditions, tenants can use the rent money to make repairs.

Example: The toilet in your apartment doesn't work. You let the landlord know in writing that it is broken. Several days go by and the landlord does not repair it. You then call a local plumber to fix the toilet, pay the plumber, and get a receipt. The cost



To use repair and deduct, the conditions that are in need of repair must be serious enough to affect the tenant's health or well-being.

of the toilet repair is \$50. When the rent is due the next month, you give the landlord the rent money, minus the \$50 for the repair, instead of the full amount of the rent. You give the landlord a copy of the plumber's bill and keep the original copy for yourself.

In an emergency situation, if you can't reach the landlord in person or by telephone, you can have the repairs made and then tell the landlord.

The use of repair and deduct sometimes leads to disputes between the landlord and tenant. A landlord may try to hold you responsible for the full rent even if you used the rent to repair a serious defect. In this situation, the landlord may try to evict you in court for nonpayment of rent. If you show the judge a copy of the letter you sent asking the landlord to make the repair and a copy of the repair receipt, the judge should not hold you responsible for the full rent. However, the judge may not agree with you, and may hold you responsible for the full rent. Therefore, you should try to take the entire amount of rent with you to court.

Withholding rent

Where a landlord simply refuses to make needed repairs, tenants often have little choice but to stop paying rent. This is called *withholding the rent* if it involves one tenant. If some or all of the tenants in one building or complex withhold rent as a group, it is called a *rent strike*. By withholding rent, tenants put pressure on the landlord to make repairs, and they avoid paying for services they are not receiving. Withholding rent is perfectly legal and often can be the only way to force the landlord to make necessary repairs.

How to start withholding rent. There are two steps you must take if you decide to withhold rent to force the landlord to make repairs:

1. You must send a letter to the landlord explaining what conditions must be corrected. The letter should explain that you will stop paying rent if the repairs are not done right away, and that you will not pay more rent until all of the repairs are completed. You should also explain that, once the repairs are completed, you will pay a reduced rent from the time the repairs were needed until the time the repairs are completed. The letter should be sent by certified mail, return receipt requested, and you must keep a copy of the letter since you may need it later in court.
2. You must save the rent you withhold each month and put it in a safe place. A bank account is a good place to deposit the rent each month because you will earn interest on the money. Saving the rent is the most important thing you can do. You are withholding rent, not spending it on something else!

What to expect. Landlords need the rent money to pay bills and make a profit. Rent withholding denies the landlord this money each month. Some landlords will decide to make all of the repairs or make an agreement with tenants to make repairs in return for paying over the withheld rent and starting to pay rent again. If you reach such an agreement with your landlord, make sure that it is in writing.

Some landlords will try to scare tenants by sending letters and notices threatening eviction instead of making the repairs. If your landlord does this, you should expect that sooner or later the landlord will bring a complaint in court for your eviction for not paying rent. (See Chapter 9, *The Causes for Eviction*, on page 56.)

NOTE! This is where saving the rent you withheld becomes very important. You cannot be evicted for nonpayment of rent if you have saved all of the rent and you appear in court with it on the day you are summoned.

You should tell the judge that you withheld your rent because of the bad conditions. The judge may require you to deposit the withheld rent with the court clerk. It is very important that you have all of the rent money at that time because, if you don't have the money, you may be evicted. The judge will then schedule a second hearing to hear evidence about the conditions in your apartment. This is called a *rent abatement hearing* and is described in the next section.

Rent abatements. The rent abatement hearing gives you the chance to show the judge just how bad the conditions are in your apartment or in the common areas of the building. Make a list and take it with you to court to remind yourself when you testify. You should take the copy of the letter that you sent notifying the landlord of your decision to withhold rent and about the defective conditions in the apartment or house. You should also take any reports by housing or health code inspectors about the conditions. If you can, take pictures of holes, stains, and other problems and show them to the judge.

The judge hearing your case has the power to lower the rent for the months in which you withheld your rent. The judge can then allow you to keep the difference between your regular rent and the lower rent for the months you withheld rent. The judge also may allow you to pay the lower rent in the future until the landlord makes all of the repairs. The judge will list each repair that must be made before the rent can be returned to its regular amount. This is called a *rent abatement order*.

The amount that your rent is lowered depends on how bad the judge finds the conditions to be. If the conditions are so bad that the apartment or house is unlivable, the judge can reduce the rent to nothing and order that you don't have to pay rent until the landlord takes care of the problems. This is why you should try as best as you can to fully describe each problem you are having so that the judge understands the difficulties you are having in your everyday life.

You cannot be evicted for non-payment of rent if you have saved all of the rent and you appear in court with it on the day you are summoned.

It is important that you use rent withholding *only* if the problems in your house or apartment are serious and *only* after you have given the landlord notice. At a rent abatement hearing, the judge could also decide that the conditions are not bad enough to justify your actions and require that you pay all of the withheld rent. If this happens, you may be responsible for paying court costs, late charges, and the cost of the landlord's attorney's fee. (See Chapter 10, *Defenses to Eviction*, on page 65.)

Settlement in court. In court, you may reach a settlement with the landlord before going to trial. If the landlord agrees to make the repairs, put this in the settlement agreement. If the landlord later does not make the repairs as promised, you can sue to enforce the agreement.

Tenants joining in a rent strike. A rent strike is rent withholding by some or all of the tenants with the same landlord. A rent strike increases the pressure on the landlord because, as more tenants withhold rent, the landlord will have less money coming in. Working as a group, tenants also stand a better chance in court. It will be harder for the landlord to convince the judge that any one tenant is somehow responsible for the defective conditions or for the landlord to deny that the defects exist. Instead, each tenant will be able to back up what each other says in court. Tenants who act together greatly improve their chances of getting the court to put pressure on the landlord through a large abatement.

As more tenants join in the rent strike, the housing and health code inspectors will be more likely to put more pressure on the landlord to make repairs. Working together also increases the possibility that the tenants can hire a lawyer. With a lawyer, you may have a better chance of getting the judge to order repairs or appoint a receiver. A rent strike is often the best way to force a resistant landlord to deal with poor housing conditions.

Court order to repair

Instead of rent withholding, tenants can go directly to court and ask the judge to order the landlord to pay for repairs. This type of lawsuit is filed in the Small Claims

Tenants can go to Small Claims Court and ask the judge to order the landlord to make repairs.

Court and can include a request that the judge order the landlord to pay money back for repairs made by the tenants. **Cite:** R.6:1-2(a)(2). See *Going to court to get back your security deposit* on page 14.

Tenants should talk with their regional Legal Services office, tenants organization, or a private lawyer if they want to know more about using Small Claims Court or if they are not sure about how they should fill out the papers required to file a Small Claims complaint.

Rent receivership

The law also allows tenants to file a petition with the court to appoint a receiver to run the building or complex. The petition, which must be filed in Superior Court, asks the judge to name someone other than the landlord to collect all of the tenants' rent payments and to use the money to make repairs to the building. The person who

is named by the court to collect rents and order repairs is called a *rent receiver*. **Cite:** N.J.S.A. 2A:42-85.

A judge will usually consider granting the petition when the landlord has a history of refusing to correct conditions that deprive the tenants of heat, water, electricity, or other essential services. A rent receiver is usually appointed by the judge only when repair and deduct, rent withholding, and other attempts to have repairs made have failed.

The following example shows how this law works. The elevator in a five-story building breaks down. The landlord is notified in writing but does not respond. The cost of fixing an elevator or replacing it can be several thousand dollars. If only one tenant withholds rent, it will take years to raise the money. Under the receivership law, one tenant can ask the court to order all of the other tenants in the building to pay the rent to the court or to a bonded receiver. The receiver can then use the rent from all of the tenants to fix the elevator.

Petitioning for a rent receiver requires the help of an attorney. Keep in mind that, if the landlord is trying to evict you because you withheld rent due to very bad conditions in your building, the judge, on his or her own, can begin the process of having a receiver appointed. You may want to ask the judge about this during a rent abatement hearing if your landlord is completely uncooperative and the conditions in your building are serious. **Cite:** *Drew v. Pullen*, 172 N.J. Super. 570 (App. Div. 1980).

Going to the landlord's insurance company

Another way to put pressure on the landlord to make repairs is to complain to the landlord's property insurance company about conditions that are a safety hazard. In towns with rent control, the name of the insurance company will appear in bills the landlord submits in connection with a hardship increase application. In other places, it may be more difficult to learn the name of the landlord's insurance company. 🏠

The law also allows tenants to file a petition with the court to appoint a receiver to run the building or complex.

Chapter 7

Rent Increases

Your rights when your rent is increased

TENANTS OFTEN ASK IF they have any rights when the landlord asks for a rent increase, especially if their landlord has raised the rent in the past and the tenant is at the point where he or she can no longer afford to pay any more. The answer to this question is yes. As this chapter explains, landlords can only increase the rent if they follow the correct procedure to end the lease at the old rent and create a new lease at the increased rent. A landlord also cannot ask for a rent increase that is unconscionable. If the tenant lives in a community with rent control, the rent increase cannot exceed the amount allowed under the rent control ordinance.

The correct way to increase the rent

The law requires a landlord to take certain steps in order to make you pay an increase in rent. First, your existing lease at your present rent has to end. This means that the landlord cannot increase the rent during your lease. For example, if you have a lease for a one-year period, the rent cannot be increased during the period of the lease. To raise the rent, the landlord has to wait until your lease is about to expire and then take action to end your lease.

Second, the landlord has to offer you the option of entering into a new lease after the old lease expires. This new lease may be at a higher rent. The next section describes how a landlord must end your lease and offer you a new lease at a higher rent.

Notice terminating lease and notice of rent increase. The law requires that, for a landlord to raise your rent, you must be given proper written notice. A proper notice must inform the tenant that the current written or oral lease is being ended and that the tenant can stay in the rental unit by signing a new lease at a higher rent. (See *The correct way to increase the rent* above.)



The law requires that, for a landlord to raise your rent, you must be given proper written notice.

If your lease is monthly, a proper notice must explain that your existing lease will be terminated or ended in one full calendar month. You must receive this notice at least one month before your lease ends. The notice period may be greater, depending on what your current lease says. If your lease is for one year, the notice must explain that your lease will terminate on the date the lease ends, and you must receive this notice at least one month before that date. The notice can be for a longer period, such as 90 days before the lease is to end, if the lease requires it.

In addition to ending the lease, the notice must also say that, at the end of your current lease, you have the choice of accepting a new lease at the higher rent. If

you decide to sign the lease and stay on as a tenant, you must pay the rent increase.

Cite: *Harry's Village, Inc. v. Egg Harbor Tp.*, 89 N.J. 576 (1982).

Any notice of a rent increase that is not in writing and is not divided into two parts—(1) ending the old lease and (2) beginning a new lease at a higher rent—is not legal, and you do not have to pay the increase.

If you don't pay the increase

If the landlord asks for a rent increase, and you decide to stay but not pay the increase, you are not agreeing to the increase. You should be aware that, if you do this, the landlord can try to evict you in court under the Anti-Eviction Act. The law allows landlords to evict tenants for nonpayment of a rent increase. **Cite:** N.J.S.A. 2A:18-61.1(f). (See Chapter 9, *The Causes For Eviction*, on page 56.)

In court, you can argue to the judge that the landlord did not give you proper notice and therefore you do not have to pay the increase until the landlord has given you the right notice.

If you succeed with this argument, the judge will dismiss the eviction complaint. The judge could also find that the landlord gave you the proper notice of a rent increase. This means that, unless the increase is “unconscionable” or in excess of the amount allowed by rent control, you will be evicted unless you pay the increase.

Cite: N.J.S.A. 2A:18-61.1(f). (See *Unconscionable rent increases* below.)

Unconscionable rent increases

Under the Anti-Eviction Act, a landlord cannot make you pay an increase in rent that is so large that it is unconscionable, meaning that it is extremely harsh or so unreasonable as to be shocking. Unconscionability is not important to tenants if the apartment, house, or mobile home is covered by a rent control ordinance adopted by the city or township. In that situation, rent control limits the amount of the rent increase. Also, if you live in subsidized housing, or receive Section 8, federal law will determine how much your rent can be increased. In all other cases, the only protection you have is that the statute states that the rent increase cannot be unconscionable. **Cite:** N.J.S.A. 2A:18-61.1(f).

Whether an increase is unconscionable depends on the facts of each case. The eviction law does not state what makes an increase unconscionable. In deciding disputes between tenants and their landlords over rent increases, judges have not defined how large an increase must be in dollars or percentages to be unconscionable. It is clear that some rent increases are unconscionable because the increase is much larger than the prior rent, or because the landlord has asked for many small increases in a short period of time that all add up to a large increase. For example, an increase of over 20 percent, if made by the landlord without a very good reason, could be unconscionable. Even a five percent increase could be unconscionable if the conditions in the building are very bad and the landlord has failed to make needed repairs.

If you believe that the rent increase your landlord is asking for may be unconscionable, you can refuse to pay the increase. Your landlord can then take you to court to try to evict you for nonpayment of the rent increase. If the notice ending your lease

and increasing your rent is proper, then you can defend against the increase in court by arguing that the increase is unconscionable.

Burden of proof. If the landlord takes you to court, it will be up to the judge to decide if the increase is unconscionable and if you have to pay the increase or be evicted. The burden of proof is on the landlord to show that the rent increase is fair and not unconscionable. **Cite:** *Fromet Properties, Inc. v. Buel*, 294 N.J. Super. 601 (App. Div. 1996). If the landlord is not prepared to prove that the increase is fair when the matter is scheduled for trial, the court can grant an adjournment (postponement) in the interest of justice.

In eviction cases, tenants are not allowed to examine the landlord's books or documents before the trial. Problems will arise if a landlord comes to court with detailed records that a tenant has never seen and may want to challenge. If this happens, the tenant should ask for an adjournment in order to have time to review the landlord's documents. In a complicated case, the tenant may also ask the court to transfer the matter to a different court—the Law Division of the Superior Court—in order to review the landlord's records and challenge them through legal procedures such as discovery.

What does the landlord have to prove? The judge should require the landlord to show that the large increase sought is justified because his expenses are more than his rental income, or that he is making an insufficient profit. Other factors that the court may look at in deciding whether a rent increase is fair and not unconscionable are:

- The amount of the proposed rent increase.
- How the existing and proposed rents compare to rents charged at similar rental properties in the same geographic area.
- The relative bargaining position of the parties—who has the most power in determining what should be a fair rental.
- Based on the court's general knowledge, whether or not the proposed rent increase would “shock the conscience of a reasonable person.” **Cite:** *Fromet Properties, Inc. v. Buel*, 294 N.J. Super. 601 (App. Div. 1996). There also may be other factors that courts will examine.

For example, if a landlord claims heavy expenses due to repairs, the landlord should be required to show that improvements were made to the rental units or the building and that these improvements mean better living conditions for tenants. Also, if a landlord spends a lot of money to make a major repair that will last for many years—such as replacing the entire roof of the building or buying all new refrigerators—the tenants should not have to pay the entire cost of the repair in a single rent increase. The increase should be spread out over the life of the repair. (For example, if a landlord spends \$15,000 to replace a roof, and the new roof will last 15 years, the rent increase passed on to all the tenants should only be for \$1,000 total, since the tenants will be paying that amount each year for the next 15 years.)

A landlord should not be allowed to charge tenants for improvements that the landlord had to make to bring the building into compliance with housing and health codes. Tenants have a right to safe and decent housing and should not be penalized

simply because a present or former landlord did not make repairs to the building. **Cite:** *Orange Taxpayers Council, Inc. v. Orange*, 83 N.J. 246 (1980).

Some judges do not, however, take these factors into account when ruling on whether a rent increase is unconscionable. Instead, there are judges who believe that landlords can double or triple the rent simply by showing that other apartments in the area are renting for a similar amount.

Once the landlord tries to prove that the rent increase is fair and not unconscionable, a tenant can dispute the accuracy of the landlord's statements and try to show that the increase simply is not fair.

Increases under rent control

Rent increases are also limited to the amounts allowed under a local rent control ordinance if the community has adopted rent control and the rental unit is covered by rent control. More than 100 cities and townships in New Jersey have passed rent control ordinances. To find out if your city or township has rent control and if it covers your unit, you should call your city or township hall. If there is rent control where you live, they will put you in touch with the person in charge of rent control cases. You can then ask for information about your situation and for a copy of the city's or town's rent control ordinance. The ordinance will state how much and how often your rent can be raised.

There are two types of rent increases allowed by most rent control ordinances. First, the ordinances allow landlords to automatically increase the rent by a certain percentage each year. This is called the *annual increase*. Second, the ordinances allow landlords to apply to the rent control board for an increase above the annual amount. This is called a *hardship increase*.

