

## THE EVICTION ACTION

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## THE EVICTION ACTION

### "LANDLORD/TENANT" COURT

The Landlord/Tenant court is a division of the Special Civil Part of the Superior Court of New Jersey. Each county in the State of New Jersey has a Landlord/Tenant Court that is empowered by statute to hear cases affecting tenancies within their county jurisdiction. The court's jurisdiction is limited to awarding "possession" of the premises to the landlord. That is, if a landlord is successful in bringing a case in the Landlord/Tenant Court, they will receive a "Judgment of Possession" which entitles them to evict the tenant from the demised (rented) premises. As a condition to commencing a case in the Landlord/Tenant Court, **a landlord/tenant relationship must exist** between the plaintiff (generally the landlord) and the defendant (generally the tenant.) If either party seeks any different form of relief, the tenancy judge has the power to transfer the case to a higher court which has more jurisdiction.

Cases that are brought (or filed) in Landlord/Tenant Court are known as "summary dispossession" proceedings. They are so named after the New Jersey Court Rule that authorizes the commencement of the case. The Rule provides the defendant shall "appear and state a defense" in lieu of providing a written answer, which is the usual way to respond to a plaintiff's Complaint.

### THE "PARTIES"

Generally, the landlord is the plaintiff and the tenant is the defendant. However, notwithstanding the foregoing, since judgments of possession may affect the rights of other persons occupying the rented premises, there has been a trend by certain judges,

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depending on what county you're in to have the landlord name all known adult occupants as defendants in the action for possession. The theory is that all those whose interests may be affected by an adverse judgment should be included in the action, so they are served with process and get notice. This would include all sub-tenants, undertenants, assignees, spouses, boyfriends/girlfriends, etc.

### **COMMENCING THE CASE**

A summary dispossession action against a tenant is governed by one of the following statutes:

- the **Summary Dispossess Act (N.J.S.A. 2A:18-53)**

or

- the **Anti-Eviction Act (N.J.S.A. 2A:18-61.1)**

In my experience, the Anti-Eviction Act applies to well over 95% of the cases that are brought in tenancy court each day.

The Anti-Eviction Act applies to (i) residential properties if the owner (landlord) **does not** live there or (ii) if the owner does live there and there are **more than two other** rental units. The Summary Dispossess Act applies to all other rental or residential properties including commercial tenancies. I have provided a copy of each of these acts on the following pages.

A tenant falling within the purview of the Anti-Eviction Act is said to have a "protected" tenancy. A landlord cannot terminate this type of tenancy without cause, i.e. one of the grounds provided for by the statute. Theoretically, a tenant can remain in the

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demised (rented) premises for as long as they want, so long as there is no violation of any provision in the Act. Hence, they are "protected" from the whims of a landlord.

### **2A:18-61.1. Removal of residential tenants; grounds**

No lessee or tenant or the assigns, under-tenants or legal representatives of such lessee or tenant may be removed by the Superior Court from any house, building, mobile home or land in a mobile home park or tenement leased for residential purposes, other than (1) owner-occupied premises with not more than two rental units or a hotel, motel or other guest house or part thereof rented to a transient guest or seasonal tenant; (2) a dwelling unit which is held in trust on behalf of a member of the immediate family of the person or persons establishing the trust, provided that the member of the immediate family on whose behalf the trust is established permanently occupies the unit; and (3) a dwelling unit which is permanently occupied by a member of the immediate family of the owner of that unit, provided, however, that exception (2) or (3) shall apply only in cases in which the member of the immediate family has a developmental disability, except upon establishment of one of the following grounds as good cause:

- a. The person fails to pay rent due and owing under the lease whether the same be oral or written.
- b. The person has continued to be, after written notice to cease, so disorderly as to destroy the peace and quiet of the occupants or other tenants living in said house or neighborhood.
- c. The person has willfully or by reason of gross negligence caused or allowed destruction, damage or injury to the premises.
- d. The person has continued, after written notice to cease, to substantially violate or breach any of the landlord's rules and regulations governing said premises, provided such rules and regulations are reasonable and have been accepted in writing by the tenant or made a part of the lease at the beginning of the lease term.
- e. (1) The person has continued, after written notice to cease, to substantially violate or breach any of the covenants or agreements contained in the lease for the premises where a right of reentry is reserved to the landlord in the lease for a violation of such covenant or agreement, provided that such covenant or agreement is reasonable and was contained in the lease at the beginning of the lease term.  
  
(2) In public housing under the control of a public housing authority or redevelopment agency, the person has substantially violated or breached any of the covenants or agreements contained in the lease for the premises pertaining to illegal uses of controlled dangerous substances, or other illegal activities, whether or not a right of reentry is reserved to the landlord in the lease for a violation of such covenant or agreement, provided that such covenant or agreement conforms to federal guidelines regarding such lease provisions and was contained in the lease at the beginning of the lease term.