Hardship increases. Rent control ordinances allow landlords to apply to the rent control board for a hardship increase. A hardship increase is an additional increase, beyond the regular annual increase, if the landlord is not making a "fair rate of return" or "fair return." However, courts have said that towns can limit the landlord's profits to amounts that are fair even if the profits are less than the landlord wants, or less than the landlord could get by investing money elsewhere.

Most rent control ordinances use a formula to determine fair return. These formulas vary. Some fair return formulas are easier to understand than others, and some are more fair to tenants. Check your rent control ordinance for the fair return formula used in your community.

Tenants must be notified if the landlord applies for a hardship increase. The rent control board will then hold a public hearing on the landlord's request and, after the hearing, make a decision on the request. The rent control hearing gives tenants a chance to contest the rent increase sought in the application.

A landlord should not be allowed to charge tenants for improvements that he or she had to make to bring the building into compliance with housing and health codes.

If you receive notice that your landlord is applying for a hardship increase, there are several steps you can take. You should immediately contact your rent control board and ask them for (1) a copy of the ordinance, (2) a copy of the landlord's application for a hardship increase, and (3) information on when the hearing on the hardship increase will be held by the rent control board. Many ordinances also provide tenants with the right to look at all of the landlord's books and records. You may also want to seek the advice of an attorney and get any help you can from the tenants organization in your building, complex, or community.

Challenging a hardship increase. At the hearing on a request for a hardship increase, the landlord will try to show why he or she should get the increase, and you have the chance to argue against the increase. To defeat the hardship application, you must show that the landlord should not recover some of the costs being claimed. This means that you must carefully go through the hardship application and examine each item to make sure that it is fair and reasonable. You should also make sure that the landlord is properly reporting all of his income. For example, you should challenge any cost the landlord is not entitled to recover under the ordinance, or any cost that appears inflated or false, or any cost that is unreasonable or too high, such as the cost of bank financing.

Your aim is to convince the rent control board that the landlord is not suffering hardship and that he or she should not get all or part of the requested increase. The rent board's decision can be appealed to the Superior Court, Law Division.

Illegal rents under rent control. If you find out that your rent is higher than the legal rent set by the rent control ordinance, you should contact your rent control board. You can file a complaint with the rent control board to get the rent lowered to the correct amount and to recover the amount of illegal rent you paid. Contact your regional Legal Services program, a private attorney, or your local tenants organization for help. You can also get your overpayment back by taking it out of future rent payments. **Cite:** *Chau v. Cardillo*, 250 N.J. Super. 378 (App. Div. 1990).

Rent increases due to condo or co-op conversions. Landlords may not be allowed to include in a hardship increase any costs that result from a planned conversion of the building to a condominium or cooperative. For example, one court has ruled that where a building had its property taxes doubled when it was converted into a cooperative, the rent control board was justified in not allowing the increase. The court also ruled that the Anti-Eviction Act requires that tenants who choose not to buy ownership in a condo or co-op be protected against conversion-related rent increases. **Cite:** *Litt v. Rutherford Rent Board*, 196 N.J. Super. 456 (Law Div. 1984).

Increases to retaliate or get even

The law does not allow your landlord to increase your rent in order to "get even" with you because you are using your legal rights as a tenant, or because you have reported housing and health code violations to official inspectors, or because you belong to a tenants organization. **Cite:** N.J.S.A. 2A:42-10.10. (See Chapter 10, *Defenses to Eviction*, on page 65.)



Chapter 8

The Nuts and Bolts of Fighting Evictions

The tenant's right to court process

IN NEW JERSEY, THE only way a tenant can be evicted or removed from his or her rental unit is if a Superior Court judge orders the eviction. An order for eviction can come only after the landlord has sued the tenant for eviction in the Superior Court and won. There is no other way that you can be evicted from your home or apartment. This means that you do not have to move out simply because the landlord tells you to or threatens to evict you if you don't leave.

This chapter explains the legal eviction process. It starts by explaining the law that protects you from removal by the landlord without being taken to court first. Chapter 11, *Removals, Stays, and Vacating Judgments*, on page 72, explains what should happen if you lose your case in court and the judge enters an eviction order against you.

An illegal eviction is now a disorderly persons offense

A lockout or eviction is unlawful if it is not done by a special court officer with a legal court order. "Self-help" evictions by landlords are illegal. If you are locked out or evicted by your landlord and not by a special court officer, or if your landlord shuts off your utilities or does other things to try to make you leave, you should call the police immediately. (You should also call a private attorney or contact your regional Legal Services office.) The law now says that the police must make sure you get back into your apartment. Read the rest of this section to find out why the police must do this.

The law in New Jersey is clear. Landlords or their employees can't legally evict tenants by themselves. (These kinds of evictions are sometimes called *self-help evictions*.) Police officers cannot evict tenants. Only a *special court officer* with a warrant for removal issued by a judge can actually evict a tenant. Landlords who try to evict tenants *by themselves* are doing something illegal, even if they have gone to court and sued the tenant for eviction. **Cite:** N.J.S.A. 2A: 39-1 and 2; N.J.S.A. 2A:18-57; N.J.S.A 2A:42-10.16; and related statutes.

But even though the law is clear, some landlords still evict tenants illegally, or scare tenants into leaving by threatening to throw them out. The problem is that many times, when frightened tenants call the police, the police will not help. The police say that they can't help because what the landlord is doing is not listed in the criminal part of the law books as a "disorderly persons offense"



The police now must help tenants who are being illegally evicted by their landlords.

or a “crime.” The police often say that they only deal with crimes, even if they know that what the landlord is doing is wrong.

The New Jersey Tenants Organization (NJTO) had been trying for many years to solve this problem. They finally succeeded. On January 12, 2006, the law was changed. (See P.L. 2005, c. 319.) ***Illegal evictions are now a disorderly persons offense, and the new law is in the criminal part of the law books.*** The police now know that they must help tenants who are being illegally evicted by their landlords.

Here are some of the things the new law does. **Cite:** N.J.S.A. 2C:33-11.1.

- The new law requires the police or any other public officials who find out about an illegal “self-help” eviction to warn the landlord or his workers to stop. If the landlord does not stop, then the landlord has broken the law. If the police arrive *after* the landlord has already locked the tenant out, the police must tell the landlord to let the tenant go back in. If the landlord refuses, then the landlord has broken the law.
- The police must make sure that tenants who are illegally evicted get back into their home or apartment. If the landlord tries to keep the tenants from going back in, the police must stop the landlord. The police must also give the landlord a summons to go to court, or even arrest the landlord if he refuses to let the tenant go back in.
- The new law says that a landlord who tries to get a tenant out by doing any one of the following things is breaking the law. These things are now disorderly persons offenses: (1) The landlord uses violence or threats of violence to get the tenants out; or (2) the landlord says or does other things to try to scare the tenants into leaving; or (3) the landlord takes the tenant’s property and puts it outside; or (4) the tenant lets the landlord in peacefully, and then the landlord forces the tenant out; or (5) the landlord padlocks the door or changes the locks; or (6) the landlord shuts off the electricity or gas, or has them shut off, in order to make the tenant leave; or (7) the landlord tries anything else to get the tenant out.
- *The only way the landlord can evict the tenant is if a special court officer with a legal court order called a warrant for removal comes out himself and does the eviction.* And even before the special court officer can do the eviction, he must give a copy of the warrant for removal to the tenant (or leave a copy on the tenant’s door) *at least three days before coming out* to do the actual eviction. The new law says that the warrant for removal must tell the tenant many things, including that self-help evictions by landlords are now disorderly persons offenses. The warrant must also let the tenants know the earliest day on which the special court officer can come back to do the eviction.
- The new law says that if a special court officer does do a legal eviction, he or she must fill out a new form called an “execution of warrant for possession.” The new form must say when the legal eviction took place, and give the name, signature, and position of the special court officer who did the eviction. *The special court officer is required to immediately give a copy of this new form to both the landlord and tenant* (or a member of the tenant’s family), and also to post it on the door of the dwelling unit.

This last part is very important. It makes the job of the police officer who is called by a frightened tenant very easy. *If the landlord does not have a copy of a valid execution of warrant filled out by a special court officer, then the landlord is doing an illegal eviction.* The police officer must tell him to stop trying to evict the tenant. If the landlord does not stop, then the police officer must stop the landlord and charge him with a disorderly persons offense. The police officer must also protect the tenant and see that the tenant gets back into the home.

- The new law says that the Attorney General of New Jersey must make sure that all state and local police officers, prosecutors, and public officials know about the new law. Each police officer must be given a form that describes the new law and the police officers' responsibilities to enforce it. Police officers must also be given special training to make sure they know what they have to do to stop illegal evictions.
- The new law also says that tenants who are legally evicted commit an offense if they intentionally damage or destroy the landlord's property. **Cite:** N.J.S.A. 2C:17-3(a)(2). In addition to criminal penalties, convicted tenants can be required to pay the landlord for the damage.

Holding your property for rent. It is also against the law for a landlord to hold or take your clothing or furniture to force you to pay rent. This is called a *distrain* and it is illegal, even if you owe rent to the landlord. **Cite:** N.J.S.A. 2A:33-1.

Hotel and motel residents

Guests in hotels and motels do not have to be taken to court to be evicted. The hotel owner or operator can lock guests out of their rooms if they don't pay their bills or if they disturb the peace. But what about people who have no other place to live and, because of the housing shortage, are forced to live in motels or hotels for months or even years at a time? Are these people residents or tenants who can only be evicted through the court process?

We believe that the answer is yes. However, recent court decisions show that the courts are interpreting the law on a case-by-case basis. In one case, a family that lived in a hotel for over two years because they had no other place to live was considered a tenant and could only be evicted through court order under the Anti-Eviction Act. **Cite:** *Williams v. Alexander Hamilton Hotel*, 249 N.J. Super. 481 (App. Div. 1991). In another case, a person who lived in a motel for two months was not a tenant and could be locked out of his room without court process. **Cite:** *Francis v. Trinidad Motel*, 261 N.J. Super. 252 (App Div. 1993). In another case, the court held that a person who lived in a hotel for three years and had no intention of moving to other accommodations was a tenant, and that the hotel was the tenant's permanent home. The tenant was entitled to the protection of the Anti-Eviction Act and had the right to sue for damages for an illegal lockout. **Cite:** *McNeil v. Estate of Lachman*, 285 N.J. Super. 212 (App. Div. 1995).



Guests in hotels and motels do not have to be taken to court to be evicted.

If you live in a hotel or motel, it will help if you can show that the owner agreed, or should have known, that you were not just a short-term guest, or that the owner did or said things that made you believe that you were a tenant. You may need the help of a private attorney or Legal Services if you find yourself in this situation.

Hotel or rooming and boarding house residents

Residents of licensed rooming and boarding homes are protected from self-help evictions. Owners must evict residents through the same court process as any other tenant. **Cite:** N.J.A.C. 5:27-3.3(c). Some hotels and motels are really rooming and boarding houses because people live there as their only residence for extended periods of time. The law considers a hotel or motel a rooming and boarding house if at least 15 percent of the rooms are occupied by people who have lived there for more than 90 days. This means that all of the residents (but not the guests) at the hotel or motel have the same rights as rooming and boarding house residents, including the right to be evicted only through court process. **Cite:** N.J.S.A. 55:13B-3(h). You may need the help of a private attorney or Legal Services to figure out if this law applies to you.

The legal eviction process

NOTE! As mentioned above, the only person who can legally evict you is a judge. The judge can order your eviction only after a court hearing at which the landlord has proven one or more of the “causes” for eviction under the Anti-Eviction Act.

Also note: If you live in a small building (three apartments or less), and the owner actually lives in one of the apartments, the landlord does not have to prove one of the causes for eviction under the Anti-Eviction Act. But the landlord must still take you to court to evict you.

In addition, the law requires that the landlord give the tenant certain notices before going to court, except for nonpayment of rent. These notices must describe in detail the cause for eviction and must be given within certain time periods. The Anti-Eviction Act is fully explained in Chapter 9, *The Causes for Eviction*, on page 56. You need to know about the eviction law to fully understand the way an eviction works.

This section explains the notices required before an eviction complaint is filed, the process of filing and serving the eviction complaint, and what you can expect at the court hearing in an eviction case.

Notices required before an eviction suit

The Anti-Eviction Act requires that for every cause for eviction except nonpayment of rent, the landlord must serve you with a notice to quit and, in some cases, a notice to cease. In general, notices must specify in detail the cause of the termination of the tenancy (why the landlord wants to evict you). **Cite:** N.J.S.A. 2A:18-61.2. Other notices, such as a notice to cease, must state precisely and in detail the nature of the offense and the conduct that the landlord wants the tenant to cease. **Cite:** *Carteret Properties v. Variety Donuts*, 49 N.J. 116 (1967). Specific detailed notices are required and are extremely important for a number of reasons. A tenant must know exactly the conduct that the landlord wants the tenant to cease, so that the tenant can

stop the conduct and avoid eviction. A tenant must know exactly why the landlord is terminating the tenancy so that a tenant can know how to prepare for the trial.

Landlords must “strictly comply” with notice requirements and, if they do not, the eviction action should be dismissed. **Cite:** *Carteret Properties v. Variety Donuts, Inc.*, 49 N.J. 116 (1967); *Housing Authority of the City of Newark v. Raindrop*, 287 N.J. Super. 222 (App. Div. 1996); *Bayside Condo, Inc. v. Mahoney*, 254 N.J. Super. 323 (App. Div. 1992). Please see Chapter 9, *The Causes for Eviction*, on page 56 for the causes for eviction and the notices that are required for each cause. See also *Failure to follow federal notice requirements and procedures* on page 67.

No notices needed for nonpayment of rent. The most common cause for eviction is nonpayment of rent. For this cause, and only for this cause, the landlord does not have to send you any advance notice before filing a complaint for eviction in court. This means that if you fail to pay rent, the landlord can go directly to court and you may not get any warning from the landlord before receiving the court summons and complaint. You do have to receive advance notice before the landlord can take you to court for not paying an increase in rent. Chapter 7, *Rent Increases*, on page 40, explains the proper form for this notice.

However, if you live in public or federally subsidized housing, you may be entitled to certain notices before the landlord files an eviction action for nonpayment of rent. A public housing authority must give a tenant 14 days’ notice. There are many types of federally subsidized housing, and the requirements for the notices are different for each. Tenants facing eviction from such housing should contact an attorney to see if the proper notices have been given.

For nonpayment of rent, the landlord does not have to send you any advance notice before filing a complaint for eviction in court.

Notice to cease and notice to quit. If you don’t owe rent but the landlord is trying to evict you for one of the other causes under the Anti-Eviction Act, the landlord must give you certain written notices before taking you to court. For some causes, you must be given a notice to cease first, then a notice to quit. For other causes, you must be given only a notice to quit.

Notice to cease. A notice to cease is a notice or letter telling you to stop certain conduct that is not allowed under your lease or under the Anti-Eviction Act. The notice must tell you exactly what conduct the landlord is complaining about. **Cite:** *Carteret Properties v. Variety Donuts*, 49 N.J. 116 (1967). The notice must also tell you that if you stop the wrong conduct, you won’t be evicted. If you stop the conduct that is described in the notice, the landlord cannot evict you. **Cite:** *A.P. Development Corp. v. Band*, 113 N.J. 485 (1988) and *RWB Newton Assoc. v. Gunn*, 224 N.J. Super. 704 (App. Div. 1988).

A notice to cease is not required for every cause for eviction. A notice to cease is necessary only if you are charged with being disorderly, breaking rules and regulations, breaking an agreement in the lease, or paying rent late.

Notice to quit and demand for possession. A notice to quit is a notice or letter from the landlord that terminates your tenancy and tells you to move out by a certain date because you have engaged in certain conduct that is not allowed under your lease or under the Anti-Eviction Act. For those eviction causes that also require a notice to cease, the notice to quit also will tell you that since you have ignored the notice to cease, you must move out by a certain date. The notice must tell you specifically what it is that you have done wrong. For causes that do not require the landlord to give you a notice to cease, this is the first and only notice you will get before the landlord can file an eviction suit.

Service of the notice to quit. A notice to quit must either be:

- Given to you directly;
- Left at your house, apartment, or mobile home with someone who is at least 14 years old; or
- Sent by certified mail.

The notice can be sent by regular and certified mail at the same time. If you don't pick up the certified mail and the regular mail isn't returned to the landlord, the court will presume that you have been served. **Cite:** N.J.S.A. 2A:18-61.2.

Time required before eviction suit

The Anti-Eviction Act requires the landlord to give you a certain period of time before filing a suit in court for your eviction. This time period must be described in the notice to quit. The time periods vary depending on the cause for eviction in the Anti-Eviction Act. **Cite:** N.J.S.A. 2A:18-61.2.

Here are some examples:

- Only three days' notice is required if the landlord wants to evict you for being disorderly or destroying property.
- One month's notice is required if the landlord wants to evict you for breaking the lease rules or for refusing to accept a change in the lease.
- Two months' notice is required if the landlord wants to move into your house or apartment.
- Three months' notice is required if the landlord is trying to board up or demolish the building because of code violations.
- Eighteen months' notice is required if the landlord wants to permanently retire your apartment building from residential use.

Please see Chapter 9, *The Causes for Eviction*, on page 56 to find out how much notice is required for each particular cause for eviction. It is important to remember that no notice period is necessary to bring an eviction suit for nonpayment of rent. It is also important to remember that you do not have to move out just because the landlord tells you to move. You have a right to go to court and explain to the judge why you shouldn't have to move.

The court complaint

How does a landlord start an eviction suit if you are still in your apartment or house after the time in the notice to quit has run out? At that point, the landlord can prepare a complaint for your eviction. The complaint states that the landlord wants you out of the rental unit and describes the specific causes for the eviction under the Anti-Eviction Act. The complaint is filed in the Superior Court, Special Civil Part. This is the court that hears landlord-tenant cases.

The summons. The summons is a paper from the court that tells you when and where the court will hear your case. The summons is attached to the complaint, and together these papers are given to you by the court. The summons and complaint can be mailed to you by the court, delivered to you by an officer of the court, left at your home with a child over the age of 14, or posted on your door.

Information about tenants' rights. The Supreme Court has adopted a set of instructions that a judge will read to the audience in court. These instructions explain court procedures and let tenants know about some of their rights. A written set of these instructions must be served with the summons and complaint. **Cite:** *Community Realty Management v. Harris*, 155 N.J. 212 (1998).

Time from complaint to court date. The summons and complaint will tell you when to appear in court. The court rules require that there be at least 10 days between the day you receive the summons and the day you must appear in court.

If the hearing is scheduled for a date that is less than 10 days from the date on which you received the summons and complaint, tell the judge when you appear in court and ask the judge to postpone the hearing.

Going to court

The date, time, and place of the court hearing in your case are listed on the summons. You must appear in court at the right date and time if you want to defend against the eviction, or try to get more time to pay rent or move out. The first thing that will happen in court is that the judge will “call the list,” or call out the names of the landlord and tenant in each case. It is important that you be present to answer when the judge calls your name and case. If you do not answer, the judge will enter a *default judgment* against you. This means that the landlord has the right to evict you just because you failed to appear. There is no other penalty for not showing up.

If the landlord does not answer, the case should be dismissed. ***You should stay in court, however, until you are given permission to leave by the judge or another court official.***

If you have already moved out by the court date, it is a good idea to show up in court and ask the judge to dismiss the complaint because you are no longer living there. If you cannot do this, you should write to or call the court.



Landlord-tenant cases are heard in the Superior Court, Special Civil Part.

Knowing what is going on. At the very beginning of the court session, the judge will read a set of instructions to all people in the courtroom. (These instructions should also be available in written form in the courtroom. If you cannot find a copy, ask a court official where they are located.) The judge should also give his oral and written instructions in Spanish. In addition, there may be a videotape explaining court procedures. It is important to listen carefully to what the judge is saying and to read the instructions. If you do not understand what is happening, or if you are not sure what you are doing, you should ask the judge to explain matters to you. The Supreme Court of New Jersey is very concerned that tenants who appear in court to represent themselves be aware of their rights and treated fairly. **Cite:** *Community Realty Management Company v. Harris*, 155 N.J. 212 (1998).

Postponing your court hearing. You should call the Clerk of the Superior Court, Special Civil Part, or the judge's office, if for some reason you can't make it to court on the day of your case. You should explain why you need a new court date and ask for a postponement. ***You should also call the landlord or the landlord's attorney and ask the landlord to agree to postpone the hearing.*** You should try to ask for an adjournment at least five days before the court date. Notify the landlord that you are asking for an adjournment. If you do not ask five days in advance, the request may not be allowed unless you can show exceptional circumstances. Last-minute requests for postponements are usually not allowed.

If an emergency such as illness or a car breakdown prevents you from going to court, you should call the court and ask for a postponement, even if it is the morning of the court hearing.

Please be aware that, in some counties, postponements are rarely given. In those counties, the landlord has to agree and there has to be a very good reason to get your hearing postponed.

Settling your case with the landlord. You can always settle your case with your landlord, even after you receive a summons and complaint, and until the judge actually begins a hearing in your case. If you reach an agreement to settle your case, get

If you reach an agreement before the court date, be sure that the landlord agrees to dismiss the complaint or officially end the case against you.

the agreement in writing and be sure that you and your landlord fully understand the terms of the agreement. You should only make an agreement with your landlord if the agreement is both fair and realistic. An agreement that you cannot keep will only lead to your eviction at a later time.

Be careful if you settle your case before the court hearing. If you reach an agreement before the court date, be sure that the landlord agrees to dismiss the complaint or officially end the case against you. This requires the landlord to notify the court clerk. You should also check with the court clerk yourself to make sure that the complaint has been dismissed.

In settling a case, try to get the landlord to agree to terms that will help you. For example, try to get

the landlord to agree to make repairs in your apartment and list those repairs in writing in the settlement agreement.

What should you do if you reach an agreement with the landlord on the day you have to go to court? To dismiss the complaint on the court day, the landlord has to tell the judge directly. This means that you should wait until the landlord tells the judge that the case has been settled. It is important that, no matter when you settle the case, the court is notified by the landlord that the case has been ended.

There have been situations where a landlord tells the tenant that the case is settled and that the court case will be dropped. The tenant then does not show up in court. The landlord then will go before the judge and get an eviction order for the absent tenant. **Remember:** Always go to court on the date listed on the summons.

Some settlements are agreements that “a judgment for possession will enter.” This settlement gives the landlord the right to evict the tenant. Other settlements state that the tenant can stay if the tenant lives up to all of the terms of the agreement. This type of settlement will usually state that if the tenant does not live up to all of the terms of the agreement, the landlord has the right to evict.

Some settlements have to be approved by the court in the courtroom. Other settlements can be approved by the judge at a later time. For more information on settlements, see Chapter 12, *Court Rules to Help Tenants*, on page 76.

Mediation

In most courts, mediation is required in eviction cases. This means that, before a judge will hear an eviction case, you and your landlord must first meet with a law clerk, other court workers, and even other attorneys, to see if the case can be settled. These people are called *mediators*. A mediator is not supposed to take sides. The mediator’s job is to help you and your landlord find a way to reach an agreement without having to go to trial.

In mediation, for example, if you don’t have all of the rent you owe, you may be able to get your landlord to agree to allow you to pay part of the back rent each month until the whole amount is paid. If the landlord agrees to this, the mediator will usually write down the agreement and give each of you a copy. As long as you keep your part of the agreement, the landlord can’t evict you without first starting a new case and proving to the court that he or she has the right to evict you. If you don’t live up to your agreement, your landlord can evict you right away.

You are not required to reach an agreement in mediation. You do not have to accept the mediator’s suggestions. You always have the right to go before the judge and have the judge decide your case.

A mediator should not offer you any confusing legal advice, especially if you don’t have a lawyer or if you are not sure of your legal rights. A mediator is not a judge. If you are pressured by a mediator, ask to end the mediation.

Defending your case in court

The judge will hold hearings in individual cases after he or she calls the list of all of the cases. This means that when you go to court for your hearing, you must be ready to show the judge why you should not be evicted. In other words, you must be

ready to defend yourself against the cause or causes for eviction that are listed by your landlord in the complaint.

The common defenses to eviction are explained in more detail in Chapter 10, *Defenses to Eviction*, on page 65.

NOTE! These defenses could include, for example, showing that the landlord has not sent you the proper notice to cease or notice to quit, or showing that the conduct that the landlord is complaining about did not happen.

Whatever defenses you use, you must be prepared to present proof (evidence) to back up your defense.

Whatever defenses you use, you must be prepared to present proof (evidence) to back up your defense. This evidence can include written documents, photographs, and the testimony of witnesses. You must take with you to court any and all evidence you think you need for your defense. Examples of the types of evidence that may be used include the following:

- Photos of your apartment;
- Receipts for rent or repairs and canceled checks;
- Inspection reports (the court may require the inspector to come to court and may not consider reports without the inspector being there); and
- A copy of your lease and letters to the landlord.

Any witnesses whom you call to testify on your behalf must be present in court on the day of the hearing. The court will not accept a letter from your witness. You will also testify on your own behalf, so it is important for you to practice your testimony—what you are going to say to the judge—before you go to court.

The hearing

A hearing is the time when the judge listens to witnesses and reads documents about your case. The judge hears from the landlord and the landlord's witnesses first. At this point, the landlord may introduce or give the judge written letters or documents to prove his case. You have the right to examine the documents to make sure that the documents are what the landlord says they are. After the landlord and his or her witnesses have testified to the judge, you can ask them questions about what they have said. *You should not be afraid to ask any questions you have.* You do not tell your side of the story at this time. You only ask questions. Your landlord or his or her witnesses may not be able to answer your questions or may say something that will help your case.

The judge will hear from you and your witnesses next. This is when you will get a chance to tell the judge your story and explain why the landlord should not be able to evict you. It is also your time to give the judge any letters, reports, photographs, or receipts that support your side of the argument. You can be questioned by the landlord or his or her lawyer. You can then present any other witnesses or evidence you think is important to your defense. For example, if your defense is that your apartment is uninhabitable because of the conditions, you should request that the housing inspector who inspected your apartment appear as a witness, and that he or she bring the inspection records. **Note:** If the inspector will not appear voluntarily, you will

have to subpoena the head of the inspection department. Ask the clerk of the court or a Legal Services office for a subpoena form and instructions on how to issue it.

The judge's decision

The judge makes a decision after hearing all of the evidence from you and your landlord. The judge usually announces his decision immediately after hearing the evidence. If you win, the judge will dismiss or throw out the landlord's case. This means that you are not evicted and you can remain in your rental unit.

If you lose, the judge enters a *judgment for possession* in favor of the landlord. A judgment for possession is an order for your eviction. It gives the landlord the legal right to have you removed from your apartment or house.

The next step in the eviction process is the act of removing you from your rental unit. This does not happen right away and takes some time to complete. You also have some rights even after the eviction order is given by the judge. The steps for removal and your rights after the eviction order are explained in Chapter 9, *The Causes for Eviction*, on page 56.



The judge makes a decision after hearing all of the evidence from you and your landlord.



Chapter 9

The Causes for Eviction

Eviction only for cause

EVICTON FOR CAUSE IS a basic rule of landlord-tenant law in New Jersey. This means that tenants can be evicted *only* under one of the causes or grounds for eviction listed in the Anti-Eviction Act. **Cite:** N.J.S.A. 2A:18-61.1. There are 18 different causes for eviction under the Anti-Eviction Act. No tenant can be evicted unless the landlord can establish one of these grounds. The law covers tenants in all types of rental property: a single-family house, an apartment building or complex, or a mobile home. The causes for eviction in the Anti-Eviction Act are listed below.

Exceptions to eviction for cause

Almost all tenants are covered by the Anti-Eviction Act. However, the law does not apply to tenants residing in buildings or houses with three or fewer apartments where the owner lives in one of the apartments. This is known as the “owner-occupied” exception. Tenants subject to the owner-occupied exception may be evicted at the end of the lease term for any reason. If you are a month-to-month tenant living in a building with three or fewer apartments and your landlord lives in one of those apartments, the landlord needs only to give you a month’s notice to quit before taking you to court. **Cite:** N.J.S.A. 2A:18-53.

Other exceptions involve tenants with developmental disabilities who permanently occupy a unit. The Anti-Eviction Act does not protect tenants in these situations. The aim of this provision is to enable the eviction without cause of co-tenants living with the developmentally disabled tenant.

As explained in Chapter 8, *The Nuts and Bolts of Fighting Evictions*, hotel and motel guests are not covered by the Anti-Eviction Act, unless they have no other home and live there on a continual basis. The Anti-Eviction Act does cover people who are living in rooming and boarding homes. Chapter 8 discusses protections for rooming and boarding house residents on page 48.

Tenants in foreclosed property. Your right to eviction for cause continues even when a bank or mortgage lender files an action to foreclose on your rented property because your landlord has not paid the mortgage. This means that the foreclosing bank or mortgage lender must follow the law and can only evict you for one of the causes under the law. **Cite:** *Chase Manhattan Bank v. Josephson*, 135 N.J. 209 (1994).

What if you are not covered by eviction for cause? It is important to remember that, even if the Anti-Eviction Act does not apply to you, the landlord or property owner still must take you to court before you can be removed from your home. As explained in Chapter 8, a landlord or property owner cannot remove you without court approval. Self-help removals or lockouts are illegal, even if you are not covered by the Anti-Eviction Act.

NOTE! If you live in public housing, or another type of subsidized housing, you may be entitled to additional notices.

Grounds for eviction (N.J.S.A. 2A:18-61.1)

a. Not paying rent

Notices required before filing eviction suit:

- No notices are required, except where the tenant resides in federally subsidized housing. In public housing, a 14-day notice is required.

Comments:

- The Homelessness Prevention Program and Emergency Assistance Program may help with back rent. See Chapter 13, *Special Programs for Tenants*, on page 79.
- Landlords sometimes try to evict tenants for charges that are not really part of the “rent.” Additional charges cannot be made part of the rent in an eviction case unless there is a written lease that contains special language. See pages 17 and 18. And for tenants who live in federally subsidized housing, such as public housing, extra fees like late charges and attorney’s fees can never be included as part of the rent in an eviction case. Landlords and attorneys who wrongly claim that certain charges are part of the rent can be sued under the federal Fair Debt Collection Practices Act. **Cite:** *Hodges v. Feinstein*, 189 N.J. 210 (2007).

b. Disorderly conduct that disturbs other tenants

Notices required:

- Notice to cease.
- Notice to quit—must be served on the tenant at least three days before filing an eviction suit.

Comments:

- Notice to cease must specifically and in detail describe the disorderly conduct and demand that the tenant stop it or face eviction. **Cite:** *A.P. Development Corp. v. Band*, 113 N.J. 485 (1988). The notice must also tell you that if you stop the disorderly conduct, you won’t be evicted. **Cite:** *RWB Newton Assoc. v. Gunn*, 224 N.J. Super. 704 (App. Div. 1988).
- Disorderly conduct must then continue after the notice to cease for the tenant to be evicted.

c. Damage or destruction of the landlord’s property

Notices required:

- Notice to quit—must be served on the tenant at least three days before filing the eviction suit.

Comments:

- The tenant's conduct that causes the damage must be intentional or grossly negligent. (You can't be evicted because of damage caused by a simple accident on your part.)

d. Violation of landlord's rules and regulations

Notices required:

- Notice to cease.
- Notice to quit—must be served on the tenant at least one calendar month before filing the eviction suit.

Comments:

- Notice to cease must specifically and in detail describe the violation of rules and demand that the tenant stop it or face eviction. The notice should cite the rule that the landlord feels is being violated.
- The rules and regulations must be accepted by the tenant in writing or be part of the lease at the beginning of the lease term.
- The rules and regulations must be reasonable.
- Violation of the rules and regulations must be "substantial."

e. (1) Violation of lease agreement

Notices required:

- Notice to cease.
- Notice to quit—must be served on the tenant at least one month before filing an eviction suit.

Comments:

- Notice to cease must describe the lease violation and demand that the tenant stop it or face eviction. The notice should also cite the number of the lease provision that the landlord feels is being violated.
- The lease must be reasonable.
- Violation of the lease must be "substantial."
- The landlord must reserve "right of reentry" in the lease. If the lease does not contain these words, or other words giving the landlord the right to go back into the apartment if the tenant breaches the lease, then the right of reentry has not been reserved. (Even if a landlord reserves the right of reentry, the landlord must still go to court and follow all of the other legal requirements described in this manual before he or she can take back the apartment.)

e. (2) Violation of public housing lease agreement provision prohibiting illegal use of drugs or other illegal activities

Notices required:

- Notice to quit—must be served on the tenant in a reasonable amount of time before filing the eviction suit.

- **Note:** No notice to cease is required.
- See page 67 for additional notice requirements.

Comments:

- Federal law allows housing authorities to have a lease provision prohibiting illegal use of controlled dangerous substances (drugs). However, the housing authority must have amended its lease to include this provision.
- The lease provision must have been in effect at the beginning of the lease term.
- Eviction may also occur for violation of a public housing lease provision prohibiting “other illegal activities.”
- The lease may prohibit illegal activity on or off the premises.
- A public housing authority may evict a tenant when a member of the tenant’s household or a guest engages in drug-related activity, even if the tenant did not know about the drug-related activity. **Cite:** *Dept. of Housing and Urban Development v. Rucker*, 122 S.Ct. 1230 (2002). The Secretary of Housing and Urban Development has urged public housing authorities “to be guided by compassion and common sense” in these cases, and that “(e)vic-tion should be the last option explored, after all others have been exhausted.” The New Jersey courts have agreed with this position. The housing authority has to have a good reason for evicting innocent family members. **Cite:** *Oakwood Plaza Apts. v. Smith*, 352 N.J. Super. 467 (App. Div. 2002). **If you are a tenant in this situation, you should contact an attorney.**

f. Not paying a rent increase

Notices required:

- One-month notice ending tenancy and notice of the rent increase.