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**f. The person has failed to pay rent after a valid notice to quit and notice of increase of said rent, provided the increase in rent is not unconscionable and complies with any and all other laws or municipal ordinances governing rent increases.**

**g. The landlord or owner:**

- (1) seeks to permanently board up or demolish the premises because he has been cited by local or State housing inspectors for substantial violations affecting the health and safety of tenants and it is economically unfeasible for the owner to eliminate the violations;**
- (2) seeks to comply with local or State housing inspectors who have cited him for substantial violations affecting the health and safety of tenants and it is unfeasible to so comply without removing the tenant; simultaneously with service of notice of eviction pursuant to this clause, the landlord shall notify the Department of Community Affairs of the intention to institute proceedings and shall provide the department with such other information as it may require pursuant to rules and regulations. The department shall inform all parties and the court of its view with respect to the feasibility of compliance without removal of the tenant and may in its discretion appear and present evidence;**
- (3) seeks to correct an illegal occupancy because he has been cited by local or State housing inspectors or zoning officers and it is unfeasible to correct such illegal occupancy without removing the tenant; or**
- (4) is a governmental agency which seeks to permanently retire the premises from the rental market pursuant to a redevelopment or land clearance plan in a blighted area. In those cases where the tenant is being removed for any reason specified in this subsection, no warrant for possession shall be issued until P.L.1967, c. 79 (C.52:31B-1 et seq.) and P.L.1971, c. 362 (C.20:4-1 et seq.) have been complied with.**

**h. The owner seeks to retire permanently the residential building or the mobile home park from residential use or use as a mobile home park, provided this subsection shall not apply to circumstances covered under subsection g. of this section.**

**i. The landlord or owner proposes, at the termination of a lease, reasonable changes of substance in the terms and conditions of the lease, including specifically any change in the term thereof, which the tenant, after written notice, refuses to accept; provided that in cases where a tenant has received a notice of termination pursuant to subsection g. of section 3 of P.L.1974, c. 49 (C.2A:18-61.2), or has a protected tenancy status pursuant to section 9 of the "Senior Citizens and Disabled Protected Tenancy Act," P.L.1981, c. 226 (C.2A:18-61.30), or pursuant to the "Tenant Protection Act of 1992," P.L.1991, c. 509 (C.2A:18-61.40 et al.), the landlord or owner shall have the burden of proving that any change in the terms and conditions of the lease, rental or regulations both is reasonable and does not substantially reduce the rights and privileges to which the tenant was entitled prior to the conversion.**

**j. The person, after written notice to cease, has habitually and without legal justification failed to pay rent which is due and owing.**

**k. The landlord or owner of the building or mobile home park is converting from the rental market**

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to a condominium, cooperative or fee simple ownership of two or more dwelling units or park sites, except as hereinafter provided in subsection l. of this section. Where the tenant is being removed pursuant to this subsection, no warrant for possession shall be issued until this act has been complied with. No action for possession shall be brought pursuant to this subsection against a senior citizen tenant or disabled tenant with protected tenancy status pursuant to the "Senior Citizens and Disabled Protected Tenancy Act," P.L.1981, c. 226 (C.2A:18-61.22 et al.), or against a qualified tenant under the "Tenant Protection Act of 1992," P.L.1991, c. 509 (C.2A:18-61.40 et al.), as long as the agency has not terminated the protected tenancy status or the protected tenancy period has not expired.

**l. (1) The owner of a building or mobile home park, which is constructed as or being converted to a condominium, cooperative or fee simple ownership, seeks to evict a tenant or sublessee whose initial tenancy began after the master deed, agreement establishing the cooperative or subdivision plat was recorded, because the owner has contracted to sell the unit to a buyer who seeks to personally occupy it and the contract for sale calls for the unit to be vacant at the time of closing. However, no action shall be brought against a tenant under paragraph (1) of this subsection unless the tenant was given a statement in accordance with section 6 of P.L.1975, c. 311 (C.2A:18-61.9);**

**(2) The owner of three or less condominium or cooperative units seeks to evict a tenant whose initial tenancy began by rental from an owner of three or less units after the master deed or agreement establishing the cooperative was recorded, because the owner seeks to personally occupy the unit, or has contracted to sell the unit to a buyer who seeks to personally occupy it and the contract for sale calls for the unit to be vacant at the time of closing;**

**(3) The owner of a building of three residential units or less seeks to personally occupy a unit, or has contracted to sell the residential unit to a buyer who wishes to personally occupy it and the contract for sale calls for the unit to be vacant at the time of closing.**

**m. The landlord or owner conditioned the tenancy upon and in consideration for the tenant's employment by the landlord or owner as superintendent, janitor or in some other capacity and such employment is being terminated.**