Comments:

- Notice requirements are explained in Chapter 8, *The Nuts and Bolts of Fighting Evictions*, on page 45.
- The rent increase must not be unconscionable (unreasonable) or must comply with local rent control law—see Chapter 7, *Rent Increases*, on page 40.

g. Housing or health code violations where:

- (1) **The landlord needs to board up or tear down the building.**
- (2) **The landlord cannot correct violations without removing the tenant.**
- (3) **The landlord must end overcrowding or an illegal occupancy.**
- (4) **A government agency wants to close a building as part of a redevelopment project.**

Notices required:

- Notice to quit—must be served on the tenant at least three months before filing the eviction suit.

Comments:

- Housing or health code violations must be substantial, and the landlord must be financially unable to make repairs.
- In most cases, the tenant cannot be evicted until relocation assistance is provided. See *Relocation assistance* on page 82, which explains the Relocation Support Program and how to apply for relocation assistance.
- The state must report to the court whether repairs can be made with tenants present for reason g.(2) above.

h. Landlord wants to permanently retire building from residential use

Notices required:

- Notice to quit—must be served on the tenant at least 18 months before filing the eviction suit.

Comments:

- The notice must say in detail what the landlord plans to do with the building. If the landlord's notice fails to clearly state what the future use of the property will be, the notice is defective and the court cannot evict the tenant. **Cite:** N.J.S.A. 2A:18-61.1(b); *Sacks Realty v. Batch*, 235 N.J. Super. 269, aff'd. 248 N.J. Super. 424 (App. Div. 1991).
- The landlord must send a copy of the notice to quit to the Department of Community Affairs and to the rent control office.
- The tenant cannot be evicted unless the landlord has all necessary approvals to convert the building to non-residential use.
- This ground cannot be used for eviction in order to avoid relocation assistance that is available in the case of housing and health code violations—see g. above.
- The landlord is liable for damages if the tenant is evicted for this reason and the landlord then re-rents to another tenant.

i. Not accepting changes in the lease

Notices required:

- Notice to quit—must be served on the tenant at least one month before filing the eviction suit.

Comments:

- Changes in the lease must be “reasonable.”
- The lease can only be changed at the end of the lease.
- You can also avoid eviction in cases where you refused to sign a lease or accept a lease change that you thought was unreasonable, even after you lose your case. As long as you agree to accept the new lease or lease change after the hearing is over, and pay any rent due, the landlord must allow you to stay. **Cite:** *Village Bridge Apartments v. Mammucari*, 239 N.J. Super. 235 (App. Div. 1990).

j. Paying rent late month after month (habitual lateness)

Notices required:

- Notice to cease.
- Notice to quit—must be served on the tenant at least one month before filing the eviction suit.

Comments:

- The notice to cease must demand that the tenant stop paying rent late.
- The tenant must continue to pay rent late at least two more times after receiving the notice to cease. **Cite:** 534 *Hawthorne Avenue Corp. v. Barnes*, 204 N.J. Super. 144 (App. Div. 1985); *Tower Management Corp. v. Podesta*, 226 N.J. Super. 300 (App. Div. 1988).
- If the tenant pays rent late after receiving the notice to cease, the landlord must keep providing the tenant with notices that paying rent late violates the lease. If the landlord does not give this notice every time the landlord accepts a late payment, the landlord can lose the right to evict the tenant. **Cite:** *Ivy Hill Park v. Abutidze*, 371 N.J. Super. 103 (App. Div. 2004).

k. Conversion to condominium or cooperative

Notices required:

- Notice to quit—must be served on the tenant at least three years before filing the eviction suit.

Comments:

- The tenant must be served with notice of intent to convert, the plan for conversion, and a notice of the right to rent comparable housing in addition to the notice to quit.
- See Chapter 14, *Condominium and Cooperative Conversions*, on page 85, for steps in condominium conversion.

l. The owner wants to live in the apartment or house

Notices required:

- Notice to quit—must be served on the tenant at least two months before filing the eviction suit. If there is a written lease, the eviction suit cannot be filed until after the lease expires.

Comments:

- Only applies where (1) the landlord is converting the apartment into a condominium and wants to sell it to a buyer who will move in; (2) the owner of three or fewer condominium or cooperative units wants to move in, or is selling the unit to a buyer who wants to move in; or (3) the owner of a house or building with three or fewer apartments wants to move in or is selling the house or building to a buyer who wants to move in.
- If the landlord is selling to a buyer who wants to move in, there must be a contract for sale and the contract must state that the house or apartment will be vacant at the time of closing.

- The buyer or owner must intend to live in the house or apartment and not convert it to commercial use. **Cite:** *Aquino Colonial Funeral Home v. Pittari*, 245 N.J. Super. 585 (App. Div. 1991).

m. Tenant loses a job that includes rental unit

Notices required:

- Notice to quit—must be served on the tenant at least three days before filing eviction suit.

Comments:

- Applies where the tenant works for the landlord as a janitor, superintendent, or in some other way; the tenant gets to live in the apartment as part of the job; and the landlord ends the tenant's job.

n. Conviction of a drug offense

Notices required:

- Notice to quit—must be served on the tenant at least three days before filing the eviction suit.

Comments:

- The drug offense must have taken place in the apartment building or on the grounds of the apartment complex.
- The tenant must be convicted of a drug offense. ("Conviction" means pleading guilty or being found guilty in court.) This also applies if the tenant is a juvenile and has been found delinquent for a drug offense.
- This will not apply if the person convicted has completed or been admitted to a drug rehabilitation program.
- This also applies if the tenant (1) lets a family member or anyone else who has been convicted of a drug offense in the building or complex live in the tenant's apartment, or (2) has in the past allowed that person to live in the apartment. This section does not apply to permitting a juvenile to occupy the premises where the juvenile has been found delinquent for the offense of use or possession.
- The tenant being evicted for letting a drug offender live in the apartment must know that the person has been convicted. If not, the tenant cannot be evicted. **Cite:** *Housing Authority of the City of Hoboken v. Alicea*, 297 N.J. Super. 310 (App. Div. 1997); *Housing Authority of the City of Jersey City v. Thomas*, 318 N.J. Super. 191 (App. Div. 1999). However, if the tenant lives in *subsidized* housing—even if it is privately owned—the landlord may be able to evict the tenant even if the tenant did not know. But the landlord must have a good reason for evicting an innocent tenant in this situation. **Cite:** *Oakwood Plaza Apts. v. Smith*, 352 N.J. Super. 467 (2002).
- No eviction suit may be brought more than two years after the date of the conviction, or more than two years after the person's release from jail, whichever is later.
- Specific rules apply when the landlord is a public housing authority. See e.(2) on page 58.

o. Conviction of assaulting, attacking, or threatening the landlord

Notices required:

- Notice to quit—must be served on the tenant at least three days before filing the eviction suit.

Comments:

- The tenant must be convicted of assaulting or threatening harm to the landlord, a member of the landlord's family, or the landlord's employees. ("Conviction" means pleading guilty or being found guilty in court.) This also applies if the tenant is a juvenile who has been found delinquent for such acts.
- This also applies if the tenant (1) lets a family member or anyone else who has been convicted of such assaults or threats live in the tenant's apartment, or (2) has in the past allowed that person to live in the apartment.
- The tenant who is being evicted for letting a person convicted of such assaults or threats live in the apartment must know of the conviction.
Cite: *Housing Authority of the City of Hoboken v. Alicea*, 297 N.J. Super. 310 (App. Div. 1997); *Housing Authority of the City of Jersey City v. Thomas*, 318 N.J. Super. 191 (App. Div. 1999).
- No eviction suit may be brought more than two years after the date of the conviction, or more than two years after the person's release from jail, whichever is later.

p. Engaging or being involved in drug activity, theft, or assaults or threats against a landlord

Notices required:

- Notice to quit—must be served on the tenant at least three days before filing the eviction suit.

Comments:

- Under this section, unlike sections n., o., and q., the landlord does not have to show a conviction—only that the activity violates criminal law.
- The drug activity must have occurred in the apartment building or apartment complex. However, this section will not apply if the person who has been engaging in drug-related activity completes or is admitted to a drug rehabilitation program.
- The assault or terroristic threats must have involved the landlord, a member of the landlord's family, or an employee of the landlord.
- Theft means theft of property on the leased premises—from the landlord, the leased premises, or from other tenants residing in the leased premises.
- This section also applies if the tenant (1) lets a family member or anyone else who has engaged in these activities live in the tenant's apartment, or (2) has in the past allowed that person to live in the apartment. However, this section will not apply if the person who has been engaging in drug-

related activity is a juvenile who has been found delinquent for the offense of use or possession.

- The tenant being evicted for letting an offender live in the apartment must know that the person has been engaging in drug-related activity. If not, the tenant cannot be evicted. **Cite:** *Housing Authority of the City of Hoboken v. Alicea*, 297 N.J. Super. 310 (App. Div. 1997); *Housing Authority of the City of Jersey City v. Thomas*, 318 N.J. Super. 191 (App. Div. 1999). However, if the tenant lives in *subsidized* housing—even if it is privately owned—the landlord may be able to evict the tenant even if the tenant did not know. But the landlord must have a good reason for evicting an innocent tenant in this situation. **Cite:** *Oakwood Plaza Apts. v. Smith*, 352 N.J. Super. 467 (2002).
- Specific rules apply when the landlord is a public housing authority. See also e.(2) on page 58.

q. Conviction of theft offense

Notices required:

- The notice to quit is not specified in the statute. However, it would appear from the rest of the statute (sections b., c., m., n., o., p.) that a notice to quit must be served on the tenant at least three days before filing the eviction suit.

Comments:

- The tenant must have been convicted of theft of property from the landlord, from the leased premises, or from other tenants residing in the same building or complex. (“Conviction” means pleading guilty or being found guilty in court.) This section applies if the tenant is a juvenile who has been found delinquent for such acts.
- This section also applies if the tenant lets a family member or anyone else who has been convicted of theft occupy the premises.
- The tenant who is being evicted for letting an offender live in the apartment must know that that person has been convicted. If not, the tenant cannot be evicted. **Cite:** *Housing Authority of the City of Hoboken v. Alicea*, 297 N.J. Super. 310 (App. Div. 1997); *Housing Authority of the City of Jersey City v. Thomas*, 318 N.J. Super. 191 (App. Div. 1999). 

NOTE! If you live in public housing, or another type of subsidized housing, you may be entitled to additional notices.

Chapter 10

Defenses to Eviction

Common defenses to eviction

A TENANT CAN BE evicted only if the landlord follows each of the steps in the eviction process and if a judge is convinced that there is cause for eviction under the Anti-Eviction Act. A tenant can defeat an eviction complaint by showing that the steps in the eviction process were not correctly followed, or that cause for eviction does not exist, or that the landlord has not met other duties under the law, particularly the duty to provide the tenant with safe and decent housing. This chapter explains the most common defenses used by tenants to defeat an eviction in court.

Tenants who have to defend themselves in an eviction case without a lawyer should read this chapter carefully. Acting as your own lawyer is called appearing *pro se*. Landlord-tenant law can be very complicated, so you should make every effort to get a lawyer. If you have to appear *pro se*, go through each of the defenses explained below and use the defenses that fit the facts of your case.

Unauthorized practice of law

The judge cannot hear an eviction case if your landlord is a corporation unless the corporation is represented in court by a lawyer. The letters “Inc.” after the landlord’s name mean that it is a corporation. The corporate landlord’s case must be dismissed if someone who is not a lawyer prepared the complaint and summons. Unfortunately, some courts may bend the court rules and allow property managers, stockholders, and others who are not lawyers to act for the corporate landlord. This is improper under New Jersey law (except that a partner in a general partnership may file papers and appear *pro se*). **Cite:** Rule 6:10 and Rule 1:21-1(c).

The Landlord Registration Act

The law requires landlords who rent houses, apartments, or buildings to register certain information with the clerk of the city or town where the building is located. If your building contains three or more apartments, the landlord also must register with the New Jersey Department of Community Affairs in Trenton. The law requires that the landlord list his or her name and address and the telephone number of someone—such as the superintendent, janitor, or other person—who can be reached at any time and who is responsible for ordering emergency repairs and receiving complaints from tenants. The landlord must display this information at the property in a place where tenants can see it, and the landlord must give this information in writing to each tenant. **Cite:** N.J.S.A. 46:8-28 and 29.

If you have to appear *pro se*, go through each of the defenses explained in this chapter and use the defenses that fit the facts of your case.

Failure to register. The registration law prevents a landlord from evicting you if the building is not properly registered. If your landlord has not registered the property or has not given you a copy of the registration, the court cannot enter a judgment to evict you in favor of the landlord. In most eviction cases where a landlord has not registered, the judge will postpone hearing the case to give the landlord time to register. Once the landlord registers, the court can then hear the case and enter a judgment for eviction. The postponement can give you extra time to move or to obtain the rent you may owe. Some judges do not follow this procedure and will enter a judgment anyway, if the landlord agrees to register the property later. This practice is clearly wrong. **Cite:** N.J.S.A. 46:8-33 and *Iuso v. Capehart*, 140 N.J. Super. 209 (App. Div. 1976).

If your landlord is not registered, you can file a complaint in Superior Court or municipal court. A landlord can be fined up to \$500 for failing to register. **Cite:** N.J.S.A. 46:8-35.

Improper notice or no notice

You can get an eviction complaint dismissed if the landlord did not give you a proper notice to cease and/or a proper notice to quit before taking you to court. This is a very important and common defense. As explained in Chapter 8, *The Nuts and Bolts of Fighting Evictions*, on page 45, these notices must specifically and in detail describe the conduct that is causing eviction and give you the correct amount of time before going to court. Notices must be very specific so that tenants know exactly what is expected of them and how to prepare for trial. Landlords must “strictly comply” with notice requirements and, if they do not, you should argue that the eviction action should be dismissed. See *Notices required before an eviction suit* on page 48. Remember that the landlord does not have to give you any notice to evict you for non-payment of rent. **Cite:** N.J.S.A. 2A:18-61.2.

Carefully read the notice to cease and the notice to quit before you go to court. If you only received a notice to quit, find out if the Anti-Eviction Act requires the landlord to first serve you with a notice to cease.

Here are some common examples of improper notices. If you think the notice that you receive from your landlord is improper in these or other ways, or even if you are not sure, tell the judge, give him or her the notice to review, and ask that the eviction complaint be dismissed because you received improper notice.

- You receive a notice to quit telling you that you have to move for playing loud music at night. You did not receive a notice to cease first. *The notice is improper because you must receive both notices in their correct order.*
- You receive a notice to cease that tells you to stop playing loud music at night. The landlord then sends a notice to quit that tells you to move because you have too many visitors. *The notice is improper because the notice to quit must relate to the same type of conduct complained about in the notice to cease.*
- On March 31, your landlord sends you a notice to quit stating that you must leave your apartment in one month, or by April 30, because she claims that you have not obeyed her notice to cease, which told you to stop violating the rules in your lease. The landlord does not wait until April 30 to start the eviction case. Instead, she files an eviction complaint on April 20, and you are

served with the summons and complaint saying that you must appear in court on May 3. *This notice is improper because you did not get the full one-month notice to quit. The landlord cannot start the eviction case until the time stated in the notice to quit has run out.*

- You receive a notice to quit that tells you to move because you broke one of the rules in the lease. The notice does not describe the specific rule that you broke and specifically what you did to break the rule. *This notice is improper because the notice must tell you exactly what rules were broken and how you broke them (dates, times, description).* **Cite:** *A.P. Development Corp. v. Band*, 113 N.J. 485 (1988).

Failure to follow federal notice requirements and procedures

Tenants who live in public housing or in other subsidized buildings may be entitled to certain notice and procedural rights over and above what is required by state law. For state law notices, see page 57.

If you are being evicted from public housing or other subsidized buildings, or you are being denied Section 8 assistance, or you are being terminated from Section 8, you should check with a Legal Services attorney to make sure that you have received the proper notice.

Public housing notice requirements. If you live in public housing, you are entitled to the following notices before the housing authority terminates your lease.

- The housing authority must give you a 14-day notice before it terminates a lease for nonpayment of rent. **Cite:** 24 C.F.R. § 966.4(l)(3)(i)(A).
- In three other types of cases, the housing authority must give you a reasonable notice of up to 30 days, depending on how serious the situation is. These are cases where a housing authority seeks to end a lease for criminal activity, threats, or having a felony conviction. In any other case, a housing authority must give you 30 days' notice before it can try to evict you in court, unless state law allows for a shorter notice. **Cite:** 24 C.F.R. § 966.4(l)(3)(i)(B)(C).
- The notice of lease termination must:
 - state the reasons for eviction,
 - inform you of your right to reply, and
 - inform you of your right to examine housing authority documents related to the termination or eviction before trial.

When the housing authority is required to give you the opportunity for a grievance hearing, the notice must also inform you of your right to request formal or informal hearings with the housing authority. **Cite:** 24 C.F.R. § 966.4 (l)(3)(ii).

- You may not always have a right to a grievance hearing before the housing authority, such as in cases involving criminal activity. In those cases, the notice of lease termination shall also state:
 - that you are *not* entitled to a grievance hearing,
 - that the housing authority must go to court to try to evict you,
 - that the government (HUD) has approved this court procedure,

- the reasons for the eviction, and
- that you have the right to examine documents related to the termination or eviction before trial. **Cite:** 24 C.F.R. § 966.4(l)(3)(v); 24 C.F.R. § 966.4(m).

It is important that you contact a Legal Services attorney to make sure that your rights are protected and that you have received the proper notice.

Subsidized housing notice requirements. If your building receives a subsidy, but you have a private landlord (not a housing authority, and not a Section 8 voucher), you may have the following rights.

- Tenants who live in most subsidized buildings are entitled to a notice that:
 - specifies the date the tenancy will be terminated;
 - states in detail the reasons for termination;
 - advises the tenant that he or she has 10 days to discuss the proposed termination with the landlord; and
 - advises the tenant that if the tenant does not leave, the landlord may file suit to evict, at which time the tenant may present a defense. **Cite:** HUD Handbook 4350.3 REV-1, Section 8-13, B2, p. 8-14; Family Model Lease, Section 23e, Appendix 4-A, p. 12.
- In certain cases, tenants may be entitled to a 30-day notice of termination of tenancy. **Cite:** HUD Handbook 4350.3 REV-1, Section 8-16, B2, 3, p. 8-20; Family Model Lease, Section 23e, Appendix 4-A, p. 12. In other cases, the notice of termination is the time period required by state law.

The above rights to notice should be written in your lease. ***Unless the housing authority or other subsidized landlord gives you the proper notice, you cannot be evicted, and the case must be dismissed.*** **Cite:** *Housing Authority of Newark v. Raindrop*, 287 N.J. Super. 222 (App. Div. 1996); *Riverview Towers Associates v. Jones*, 358 N.J. Super. 85 (App. Div. 2003).

If you are not sure what type of housing you live in, you may check the *Guide to Affordable Housing in New Jersey*, www.state.nj.us/dca/divisions/codes/publications/guide.html.

Section 8 voucher notice requirements. If you are a Section 8 voucher holder, you are entitled to the notices that you would receive under state law. For state law notices, see page 57. You are not entitled to any notices over and above what you would receive under state law.

If you are a Section 8 voucher holder, and you receive an eviction notice from your landlord, you must promptly give the public housing authority a copy of the eviction notice. **Cite:** 24 C.F.R. § 982.551(g). Your landlord must give the public housing authority a copy of any eviction notice that the landlord gives you. **Cite:** 24 C.F.R. § 982.310(e)(2)(ii).

Improper eviction complaint

An eviction suit can be dismissed by the judge if the eviction complaint was not prepared in the correct way. This often happens, and you should read the complaint you received to make sure it is correct. Here are some examples of an improper eviction complaint.

- The complaint does not say why the landlord wants you out or does not describe the cause for eviction under the Anti-Eviction Act.
- In a nonpayment of rent eviction, the complaint must include only the amount of rent legally due. The landlord cannot add charges that are not legally part of the “rent.” See pages 17, 18, and 57 for more information about charges that cannot be included in the rent.
- The reason stated in the complaint for your eviction is not one of the causes for eviction in the Anti-Eviction Act. (See Chapter 9, *The Causes for Eviction*, on page 56.)
- The reason stated in the complaint why the landlord wants you out is not the same as the one in the landlord’s notice to cease and/or notice to quit. The cause for eviction in the complaint must match the cause given in the notice to cease and/or notice to quit.

The judge should dismiss an improper eviction complaint because eviction cases are set up to be quick, and the landlord can always start the eviction process over again. Some judges will incorrectly allow a landlord to amend or change the complaint in court, so that the complaint is proper and the case can proceed to hearing. You should object if the judge allows an on-the-spot change to the complaint. If the judge allows the amendment anyway, ask to postpone the hearing so that you have time to prepare a defense to the amended or changed complaint.

Paying the rent

A common defense to an eviction for nonpayment of rent is to show that the rent has already been paid. ***This is why it is very important to get a rent receipt (signed by the landlord) for each rent payment, even if you pay by check or money order.*** You can prove that the rent has been paid by bringing receipts to court to show the judge. What if you agree that you owe the rent or you have a hearing and the judge finds that you owe rent? ***You can still have the eviction dismissed by paying the rent and court costs to the court before the court closes on the day of the hearing.*** **Cite:** N.J.S.A. 2A:18-55.

For example, at the end of your hearing, the judge finds that you owe \$500 and enters a judgment for possession for nonpayment of rent. You immediately leave the court and call a relative or friend who agrees to lend you the money. The case against you can still be dismissed, and you will not be evicted if you can get the money (including court costs) to the courthouse and pay it to the court clerk before the court closes for the day, usually at 3:30 or 4:00 p.m.

The rent money and court costs are paid to the clerk of the Special Civil Part of the Superior Court. The clerk does not take personal checks. Cashier's checks or money orders are best and should be made out to *Treasurer, State of New Jersey*. The court clerk will give you a receipt and send the money to your landlord. The court clerk also will dismiss the eviction complaint against you. If you pay all of the rent to the court clerk before the hearing on your complaint, you should go to the hearing anyway to make sure that the judge knows you have paid the rent and dismisses the complaint.



If your landlord is supposed to pay for utilities and does not pay the bill, you may be in danger of having your utilities shut off.

Paying for utility bills

If your landlord is supposed to pay for utilities and does not pay the bill, you may be in danger of having your utilities shut off. If you receive a notice from an electric, gas, water, or sewer public utility that your service is in danger of being shut off, you may pay the utility to keep the service going. You may then deduct this amount from your rent, and the landlord cannot evict you because you have not paid that amount as rent. **Cite:** N.J.S.A. 2A:18-61.1(a).

If you pay for utility bills, keep the notices and your receipts from the utilities because the landlord may still try to evict you for nonpayment of rent.

Failure to obtain a certificate of occupancy

A municipality may have an ordinance that requires a landlord to obtain a certificate of occupancy (also known as a “C.O.”) before the landlord can rent a unit. The certificate of occupancy, issued by the municipality, ensures that apartments meet code standards before they are rented. Failure by a landlord to obtain a certificate of occupancy can be used to show that the conditions in the apartment are poor and that this violates the landlord’s duty to provide habitable housing. The conditions of the apartment determine how much rent is due. **Cite:** *McQueen v. Brown and Cook*, 342 N.J. Super. 120, aff’d 175 N.J. 2000 (2002). ***The court in this case said that if a landlord does not have a C.O., he or she must apply for one before trying to evict a tenant.***

Failure to provide safe and decent housing

Chapter 6 explains the landlord’s duty to provide safe and decent housing. The chapter also explains the various ways you can use your rent to force your landlord to make repairs in your apartment or house. These ways include *repair and deduct*—using rent to make repairs yourself and then deducting the cost of the repair from the rent. Another way is *rent withholding*—keeping your rent payments from the landlord until he or she makes needed repairs.

Both repair and deduct and rent withholding involve not paying the landlord the rent when it is due. This means that if you take these steps, your landlord could take you to court for nonpayment of rent. In court, your defense to the landlord’s claim for rent will be that he or she failed to provide you with safe and decent housing. You should review Chapter 6, *Your Right to Safe and Decent Housing*, on page 29, especially those sections explaining repair and deduct, rent withholding, and rent abatement. It is important to remember that if you use repair and deduct and rent withholding as a defense to nonpayment of rent, you will have to show the court how serious the problems are in your apartment. For rent withholding, you may also be required to deposit with the court the full amount of rent you have withheld before you can get a hearing on your defense that your housing is unsafe and in need of repair. The judge does not have to do this, however, and can simply adjourn the case without requiring you to deposit the rent. To be safe, when you go to court after not paying the rent,

you should take with you the full amount of rent you have withheld in cash, a certified check, or a money order. The court will not accept personal checks.

The landlord is wrong or is lying

If what the landlord says in the complaint is not true, you have the right to deny it. The landlord then has to prove that what he or she says is true. The law requires the landlord to prove that the complaint is based on facts. But be careful: sometimes a judge will believe the landlord over a tenant, so you should be ready to prove that you are right and that the landlord is wrong. You can do this by taking with you to court witnesses, photos, letters to or from the landlord, receipts, and anything else that might help prove your case.

Waiver—the landlord knew about it but continued the tenancy

The landlord waives, or gives up, his or her right to evict you if he or she knows that you have been breaking the lease or any rules of the tenancy but still accepts your rent payment during this period. **Cite:** N.J.S.A. 46:8-10. Here are some examples of a waiver:

- The landlord sends you a notice to cease playing loud music and then sends you a notice to quit by March 31. If the landlord accepts your April rent payment, the landlord has waived the notice to quit. **Cite:** *Royal Associates v. Concannon*, 200 N.J. Super. 84 (App. Div. 1985). While the acceptance of rent is a very important factor in determining whether the landlord has waived the notice to quit, it may not be sufficient, depending upon the facts of a particular case.
- Your lease says that no pets are allowed, but the landlord has allowed you to have a pet since you moved in, and other tenants have also been allowed to have pets.
- The landlord sends a notice to cease but then later sends you other notices that contradict the notice to cease or that do not threaten the tenant with eviction. **Cite:** *A.P. Development Corp. v. Band*, 113 N.J. 485 (1988).

Retaliation—the landlord wants to get even

The law does not allow a landlord to evict you to get even for asserting your rights under the law or for enforcing your rights under the lease. The landlord also cannot evict you to get even for your complaining about conditions in your house or apartment to the board of health, building inspector, housing authority, or any other government agency. Finally, the landlord cannot evict you to get even for your involvement with a tenants association or any lawful organization. Each of these types of getting even (retaliation) are defenses to the eviction action. If you can prove that your landlord is trying to evict you in retaliation, the case will be dismissed. **Cite:** N.J.S.A. 2A:42-10.10 and 10.11. Be prepared to prove retaliation before you go to court.

If one of the landlord's reasons for evicting you is that you have complained to a government agency, you are protected from eviction by law. This is true even if the landlord has other reasons for trying to evict you, such as wanting to get a higher rent from a new tenant. **Cite:** *Silberg v. Lipscomb*, 117 N.J. Super. 491 (1971); *Les Gertrude Associates v. Walko*, 262 N.J. Super. 544 (App. Div. 1993). 

Chapter 11

Removals, Stays, and Vacating Judgments

When court is over: what to expect if the judge orders your eviction

THE EVICTION PROCEDURE DOES NOT end when court is over. Even if the judge decides in favor of the landlord and enters an order or judgment evicting the tenant, the landlord still must follow certain steps to actually have the tenant removed from the apartment or house. This removal procedure takes time. Also, during this time, there are opportunities for the tenant to avoid eviction altogether or to get more time to move out. If you have gone to court, lost, and the judge has entered an order for your eviction, read this chapter carefully. ***Recent changes to the law spell out exactly what steps must be followed for an eviction to be legal. See pages 45-47 of this manual.***

Warrant for removal

The warrant for removal is an order from the judge telling the Special Civil Part court officer to evict you. The landlord must send proof of the judgment to the court clerk, and the court clerk will issue a warrant for removal to the court officer. The law does not allow the warrant for removal to be issued by the court clerk until at least three business days after the judge enters a judgment for possession or an order of eviction. The three-day period is the legal amount of time a landlord must wait to start the process of removing you after the judge orders an eviction.

When the court officer gets the warrant for removal from the court clerk, the court officer then serves a copy of the warrant on the tenant. The warrant states that the tenant has three choices:

1. *Move out within three days to avoid being evicted by the court officer.* The three days do not include weekends or legal holidays. **Cite:** N.J.S.A. 2A:42-10.16.
2. *Contest the warrant.* This means asking for a new court date so that you can show why you should not be evicted and the warrant should be stopped. Your rent payments must be up to date in order to do this.
3. *Be evicted by the court officer.* This means that the court officer will come to your apartment or house and remove you from the premises.

Note: Unless the landlord and tenant agree in writing to a longer time frame, the landlord must ask the court clerk to issue a warrant for removal within 30 days of getting the judgment. If the landlord waits longer than 30 days, the landlord will have to notify the tenant and go back to court to get permission to have the warrant issued. The same thing is true if the landlord does not ask the court officer to lock the tenant out within 30 days of the service of the warrant on the tenant by the court officer. The landlord will have to notify the tenant and go back to court to get permission to have the court officer complete the eviction.

Time from warrant to eviction. When you are served with the warrant for removal, you then have three days to move out. If you do not move or you do not contest the warrant and get a stay of the warrant from the judge, the court officer may evict you at the end of the three days. This three-day period excludes the day the warrant was served, weekends, and legal holidays.

If the court officer evicts you. If you do not voluntarily leave the apartment or you do not contest the warrant, the court officer will come to your apartment or house and evict you. If you are at home at the time, the court officer will put you out and padlock the door. The court officer may also remove your things from the house or apartment and have them put on the curb before locking the door.

The warrant gives the court officer power to use force or arrest if you try to stop the eviction. This act is legal in New Jersey. It is important that you leave the premises peaceably. By all means, do not argue or fight with the court officer.

NOTE! Even if the court officer locks you out, it is illegal for a landlord to hold or take your clothing or furniture to force you to pay rent. This act is illegal, even if you owe the rent. **Cite:** N.J.S.A. 2A:33-1.

Staying the warrant for removal—getting more time to move

By agreement with the landlord. After a judgment for possession has been entered, and even after a warrant for removal has been served, a tenant may still try to make an agreement with the landlord. If the landlord does agree, make sure the agreement is in writing and that a copy is filed with the court.

Going to court. Whenever you go to court to seek more time to move or to seek a stay of the warrant for removal, it is important to ask for a specific amount of time. Courts may not wish to give an open-ended stay.

Orders for orderly removal—stopping the lockout to get more time to move. When you get the warrant for removal, the warrant will tell you that you will be locked out in three days, not including weekends and holidays. If you cannot be out in three days and need more time to move and have good reason, you can ask the court for more time. One way to do this is to ask the court for an *order for orderly removal*. This means that the court can give you an extra seven days to move out voluntarily. The court can do this without having a court hearing. The court can allow you this time without requiring you to pay rent.

To get an order for orderly removal, you must go to the court clerk's office. Take with you your copy of the warrant. Forms for the application for orderly removal should be available in the clerk's office. You must give notice to the landlord that you are applying for an order. If the court grants an order for orderly removal, the landlord can seek to reverse it, but the landlord must give you notice. **Cite:** Rule 6:6-6.

If you need to stop the lockout for more than seven days in order to move out voluntarily, you will have to get a hearing date. You can do this by filing an order to show cause. To help you, forms for this should be available in the office of the clerk of the court.

Hardship stays—up to six months. The judge is allowed under law to give a tenant up to six months to stay in the rented property if certain conditions are met.

This stay of the warrant for removal is called a *hardship stay of eviction*. To get a hardship stay, you must show that you have not been able to find any other place to live. You must also show that all of your rent has been paid, or that you are able to pay it. You must agree to pay the rent during the time the judge allows you to stay in the apartment. This means that you cannot get a hardship stay if you are evicted for non-payment of rent, unless you can pay all of the rent that you owe and are able to pay future rent by the time you appear in court to contest the warrant for removal. In other cases, where you are evicted and your rent is current, a hardship stay can give you up to six more months to find another place to live. **Cite:** N.J.S.A. 2A:42-10.6.

Stays for terminally ill tenants. The law allows a judge to grant one-year stays of eviction if the tenant is terminally ill. To be eligible for this type of stay, the tenant must meet *all* of these conditions:

- Owe no back rent,
- Be terminally ill and so certified by a doctor,
- Have been a tenant of the landlord for at least two years before the stay is granted, and
- Show that there is a strong chance that the tenant will not be able to find and move to another place without suffering medical harm.

This law applies to all buildings, including owner-occupied buildings.

Cite: N.J.S.A. 2A:18-59.1.

How to overturn the warrant—vacating the judgment to prevent homelessness

In certain cases you may be able to avoid being evicted, even after the judge has ordered your eviction and the warrant for removal has been served on you by the court officer. Also, you may be able to get back into your apartment after the lockout. For example, you may obtain relief if:

- You did not get the summons and complaint, and the warrant for removal is the first court paper you received telling you of any legal action against you; or
- You have new proof showing that you should have won the case; or
- You were told by the landlord that the case was settled and that you did not have to go to court, but the landlord then went to court and obtained a judgment for possession.

Under court rules, a judge has the power to overturn a court decision or vacate a judgment or order. The Supreme Court has ruled that judges can stop an eviction based on nonpayment of rent when the tenant is able to pay all of the rent due (including court costs). Such action is necessary in order to prevent tenants from becoming homeless. A court can set aside a judgment “in the interest of justice.” Even after a tenant has been evicted, a court can order a landlord to let a tenant back into the apartment. **Cite:** *Community Realty Management, Inc. v. Harris*, 155 N.J. 212 (1998); *Morristown Housing Authority v. Little*, 135 N.J. 274 (1994).

A formal paper, called an *order to show cause* or *motion*, must be filed with the court in order to ask the judge to set aside an eviction judgment. To set aside a judgment

under this procedure, you must have all of the rent that is due, plus the landlord's court costs. You should ask the court clerk to help you file the order to show cause or motion if you can't get a lawyer to help you. The judge will conduct a hearing on your motion after it is filed with the court.

There are many programs—such as Emergency Assistance (EA) and the Homelessness Prevention Program (HPP)—that provide funds to certain low-income tenants to pay back rent in order to prevent eviction. (See Chapter 13, *Special Programs for Tenants*, on page 79.) Often, by the time a tenant learns of these programs, applies for help, and is granted assistance with back rent, the judgment for eviction has already been entered by the court and the warrant for removal may have been issued and served on the tenant. If, at this point, you offer to pay all of the rent but the landlord insists on evicting you, you can ask the court to vacate the judgment against you and order the landlord to accept the rent. You can even file for relief (ask that the judgment against you be dismissed) after you are locked out.

The Abandoned Tenant Property Law (N.J.S.A. 2A:18-72)

Sometimes, when a tenant is evicted or leaves an apartment on a voluntary basis, the tenant leaves property behind in the apartment. If you want to go back to get the property you left behind, you should notify the landlord in writing. Be sure to tell the landlord your current address. You should also tell the landlord why you left the property and when you will be back to get it.

A landlord may dispose of a tenant's property *only if* the landlord believes that the tenant is not going to try to get back into the apartment legally and has abandoned the items.

In addition, the landlord must give the tenant written notice that the landlord intends to dispose of the property. The notice must give the tenant a time period in which to claim the property. This is:

- 30 days after delivery of the landlord's written notice; or
- 33 days after the notice is mailed, whichever comes first.

If the property is a manufactured or mobile home, the notice must give the tenant:

- 75 days from the date of delivery of the notice; or
- 78 days from the date of mailing, whichever comes first.

After notifying the tenant that he intends to sell the tenant's property, the landlord must store the property in a safe place. The tenant is required to pay a reasonable storage cost and the cost of taking the property to the storage place.

If you want your property back, you should remove it as soon as possible. The landlord may dispose of the property if the tenant does not claim the property in time. Therefore, if you receive such a notice, you should immediately notify the landlord that you intend to reclaim the property. You should respond in writing because this will give you an extra 15 days from the time described above to get your property. If you do not notify the landlord in writing, you must remove the property in the time set out in the landlord's notice (as described above). 

Chapter 12

Court Rules to Help Tenants

Court rules help tenants understand their rights and help them represent themselves

THE SUPREME COURT OF New Jersey ordered, in *Community Realty Management, Inc. v. Harris*, 155 N.J. 212 (1998), that procedures be followed to help tenants who represent themselves understand their rights and what will happen in court. Some of these were discussed earlier, but we are repeating them here because of their importance.

Court instructions

The Supreme Court has adopted instructions that must be read at the start of each session of landlord-tenant court. These instructions are extremely important because they will help you to understand court procedures and some tenants' rights. **Cite:** Rule 6:5-2(b).

Important topics covered by the instructions include:

- The calendar call;
- Settlements;
- Waiting for trial—what happens if your case has to be adjourned to another day;
- Nonpayment cases (getting your case dismissed if you pay your rent by a certain time);
- Eviction procedures (the warrant for removal); and
- Stopping an eviction after a judgment for possession.

The judge must read instructions about court procedures and some tenants' rights at the start of each session of landlord-tenant court.

The instructions must be read in person by the judge. The instructions also must be given in Spanish, but this may be done by videotape.

A copy of the instructions must be served with the court complaint.

A copy of the instructions must also be available in written form in court. The written instructions will also be available in Spanish. If you cannot find the written instructions, ask the clerk of the court.

There must be a second reading of the instructions for latecomers. This may be done by videotape.

Default judgments

If you do not appear in court on the day of the trial, the clerk of the court will enter a default judgment for possession against you. This means that the landlord can evict you once the landlord takes certain steps. The landlord has to file an affidavit that meets the following conditions:

- The affidavit must state why you are being evicted and set forth the “good cause” required by the statute.
- The affidavit must state that all extra fees (such as late fees and attorney’s fees) that are included in the complaint for nonpayment of rent are permitted to be charged as rent by the lease and by federal, state, and local law. **Note:** If an attorney represents the landlord, the attorney must sign the affidavit.
- If the eviction requires service of notices such as a notice to quit or a notice to cease, the landlord’s affidavit must have all of the notices attached. The affidavit must state that the landlord served the tenant with these notices and that the facts in the notices are true.

If you do not appear in court on the day of the trial, the clerk of the court will enter a default judgment for possession against you.

The clerk of the court cannot enter a default judgment against a tenant who is a minor or mentally incapacitated. A court can enter a default judgment against a mentally incapacitated person, but only after it gives the tenant’s guardian five days’ written notice.

Consent judgments for possession and stipulations of settlement

If you settle a case with the landlord, the settlement may require that there be a judgment for possession entered. This means that you give the landlord the right to evict you based on this settlement.

The settlement must:

- Be in writing;
- Be signed by all parties;
- Contain all of the affidavits required for default judgments (see *Default judgments* above); and
- Be presented to the judge for approval.

If the settlement requires the tenant to pay rent and also to leave the apartment, it must be reviewed by the judge *in person in open court*. This will give the tenant the opportunity to ask questions about the settlement.

All other settlements—for example, those where the tenant continues to pay rent and remains in the apartment—can be reviewed by a judge at a later time.

Enforcement of consent judgments and stipulations of settlement. If you enter into a settlement agreement or a consent judgment, you must live up to its terms. If you do not live up to the terms, the landlord may seek to evict you on the grounds that you have failed to live up to the agreement.

If you fail to live up to the agreement, the landlord must file a certification. The certification must state exactly why the landlord claims you violated the agreement and list the facts to support this position. The certification must be sent to you in the mail or posted on your door. If you receive such a notice, you should contact an attorney.

Court forms

The Supreme Court has adopted certain forms that may be used in landlord-tenant court. Some of the forms are only for landlords to sign. Other forms are for a settlement or an agreement that provides for a consent judgment. If there is such an agreement, it must be in writing and both parties must sign it. You do not have to use these forms—you may try to use others. You may add to the court forms extra settlement terms that you can agree upon.

You should try to become familiar with and understand the forms before going to court. The forms are:

- Certification by the landlord, and
- Certification by the landlord's attorney.

There are forms for two types of settlements: (1) where the tenant pays the rent and still agrees to leave; and (2) where the tenant pays rent and it is agreed that the tenant can remain in the premises. The forms are:

- *Consent to Enter Judgment (Tenant Remains)*. In this judgment, the parties agree that the tenant will stay in the apartment.
- *Consent to Enter Judgment (Tenant Vacates)*. In this judgment, the tenant agrees to leave. 

Chapter 13

Special Programs for Tenants

Homelessness Prevention, Relocation Assistance, and Property Tax Rebates

NEW JERSEY HAS ESTABLISHED programs to prevent homelessness by providing assistance to cover back rent to low-income tenants who face eviction for nonpayment of rent. The state also operates a Relocation Assistance Program to help tenants who must move because their housing unit is no longer habitable or safe. The state also has a Homestead Property Tax Credit Act to return property taxes to tenants. These programs are discussed in this chapter.

Each of these programs has its own special purpose. Each program has its own set of rules and is administered by a different state or local agency. This chapter will help you to decide whether you might qualify for this assistance and where you can go to apply. Read this chapter carefully; but if you are having trouble with any of these programs, you may want to contact your regional Legal Services office.

Programs to prevent eviction

New Jersey has several programs to help people who are in danger of being evicted and becoming homeless because they cannot pay their rent. The two major programs are the Emergency Assistance (EA) Program and the Homelessness Prevention Program (HPP). EA is only available to people who are receiving or would be eligible to receive welfare or Supplemental Security Income (SSI). HPP is available to people who are employed or receiving unemployment or disability payments.

Homelessness Prevention Program (HPP)

The Homelessness Prevention Program is funded by the state and operated by the New Jersey Department of Community Affairs. The primary purpose of the program is to help people who face eviction because they have fallen behind in their rent payments, and who have a chance to keep their housing unit if they can get a little help.

Cite: N.J.S.A. 52:27D-280. HPP can also help people who are already homeless. HPP can pay a security deposit and a few months' rent to help people move into a home as long as they are able to show that they can pay the rent on their own after that.

Back rent for tenants facing eviction. HPP provides money to tenants to pay rent that is due to the landlord to prevent eviction. To qualify for HPP, you must meet certain income limits. You must show that you got behind in your rent because of a temporary crisis, such as being laid off from your job. Also, you must prove that you will be able to afford to pay the rent in the future if HPP pays your back rent. You must also show that the landlord has served you with a summons and complaint for eviction for nonpayment of rent. To qualify for HPP, you must fill out an application form and provide detailed information on your income and the pending eviction complaint.

against you. If you qualify, HPP can pay at least three months' back rent, and up to six months in special cases.

HPP vouchers. HPP gives vouchers to tenants who qualify for assistance. The HPP voucher is a promise by HPP to pay the landlord the amount of the voucher, which is the amount the tenant needs to pay to avoid eviction. If HPP agrees to give you a voucher to cover the back rent, you must get the landlord to accept the voucher as payment. If the landlord signs the voucher, he or she must also agree to dismiss the eviction complaint.

If you cannot get the landlord to sign the voucher before the court hearing, you must then ask the judge to order the landlord to accept the voucher at the eviction hearing. There have been several court rulings where eviction actions have been dismissed because the funds are available to the landlord. The New Jersey Supreme Court upheld a New Jersey law that says that the landlord cannot discriminate against tenants who get subsidies to help pay their rent. **Cite:** *Franklin Tower One, L.L.C. v. N.M.*, 157 N.J. 602 (1999). That law in a stronger form has now become a part of the New Jersey Law Against Discrimination. **Cite:** N.J.S.A. 10:5-12(g). Complaints against landlords who refuse to accept HPP funds can be filed with the New Jersey Division on Civil Rights. See Chapter 16, *Housing Discrimination*, on page 94 for more information about the law and where to file complaints.

How to apply for the Homelessness Prevention Program. HPP funds for back rent are distributed through program representatives who work out of field offices located throughout the state. You can apply directly to the HPP office serving your county. Social service or community agencies can also write you a referral letter.

For the address and phone number of the office serving your area, call the main office of the program at 1-866-889-6270.

The program's main address is:

Homelessness Prevention Program
Department of Community Affairs
P.O. Box 806
Trenton, NJ 08625-0806

It often takes time to get a decision from HPP on whether or not they will help you. You may not have much time because the landlord has already begun the eviction action and you have a date to appear in court. It is very important that you contact HPP as early in the eviction process as possible and that you let them know when your eviction case will be heard in court.



In most years, HPP does not get enough money to help everyone who needs it.

HPP has limited funding. HPP gets a small amount of money from the State of New Jersey each year. In most years, HPP does not get enough money to help everyone who needs it. HPP also does not get money to have enough staff people in each county to take applications and process assistance to tenants. This funding shortage means that you may find that your local HPP office has run out of money, especially in

the spring when the state fiscal year is coming to an end. It also means that you may have difficulty getting through to a local office or getting your application approved in time to prevent your eviction. If you are having trouble getting help from HPP, you can contact your regional Legal Services office or get help from a homelessness prevention agency in your community.

If you are denied HPP. If HPP denies your request, they must send you a notice explaining why you were denied. You have the right to contest the denial at an informal hearing, called a *fair hearing*. You must ask for this hearing. Unfortunately, the hearing is not an emergency, and you are likely to be evicted before your hearing.

Emergency Assistance (EA)

Money to pay back rent may also be available to tenants who are receiving or eligible to receive cash benefits from Work First New Jersey (WFNJ), or recipients of Supplemental Security Income (SSI), through a program called Emergency Assistance (EA). EA can give you up to three months' back rent or up to three months' back utility payments in order to prevent eviction. It can also provide you with six months or more of rental assistance going forward.

If you actually are evicted and become homeless, EA also provides:

- Emergency shelter,
- Security deposits and advance rent to lease an apartment,
- Utility deposits for a new apartment,
- Temporary rental assistance (TRA) to help you pay for a new apartment, and
- An allowance for furniture if you need it.

How to apply for EA. You must apply for EA at your county welfare agency if you are eligible for WFNJ or SSI. (Single adults and childless couples who are eligible for WFNJ must apply at the local welfare department if the county welfare department has not taken over WFNJ.) To be eligible for EA, you must be homeless or expect to be homeless soon. You must show proof of an eviction, usually an eviction complaint or notice from your landlord. You must also show that you were unable to pay your rent. You may show that you were unable to pay your rent, even if you received welfare money, if you had to use it to pay for food, clothing, and other essentials. If you are denied EA, you must receive a written notice, and you have the right to a fair hearing on the decision. If you ask for an emergency hearing, the hearing should be held on an emergency basis. If you are denied EA, you should contact your regional Legal Services office.

Other rental assistance programs

There may be other programs in your area that can help you to pay back rent to prevent an eviction if you are not on public assistance. Money is made available each year by the state to each county to operate a Comprehensive Emergency Assistance System, or CEAS. Each county has a CEAS committee that decides how the money will be used and which agencies in each community will receive this money. These local agencies then use this money to help people facing eviction or to provide shelter to homeless people. If your landlord is taking you to court for nonpayment of rent,

call your county Board of Social Services and ask where to find such a program in your county.

These programs usually have very little money. They can pay only one or two months' back rent and help only a few families each month. It is important to call your county Board of Social Services as soon as you know that your landlord is trying to evict you.

Relocation assistance

Tenants are often forced to move from their homes because of action taken by a government agency. This is called *displacement*. The reasons an agency could order a tenant to move include the following:

- The building is to be boarded up or torn down with government approval.
- The landlord is ordered by the housing or building inspector to make repairs that cannot be made unless the tenants move.
- The landlord has allowed more people to live in a unit than the law allows, or the landlord has made a separate apartment out of a part of the building—such as an attic or a basement—that it is not legal to rent.
- The building is being taken over by a government agency to be used to build a school playground, a highway, a police station, a neighborhood renewal program, or some other public project.
- The landlord is not allowed to rent the apartment or room because of zoning laws.

The law requires that tenants forced to move for any of the above reasons be eligible for relocation assistance. **Cite:** N.J.S.A. 20:4-1, *et seq.*; N.J.S.A. 52:31B-1, *et seq.*; N.J.A.C. 5:11-1, *et seq.*; N.J.S.A. 2A:18-61.1(g) or 2A:18-61.1(h).

What is relocation assistance?

Relocation assistance is money and other support to help displaced tenants find a new place to live. Eligible tenants may be able to receive the following payments:

- Money for temporary housing until the tenant finds a permanent home, if the government agency forces the tenant to move out immediately because of an emergency. This is limited to \$500.
- A payment to cover the tenant's actual moving costs, or a dislocation allowance of \$200 and a fixed moving payment of up to \$300, based on the number of rooms occupied.
- Up to \$4,000, payable over three years, to meet rental expenses, or up to \$4,000 to help with the required down payment expenses to purchase a house.
- Help to locate a new, affordable place for the tenant to live.

Tenants living in illegal apartments that violate the town's zoning laws cannot be evicted unless they receive relocation assistance from the landlord (or the town, if it has a special law) in the amount of six times the monthly rent. This money must be paid to the tenant at least five days before the tenant is evicted. **Cite:** N.J.S.A. 2A:18-61.1(g) or 2A:18-61.1(h); *Kona Miah v. Ahmed*, 179 N.J. 511 (2004).

Which agency provides relocation assistance?

The law makes the government agency that orders you to move responsible for relocation payments, including money payments. The government agency will usually be a city, town, or township agency that is involved in any of the actions described above, such as the housing inspection office, health department, or fire department. Many cities have a relocation officer who must make sure that relocation assistance is available whenever any city agency causes displacement. The operation of local relocation support programs is monitored by the New Jersey Department of Community Affairs in Trenton.

Be aware: Cities and towns do not like to pay relocation assistance benefits, even to people who are eligible for them. Displaced tenants are often told that they are not eligible for these benefits when they clearly should receive them. Sometimes, tenants are told that towns “don’t give relocation assistance.” If you think you are eligible for relocation assistance and are not satisfied with the response of your local agency, contact your regional Legal Services office for further advice.

How can I obtain relocation assistance?

Visit your city or county relocation support office and ask if you are eligible for relocation assistance. You should contact the relocation support office as soon as you receive any notice that states that you must move because of bad conditions in your apartment, whether the notice is from your landlord or from a city agency. If you have any problems with your local relocation agency, you may appeal. Call and/or write:

Relocation Support Program
Department of Community Affairs
P.O. Box 802
Trenton, NJ 08625
(609) 984-7609

How can I protect my right to receive relocation assistance?

There are several steps you can take to protect your right to receive relocation assistance:

- Do not move from your apartment or home until you get a notice from the relocation office telling you that you are eligible for relocation assistance and that you must move.
- If you find housing on your own, ask the relocation officer to inspect the housing before you move to make sure that the housing is safe and decent.
- If the relocation officer finds housing for you to move into, make sure that the housing is decent, safe, and sanitary; near your work, transportation, and public facilities; affordable; and large enough for you and your family.
- File an application for relocation assistance benefits as soon as possible, but no later than 12 months after your moving date.

Displacement by fire

Tenants who have lost their housing because of fire do not have an absolute right to receive relocation assistance benefits. Under state law, cities may, if they wish, provide fire victims with limited benefits. You must check with your local housing or fire in-

spector to see if your city or town provides relocation assistance to fire victims. **Cite:** N.J.S.A. 20:4-3.1. Another law allows tenants to sue to force their landlord to repair their fire-damaged apartments. This law states that if a tenant's apartment or rented house is damaged by fire, and the fire is not the tenant's fault, the landlord must repair the fire damage as quickly as possible. The law also excuses a tenant from paying rent until the repairs are made. However, this law may not help you if your lease contains provisions that are different from those in the law. **Cite:** N.J.S.A. 46:8-6.

Property tax rebates for tenants

For many years, lower-income tenants and seniors have periodically been eligible for tax rebates and refunds through state-funded programs. Benefits and eligibility vary, depending upon how much funding the state is willing to dedicate to the programs. For example, when funding is low, rebates are often limited to lower-income senior homeowners, with tenants being entirely left out. The situation changes from year to year—that is why it is important for tenants to check each year to see if they are eligible.

For the latest information about these programs, call the New Jersey Division of Taxation at (609) 292-6400 or go to the Division's website at www.state.nj.us/treasury/taxation. You may also contact the Taxpayer Legal Assistance Program at Legal Services of New Jersey or your local or state tenants organization. 

Chapter 14

Condominium and Cooperative Conversions

Tenants are protected when buildings are converted

TENANTS CAN FACE EVICTION if their building or apartment is being converted into a condominium or cooperative. The Anti-Eviction Act protects all tenants from eviction due to condominium conversion for at least three years, and possibly for several more years. In Hudson County, the law also protects senior citizens and their spouses, handicapped tenants and their families, and lower-income residents against conversion-related eviction. This chapter gives a brief description of these legal protections.

Conversions are complicated: get help!

The legal process to convert a rental building to a condominium or a cooperative is complicated, as are the laws protecting tenants. If you learn that your building is undergoing conversion, or will be converted in the future, it is important that you seek legal advice from a lawyer who knows about these laws. Your regional Legal Services office can help if you are eligible.

Basic steps in conversion

Landlords must follow certain steps to convert rental housing to condominiums or cooperatives. Landlords must follow four different laws:

- The Planned Real Estate Development Full Disclosure Act. **Cite:** N.J.S.A. 45:22A-21.
- The Senior Citizen and Disabled Protected Tenancy Act. **Cite:** N.J.S.A. 2A:18-61.22.
- The Anti-Eviction Act. **Cite:** N.J.S.A. 2A:18-61.1(k) and 2A:18-61.8.
- The Tenant Protection Act of 1992. **Cite:** N.J.S.A. 2A:18-61.40.

An owner who plans to convert a building or a mobile home park must first give each tenant two separate documents: (1) a notice of intent to convert and (2) a full plan of conversion. The notice of intent to convert and the conversion plan must be sent by certified mail. In addition, the owner must give tenants a three-year notice to quit or vacate the rental unit because of the conversion. The notice of intent to convert and the conversion plan documents must be given to all affected tenants at least 60 days before giving the tenants the three-year notice to quit.



The Anti-Eviction Act protects all tenants from eviction due to condominium conversion for at least three years, and possibly for several more years.

The laws concerning conversion must be strictly followed by the owner. If the owner does not provide all of the information required in the proper form and in the proper way, the owner may not be able to evict the tenant at the end of the three-year notice period. **Cite:** *Riotto v. Van Houten*, 235 App. Div. 177 (App. Div. 1989); *Sibig and Co. v. Santos*, 244 App. Div. 366 (App. Div. 1990).

The notice of intent to convert. The notice of intent to convert must contain three separate items:

- A notice to the tenants of their right to buy ownership in the property at a set price.
- A notice that each tenant has an exclusive right to buy his or her apartment in the first 90 days after receiving the notice of intent to convert. The notice must also state that, during the 90 days, the apartment cannot be shown to anyone else unless the tenant has given up his or her right to buy in writing.
- A copy of the regulations on conversions approved by the New Jersey Department of Community Affairs. These regulations explain the tenant's rights under the Anti-Eviction Act.

The full plan of conversion. The full plan of conversion must contain a great deal of very specific information. For example, the plan must contain a legal description of the property, the price of the apartment, terms of sale, and a copy of the deed to the apartment, if purchased. The plan is defective if it does not contain all of the required information. The requirements for a conversion plan are very complicated, and you should have a skilled attorney review them for you.

Three-year notice to vacate or quit. After giving tenants the notice of intent to convert and the plan for conversion, the owner must then give tenants who choose not to buy ownership in a condo or co-op a three-year notice to vacate or quit the rental unit. The owner cannot file a court action to evict the tenant because of the conversion until the end of the three-year notice period. This means that tenants have a minimum of three years before their landlord can take them to court to ask that they be evicted because of the conversion. In addition, any time left on a written lease must also end before an eviction case can be started, even after the end of the three-year notice period.

The notice to quit must state the reason for ending the tenancy and must be served personally by giving a copy directly to the tenant or by leaving a copy at the tenant's home with a family member over the age of 14. It can also be served by certified and regular mail. If the regular mail is not returned, the tenant is presumed to have been served.

The right to ask for comparable housing. Tenants who have received the notice to quit can ask the landlord in writing for a reasonable opportunity to look at and rent comparable housing. This right to ask for comparable housing extends for 18 months after receipt of the notice to quit. Comparable housing means housing that meets all local and state housing codes and is equivalent to the apartment in which the tenant then lives in size, number of rooms, major facilities, rent, and in other ways. The requirements on the owner to offer reasonable opportunities for

comparable housing are detailed, and tenants should consult with a knowledgeable attorney for further advice.

Rent increases during the three-year notice period. Tenants are given some protection against unfair rent increases during the three-year notice period and for the entire time they remain in the apartment, including during any hardship stays of eviction (postponements). Tenants continue to be covered by rent control if rent control applies to the building. Also, an owner who asks the rent control board for a hardship increase cannot use any increases in costs resulting from the conversion to justify his or her claim of hardship.

Tenants continue to be covered by rent control if rent control applies to the building.

Cite: N.J.S.A. 2A:18-61.31.

Tenants in *towns without rent control* can receive only reasonable rent increases. The owner cannot use any increases in costs resulting from the conversion to justify a rent increase. For example, an owner may not raise rents because his taxes have risen because of the conversion. **Cite:** N.J.S.A. 2A:18-61.31. In this situation, tenants should seek legal advice.

Further delays in evictions. Tenants should also seek legal advice when faced with a court action for eviction after the three-year notice period. There are complicated rules on the circumstances under which the judge can grant further stays or postponements of eviction. The general rules are that the owner must show that a tenant who requested comparable housing within the first 18 months was actually offered comparable housing. If the tenant requested comparable housing and it was not offered, the court must grant a one-year stay (postponement). After at least a one-year stay, the court cannot give any more stays if the owner provides the tenant with hardship relocation compensation. Hardship relocation compensation is a waiver of five months' rent. A tenant who receives this compensation can live rent free for five months. However, the court will automatically renew the one-year stay if the owner does not provide this relocation compensation and fails again to give the tenant a reasonable chance to find similar housing. The court can give up to five one-year stays as long as the landlord does not give the tenant an offer of comparable housing or hardship relocation compensation. **Cite:** N.J.S.A. 2A:18-61.11.

Additional requirements. There are several additional legal requirements that must be met by owners. First, the owner must give any tenant whose tenancy began before the conversion, and who is evicted because of the conversion, a waiver of one month's rent for the cost of moving. **Cite:** N.J.S.A. 2A:18-61.10. Second, any tenant who moves in after the owner has officially filed to convert to condo or co-op must be given notice that the building is being converted. The tenant also has to be warned that he or she can be evicted after 60 days' notice if the unit is sold to a new owner who wants to personally move in. **Cite:** N.J.S.A. 18-61.9. Third, the owner or buyer of a condominium unit can be liable to a tenant in a civil action for three times the amount of damages plus attorney's fees and court costs for misleading the tenant in any way about the conversion. **Cite:** N.J.S.A. 2A:18-61.9.

Special protections for senior citizens and the disabled

The law protects from eviction for up to 40 years qualified senior citizens and disabled people who live in buildings being converted to condominiums or cooperatives. During this protected period, these tenants must continue to pay rent and follow reasonable rules and regulations, or they can be evicted for some other reason, such as nonpayment of rent. **Cite:** N.J.S.A. 2A:18-61.22.

The law protects qualified senior citizens and disabled tenants from eviction for up to 40 years.

Qualifications for protection. Senior citizens qualify for protection from eviction if they (1) have an income not higher than three times the per capita (average) income in the county they live in or \$50,000, whichever is greater; (2) have lived in the building for one year or have a lease with longer than a one-year term; (3) are over 62 years old; and (4) live in a building containing at least five rental apartments. Disabled people qualify if they are unable to work because of a physical or mental impairment, or they are veterans who have a service-connected disability of 60 percent or more. Disabled people must also meet the income standards and have lived in the building with at least five rental units for one year, or have a lease with longer than a one-year term. **Cite:** N.J.S.A. 2A:18-61.24.

How to apply for protection. The city or town will send an application form for protected tenancy to every tenant in the building before a landlord converts a building. Seniors or disabled tenants who wish to apply must fill out the form and return it to the town within 60 days of receipt. The tenant must also sign a written statement, sworn before a notary public, giving his or her income and stating that he or she has either lived in the apartment for one year or has a long-term lease.

The city must decide in writing within 30 days after the application is filed if the tenant qualifies. A tenant who qualifies is eligible for protection if the landlord goes ahead with the conversion. **Cite:** N.J.S.A. 2A:18-61.28.

The application for protection should be sent to the city within 60 days of receiving it. Tenants can still apply for protection even weeks or months later, as long as the application is made before a court actually enters a judgment for eviction, or before the apartment is sold to a person who intends to live in it. Tenants who applied for and were not given protection because they did not qualify (because they were over income or for other reasons) can apply again. This can be done even a year or more later, as long as they reapply before a court judgment or before the apartment is sold. **Cite:** *Ellin Corp. v. Tp. of North Bergen*, 253 N.J. Super. 434 (App. Div. 1992).

Protections against rent increases. Qualified senior citizens and disabled tenants also receive protection from unreasonable rent increases. Rent control continues to apply to protected tenants if the building is covered by rent control, and an owner who asks the rent control board for a hardship increase is not allowed to use the additional cost of the conversion as a reason for a hardship rent increase. Where rent control does not apply, any rent increase must be reasonable. Also, the owner cannot use any increases in costs resulting from a conversion to justify a rent increase. Protected

tenants facing rent increases should seek knowledgeable legal help. **Cite:** N.J.S.A. 2A:18-61.31.

Special Hudson County protections

The law provides additional protections for certain tenants living in Hudson County. **Cite:** N.J.S.A. 2A:18-61.40. Qualified Hudson County tenants are permanently protected from eviction due to the conversion of their building. Qualified tenants must continue to pay rent and follow reasonable lease rules. They can still be evicted if their landlords can prove in court one of the other legal causes for eviction.

Qualifications for protection. Hudson County tenants qualify for protection from eviction if their household income is below certain amounts that are established each year. These tenants must also have lived in their apartments for at least 12 months before they apply for protection. They must also apply for protection before the landlord gets permission from the state to convert.

Before an owner can convert, all tenants in the building must be notified in writing that they have a right to apply for special protection from eviction. The state will not allow the owner to convert unless the owner can show that all tenants have been notified of their right to apply for protection.

How to apply for protection. The city will send an application to every tenant in the building before a Hudson County owner converts a building. Tenants who wish to apply for protection must fill out the form and return it to the town within 60 days of receipt. Tenants may also have to sign a written statement, sworn before a notary public, giving their income and stating that they have lived in the apartment for 12 months.

The city must notify tenants who qualify in writing within 30 days after receiving the applications. Tenants who do not qualify for these special Hudson County protections still have the same rights as all other tenants in conversions, as discussed above.

Other requirements. Hudson County tenants can lose their protection against eviction if their household income goes higher than the amounts allowed in the law. Tenants can also lose protection if they no longer reside in the apartment. In addition, the rent for protected Hudson County tenants continues under rent control if their building is covered by rent control. An owner who asks the rent control board for a hardship increase cannot use increases in costs from conversion as a reason for a hardship rent increase. If rent control does not apply, an owner can only receive reasonable rent increases that do not include any increases in costs resulting from conversion. 🏠

Chapter 15

Rooming and Boarding Homes and Mobile Home Parks

AN ESTIMATED 40,000 PEOPLE, most of them poor and elderly, live in New Jersey's 3,500 rooming and boarding homes. Some of these buildings are old and greatly in need of repair. Some have narrow hallways with poor lighting and don't have proper electrical and heating systems. This makes them fire hazards and hard to escape from when a fire occurs. The poor and elderly who live in these homes are often victimized by landlords who take advantage of the residents' fear of eviction by demanding high rents for poor living conditions.

Thousands of other families reside in mobile home parks throughout New Jersey. Mobile home residents are in an unusual situation—they usually own their mobile home but have to lease the lot on which the home sits from a mobile home park owner. There are a limited number of licensed and approved mobile home parks. Almost none of these parks accept homes moved from another park. For this reason, mobile home residents have little room to bargain if they have a dispute with a park owner.

Special laws have been passed to protect residents of rooming and boarding homes and mobile homes. This chapter explains these protections.

Protections for rooming and boarding house residents

The Rooming and Boarding House Act is designed to protect residents living in rooming and boarding homes. Under the law, the Department of Community Affairs (DCA) is responsible for inspecting every rooming and boarding home in New Jersey. DCA must make sure that each home is safe and decent. DCA must also make sure that the owner or manager of the house respects the rights of residents. For example, DCA must make sure that the building is fire safe, has no serious plumbing or electrical problems, has enough light and air, is clean, and is secure. DCA must make sure that the house is well run. They must also make sure that there are no violations of the residents' legal rights, such as the right to have visits from family, friends, and social workers. **Cite:** N.J.S.A. 55:13B-1.

The licensing process

Every rooming and boarding home must apply each year to DCA for a license. DCA must then inspect the homes and review their records each year.

If DCA discovers that a building needs repairs or that other violations exist, it must send the owner a written notice of the violations. The written notice must state the date and time by which the owner must correct the violations. If the repairs are not made by the required date, DCA can (1) order the house to be closed, (2) fine the owner for the violations, or (3) ask a court to appoint a receiver. The receiver's job is

to make any necessary repairs or improvements and take all other steps necessary to properly operate the home.

DCA can authorize a county or municipality to do the inspections. If it does, DCA must control and supervise the inspections.

Protections against eviction

The protections in the Anti-Eviction Act apply to rooming and boarding home residents. This means that these residents are entitled to the same protections as all other tenants. This includes the protections against eviction listed in Chapter 9, *The Causes for Eviction*, on page 56. In addition, if a resident is displaced from a rooming or boarding home due to code enforcement, the resident is eligible for relocation assistance. See *Relocation assistance* on page 82. **Cite:** N.J.S.A. 2A:18-61.1; N.J.S.A. 55:13B-6(e).

Other rights of boarding home residents

The law says that every resident of a boarding home has the following rights:

- To manage his or her own financial affairs;
- To wear his or her clothing in the style he or she prefers;
- To style his or her hair according to his or her preference;
- To keep and use personal property in his or her room, except where the boarding house can show that this would be unsafe or impractical, or that it would interfere with the rights of others;
- To receive and send unopened mail;
- To unaccompanied use of a telephone at a reasonable hour and to a private phone at the resident's expense;
- To privacy;
- To hire his or her personal doctor at his or her own expense or under a health care plan;
- To privacy concerning his or her medical condition and treatment;
- To unrestricted personal visits with any person of his or her choice, at any reasonable hour;
- To be active in the community;
- To present complaints for his or her own self or others to government agencies or other persons without threat of reprisal (getting even) in any form or manner;
- To a safe and decent living environment and care that recognizes the dignity and individuality of the resident;
- To refuse to work for the boarding facility, except as contracted for by the resident and the operator;
- To practice his or her religion;
- To not be deprived of any legal right solely because he or she lives in a boarding house; and
- To be free from retaliation by the owner if the resident tries to stand up for or enforce his or her rights. **Cite:** N.J.S.A. 55:13B-14 and 19.

The owner must give each resident written notice of these rights, and the notice must be posted in the home. The notice must include the name, address, and telephone number of social services agencies, including the Office of the Ombudsman for the Institutionalized Elderly, the county welfare agency, and the county Office on Aging.

Any resident whose rights are violated can sue the offender. The resident can ask for actual and punitive damages, reasonable attorney's fees, and costs of the action.

Cite: N.J.S.A. 55:13B-21.

Protections for mobile home tenants

Mobile home owners are also tenants because they rent space in mobile home parks. For this reason, mobile home owners are protected from eviction under the Anti-Eviction Act. They are also covered by the New Jersey Homestead Property Tax Credit Act. Court decisions have also established that other landlord-tenant laws, covering security deposits, receivership, truth in lending, landlord identity, discrimination against children, self-help eviction, distraint, and reprisal (getting even), also apply to mobile home owners, even though mobile homes are not specifically mentioned in these laws. **Cite:** *Fromet Properties, Inc. v. Buel*, 294 N.J. Super. 601 (App. Div. 1996); *Pohlman v. Metropolitan Trailer*, 126 N.J. Super. 114 (Ch. Div. 1973). Mobile home tenants also have special protections under the Mobile Home Act. These protections are explained in the sections that follow.

Requirement for a written lease

The Mobile Home Act requires park owners to give at least a one-year written lease to all renters of space within a month after they move in. This is the only form of residential tenancy in New Jersey where a written lease for a particular period of time is required. **Cite:** N.J.S.A. 46:8C-4.

However, the park owner may have a written rule about the style or quality of the type of equipment to be used by the home owner. A mobile home owner cannot be forced to buy equipment from a park owner or a particular outlet. The mobile home owner may sue the park owner in civil court if this happens.

A mobile home park owner cannot require a resident to buy either a mobile home or necessary equipment from a particular seller. **Cite:** N.J.S.A. 46:8C-2.

Moving and selling mobile homes

A mobile home park owner cannot ask a tenant to move his or her mobile home within the park unless the move is reasonably necessary. The owner must also serve the tenant with a 30-day notice. In an emergency, the operator may move the mobile home but is responsible for all costs for any damages to the mobile home resulting from the move. **Cite:** N.J.S.A. 46:8C-2.

A mobile home owner who plans to sell his or her home must give written notice to the park owner. It is unlawful to try to sell a mobile home without the park owner's consent or knowledge. Before selling a mobile home, the seller must give the buyer an application for park tenancy. The buyer must then return the application in person to the park owner or operator. A park owner has the right to approve who

buys a mobile home in the park but cannot deny anyone without reason. If the park owner unreasonably refuses to approve the buyer, the home owner or the intended buyer can sue in Superior Court. The court can award damages, costs of the lawsuit, and attorney's fees. The court may also require the park owner to rent to the prospective buyer. A valid reason for refusal would be an unsatisfactory credit report on the prospective buyer. **Cite:** N.J.S.A. 46:8C-3.

A park owner can refuse to approve an interested buyer if the park has been legally designated for senior citizens and the tenant is below the minimum age requirement. However, in a park that is not reserved for seniors, discrimination against buyers with children may be against state and federal law. Please seek legal advice if you think you are experiencing this type of discrimination.

Disclosure of fees

A mobile home park owner must make known to the tenants and the public all fees, charges, assessments, and rules. These disclosures must be in writing and must be given to tenants before they move in. Any additional fees, charges, assessments, rules, or changes must also be in writing and given to mobile home tenants at least 30 days before the effective date. If the written notice is not given, the park owner cannot use a mobile home owner's failure to comply as a cause for eviction. **Cite:** N.J.S.A. 46:8C-2.

It is unlawful for a mobile home park owner to ask for or receive a donation or gift directly or indirectly from someone who wants to rent a space in the park. This is a disorderly persons offense, and the owner can be prosecuted in municipal court. If such a payment is made, the home owner can sue to recover the amount paid. The judge can award double the amount of the unlawful payment, court costs, and attorney's fees. **Cite:** N.J.S.A. 46:8C-2.

Rent increases and maintenance

Rent increases for mobile home owners are subject to the same notice requirements and other limits, including rent control if applicable, as those for all other tenants. The mobile home park owner is responsible for the general upkeep of the park. This includes the maintenance of all services agreed to in the lease. If the park owner does not maintain the area or services properly, it constitutes a breach of the warranty of habitability, and the tenant may seek justice in the same ways any other tenant would.

Manufactured Home Owners Association

There is an association of mobile home owners that can provide information and other assistance to mobile home owners. Please contact:

MHOA NJ
PO Box 104
Jackson NJ 08527
Email: mhoanj@optonline.net
Phone: (732) 534-0085



Chapter 16

Housing Discrimination

Discrimination in renting is illegal

NEW JERSEY AND UNITED STATES laws prohibit discrimination in the rental of housing. These laws are called *fair housing laws*.

This chapter describes illegal discrimination and what you can do about it if you believe a landlord or real estate agency is violating fair housing laws.

Under state and federal laws, it is illegal for a landlord or real estate agency to refuse to rent to you because of your race, religion, color, national origin, ancestry, marital status, sex, sexual orientation, or physical or mental handicap. These laws also make it illegal for a landlord or real estate agency to refuse to rent to you because you are pregnant or your family includes children under 18 years of age.

Refusal to rent to Section 8 recipients and people with other types of income

New Jersey law also makes it illegal for a landlord to refuse to rent to a person because the person has a Section 8 voucher or another type of housing assistance. **Cite:** N.J.S.A. 10:5-12(g). This applies to tenants who obtain Section 8 while already tenants in a house or apartment, and to tenants who are seeking to rent from a landlord for the first time. A landlord cannot refuse to accept rental assistance from a tenant and then turn around and sue to evict that tenant for nonpayment of rent. **Cite:** *Franklin Tower One, L.L.C. v. N.M.*, 157 N.J. 602 (1999).

If you have a Section 8 voucher or another subsidy and a landlord refuses to rent to you, you should immediately contact an attorney or the New Jersey Division on Civil Rights. (New Jersey law also makes it illegal to refuse to rent to a person who will pay rent with other sources of income, such as welfare, alimony, or child support. **Cite:** N.J.S.A. 10:5-12[g].)

The New Jersey Division on Civil Rights has five local offices. You should call the local office that handles cases in your county. See page 97.



State and federal laws make it illegal for a landlord or real estate agency to refuse to rent to families with children.

Also see *What may not be discrimination* on page 95.

Discrimination against families with children

State and federal laws make it illegal for a landlord or real estate agency to refuse to rent to families with children. **Cite:** N.J.S.A. 10:5-12(g)(5). There are, however, some exceptions. A landlord can refuse to rent to families with children if the building was built only for senior citizens. But every

apartment in such a building must be occupied by people over the age of 62. Retirement communities for people over 55 can refuse to rent to families with children, but only if they meet certain requirements.

Under state law, it is illegal for a landlord to refuse to rent to a couple because they are not married. **Cite:** *Kurman v. Fairmount Realty Corp.*, 8 N.J. Admin. Reports 110 (1985). And a court has ruled that it is illegal for a landlord to refuse to rent to homosexuals because of the landlord's fear that they may have or get AIDS. **Cite:** *Poff v. Caro*, 228 N.J. Super. 370 (Law Div. 1987).

Also see the information under the section *What may not be discrimination* below.

Special protection for the disabled

If you are handicapped or disabled, federal and state laws have additional protections against discrimination. It is illegal for a landlord to refuse to rent to you just because of your handicap or disability. The landlord also cannot refuse to make reasonable changes to your apartment that will make it easier for you to live there. This means that the landlord must let you provide handrails, ramps, or any other special equipment you need. You will have to pay for these changes yourself. (**Note:** If you live in a subsidized building, the landlord may have to pay for the changes.) You will also have to pay the reasonable cost of removing the ramps or handrails or other changes when you move out of the apartment, if that is what the landlord wants. ***The law also says that the landlord must change the rules and regulations to make it possible for you to live in and enjoy an apartment, as long as the changes you are asking for are legal.*** **Cite:** 42 U.S.C. § 3604 and N.J.S.A. 10:5-4.1.

It is illegal for a landlord to refuse to rent to you just because of your handicap or disability.

The landlord may be able to make you deposit money into a special bank account each month to cover the cost of removing the ramps and other equipment when you move out. The landlord can only make you deposit this money if he or she can prove that the changes you need will be very expensive. However, the payments must be low enough that you can afford them, and must stop after the amount needed to make the changes has been deposited. The landlord must give you the interest earned on this special account.

State law also permits a tenant with a disability to terminate a lease because the apartment or home is not "handicapped accessible." You can break your lease only if you asked your landlord to make the unit accessible and the landlord is unwilling or unable to do so. **Cite:** N.J.S.A. 46:8-9.2.

Also see the next section, *What may not be discrimination*.

What may not be discrimination

There are certain reasons a landlord may refuse to rent to you that are not illegal discrimination. A landlord doesn't have to rent to you if your income is not high enough to afford the rent or if a check of your financial background shows that you

have failed to pay rent for apartments in the past or have been unable to pay other debts. *But these reasons may not be good reasons if you have a Section 8 voucher or another type of housing assistance.* **Cite:** *T.K. v. Landmark West*, 353 N.J. Super. 223 (2002). However, see *Pasquince v. Brighton Arms Apartments*, 378 N.J. Super. 588 (App. Div. 2005), where the court held that a person with a Section 8 voucher could be denied an apartment if there was a poor credit history. It depends on the facts of the case. If you have a Section 8 voucher or another subsidy and a landlord refuses to rent to you because of your credit history or the amount of your income, you should contact an attorney or the New Jersey Division on Civil Rights. See *Refusal to rent to Section 8 recipients and people with other types of income* on page 94.

A landlord can refuse to rent to you if your family is too large for the size of the apartment. Whether or not your family is too large usually depends upon how big the whole apartment is, not just how many bedrooms it has.

It is important that you ask the landlord to be specific about why he or she is refusing to rent to you. If you suspect illegal discrimination, get help from a fair housing group, Legal Services, a private attorney, or the Division on Civil Rights.

How to file a discrimination complaint

Housing discrimination occurs frequently in New Jersey. There are government agencies set up to investigate complaints of housing discrimination.

If you feel that the landlord will not rent an apartment to you because of your race, religion, color, national origin, ancestry, marital status, sex, handicap, sexual preference, source of income for rent payment, or because you have children, you can do several things.

You can file a discrimination complaint directly with one of three government agencies. These agencies are required to investigate your complaint and take action to help you if they find that you have suffered discrimination. They can make landlords who discriminate pay money damages and can even get you into the apartment you wanted but were denied. Landlords who violate the Law Against Discrimination are subject to substantial fines—up to \$10,000 for a first offense. **Cite:** N.J.S.A. 10-5-14.1(a).

It is important to call or write to these agencies immediately if you believe you are the victim of housing discrimination. You will want these agencies to investigate your complaint right away.

There are two main agencies—one federal and one state—that handle housing discrimination complaints:

The U.S. Department of Housing and Urban Development (HUD)

Fair Housing and Equal Opportunity Division
1 Newark Center, 13th Floor
Newark, NJ 07102
1-800-496-4294 (discrimination complaints)
(973) 622-7900 (HUD complaints)
www.hud.gov/complaints/housediscrim.cfm

**New Jersey Department of Law and Public Safety
Division on Civil Rights**

Atlantic City Office

26 S. Pennsylvania Avenue, 3rd Floor

Atlantic City, NJ 08401

(609) 441-3100

*Serves Atlantic, Cape May, Cumberland, Ocean,
and Salem counties*

Camden Office

1 Port Center, 4th Floor

2 Riverside Drive, Suite 402

Camden, NJ 08103

(856) 614-2550

Serves Burlington, Camden, and Gloucester counties

Newark Office

31 Clinton Street, 3rd Floor

P.O. Box 46001

Newark, NJ 07102

(973) 648-2700

Serves Essex, Hudson, Union, and Middlesex counties

Paterson Office

100 Hamilton Plaza, 8th Floor

Room 800

Paterson, NJ 07505

(973) 977-4508

Serves Bergen, Morris, Passaic, Sussex, and Warren counties

Trenton Office

140 East Front Street, 6th Floor

P.O. Box 090

Trenton, NJ 08625-0090

(609) 292-4605

*Serves Burlington, Mercer, Hunterdon, Somerset, Monmouth,
and Middlesex counties*

You can find out more about the Division on Civil Rights, including information about filing a complaint, at the Division's website:

www.njcivilrights.com

Both agencies handle complaints about the various forms of illegal discrimination described above. Only the state agency, the Division on Civil Rights, handles complaints about discrimination based on sexual orientation.

If you have a complaint against a *real estate broker or agent*, the New Jersey Real Estate Commission can investigate and punish any broker or agent whom they find to

have discriminated against you. The Commission cannot award money damages or force the broker to rent to you. The Commission can be reached at:

New Jersey Real Estate Commission
240 West State Street
P.O. Box 328
Trenton, NJ 08625-0328
(609) 292-8280
www.state.nj.us/dobi/remnu.shtml

You also can go directly to court without using these agencies and sue the landlord and/or broker who you believe has discriminated against you. This means, however, that you may need your own lawyer and will have to do your own investigation. If you succeed in court, you may be able to get money damages, the apartment that was wrongfully denied you, and attorney's fees.

If your complaint involves an owner-occupied two-family home, the Division on Civil Rights, HUD, and the Real Estate Commission won't be able to help you. Your only choice in such a case is to go to court.

Local fair housing groups. Some counties have fair housing organizations that can help you with your discrimination complaint. They can investigate your complaint for free and help you get the housing you want. They can also help you bring charges against the landlord and/or real estate broker, find you an attorney, or help you file a complaint with HUD or the Division on Civil Rights.

The following counties have organizations that may be able to help you with your fair housing complaint:

Bergen County

Fair Housing Council of Northern New Jersey
131 Main Street, Suite 140
Hackensack, NJ 07601
(201) 489-3552
www.fhcnnj.org

Middlesex County

Puerto Rican Housing Coalition
90 Jersey Avenue
New Brunswick, NJ 08901
(732) 828-4510
www.prab.org

Monmouth County

Monmouth County Fair Housing Board
Community Development
Hall of Records Annex
1 East Main Street, 2nd floor
Freehold, NJ 07728
(732) 431-7490
www.co.monmouth.nj.us/page.aspx?Id=3000

Morris County

Urban League of Morris County
Fair Housing and Assistance Program
300 Madison Avenue, Suite A
Morristown, NJ 07960-6116
(973) 539-2121
(973) 998-6520 (Fax)
www.ulmcnj.org/housing2.ivnu

The need for legal help. Proving housing discrimination can be difficult and complicated. You may need help from one of the fair housing groups listed above. You will also need a lawyer. The fair housing groups may be able to refer you to a lawyer. You can also call your Legal Services program for their help or a referral to a private attorney specializing in housing discrimination cases. 

New Jersey Legal Services Programs

State Coordinating Program

Legal Services of New Jersey

P.O. Box 1357

Edison, NJ 08818-1357

(732) 572-9100

www.LSNJ.org

LSNJLAWSM statewide, toll-free legal hotline:

Apply for help online: ***www.lsnjlawhotline.org***

1-888-LSNJ-LAW (1-888-576-5529)

www.LSNJLAW.org

Regional Legal Services Programs

Central Jersey Legal Services

Mercer County (609) 695-6249

Middlesex County—New Brunswick (732) 249-7600

Middlesex County—Perth Amboy (732) 324-1613

Union County (908) 354-4340

Essex-Newark Legal Services (973) 624-4500

Legal Services of Northwest Jersey

Hunterdon County (908) 782-7979

Morris County (973) 285-6911

Somerset County (908) 231-0840

Sussex County (973) 383-7400

Warren County (908) 475-2010

Northeast New Jersey Legal Services

Bergen County (201) 487-2166

Hudson County (201) 792-6363

Passaic County (973) 523-2900

South Jersey Legal Services

Atlantic County (609) 348-4200

Burlington County (609) 261-1088

Camden County (856) 964-2010

Cape May County (609) 465-3001

Centralized intake 1-800-496-4570

Cumberland/Salem Counties (856) 691-0494

Gloucester County (856) 848-5360

Monmouth County (732) 414-6750

Ocean County (732) 608-7794