**n. The person has been convicted of or pleaded guilty to, or if a juvenile, has been adjudicated delinquent on the basis of an act which if committed by an adult would constitute an offense under the "Comprehensive Drug Reform Act of 1987," N.J.S.2C:35-1 et al. involving the use, possession, manufacture, dispensing or distribution of a controlled dangerous substance, controlled dangerous substance analog or drug paraphernalia within the meaning of that act within or upon the leased premises or the building or complex of buildings and land appurtenant thereto, or the mobile home park, in which those premises are located, and has not in connection with his sentence for that offense either (1) successfully completed or (2) been admitted to and continued upon probation while completing, a drug rehabilitation program pursuant to N.J.S.2C:35-14; or, being the tenant or lessee of such leased premises, knowingly harbors or harbored therein a person who has been so convicted or has so pleaded, or otherwise permits or permitted such a person to occupy those premises for residential purposes, whether continuously or intermittently, except that this subsection shall not apply to a person harboring or permitting a juvenile to occupy the premises if the juvenile has been adjudicated delinquent upon the basis of an act which if committed by an adult would constitute the offense of use or possession under the said act. No action for removal**

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may be brought pursuant to this subsection more than two years after the date of the adjudication or conviction or more than two years after the person's release from incarceration whichever is the later.

o. The person has been convicted of or pleaded guilty to, or if a juvenile, has been adjudicated delinquent on the basis of an act which if committed by an adult would constitute an offense under N.J.S.2C:12-1 or N.J.S.2C:12-3 involving assault, or terroristic threats against the landlord, a member of the landlord's family or an employee of the landlord; or, being the tenant or lessee of such leased premises, knowingly harbors or harbored therein a person who has been so convicted or has so pleaded, or otherwise permits or permitted such a person to occupy those premises for residential purposes, whether continuously or intermittently. No action for removal may be brought pursuant to this subsection more than two years after the adjudication or conviction or more than two years after the person's release from incarceration whichever is the later.

p. The person has been found, by a preponderance of the evidence, liable in a civil action for removal commenced under this act for an offense under N.J.S.2C:20-1 et al. involving theft of property located on the leased premises from the landlord, the leased premises or other tenants residing in the leased premises, or N.J.S.2C:12-1 or N.J.S.2C:12-3 involving assault or terroristic threats against the landlord, a member of the landlord's family or an employee of the landlord, or under the "Comprehensive Drug Reform Act of 1987," N.J.S.2C:35-1 et al., involving the use, possession, manufacture, dispensing or distribution of a controlled dangerous substance, controlled dangerous substance analog or drug paraphernalia within the meaning of that act within or upon the leased premises or the building or complex of buildings and land appurtenant thereto, or the mobile home park, in which those premises are located, and has not in connection with his sentence for that offense either (1) successfully completed or (2) been admitted to and continued upon probation while completing a drug rehabilitation program pursuant to N.J.S.2C:35-14; or, being the tenant or lessee of such leased premises, knowingly harbors or harbored therein a person who committed such an offense, or otherwise permits or permitted such a person to occupy those premises for residential purposes, whether continuously or intermittently, except that this subsection shall not apply to a person who harbors or permits a juvenile to occupy the premises if the juvenile has been adjudicated delinquent upon the basis of an act which if committed by an adult would constitute the offense of use or possession under the said "Comprehensive Drug Reform Act of 1987."

q. The person has been convicted of or pleaded guilty to, or if a juvenile, has been adjudicated delinquent on the basis of an act which if committed by an adult would constitute an offense under N.J.S.2C:20-1 et al. involving theft of property from the landlord, the leased premises or other tenants residing in the same building or complex; or being the tenant or lessee of such leased premises, knowingly harbors therein a person who has been so convicted or has so pleaded, or otherwise permits such a person to occupy those premises for residential purposes, whether continuously or intermittently.

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The following is the Summary Dispossess Act, cited as **N.J.S.A. 2A:18-53**, and it applies to all tenants (both residential and commercial) that are not covered by the Anti-Eviction Act.

**2A:18-53. Removal of tenant in certain cases; jurisdiction**

Except for residential lessees and tenants included in section 2 of this act, (**N.J.S.A. § 2A:18-61.1**) any lessee or tenant at will or at sufferance, or for a part of a year, or for 1 or more years, of any houses, buildings, lands or tenements, and the assigns, undertenants or legal representatives of such tenant or lessee, may be removed from such premises by the Superior Court, Law Division, Special Civil Part in an action in the following cases:

- a. Where such person holds over and continues in possession of all or any part of the demised premises after the expiration of his term, and after demand made and written notice given by the landlord or his agent, for delivery of possession thereof. The notice shall be served either personally upon the tenant or such person in possession by giving him a copy thereof or by leaving a copy of the same at his usual place of abode with a member of his family above the age of 14 years.
- b. Where such person shall hold over after a default in the payment of rent, pursuant to the agreement under which the premises are held.
- c. Where such person (1) shall be so disorderly as to destroy the peace and quiet of the landlord or the other tenants or occupants living in said house or the neighborhood, or (2) shall willfully destroy, damage or injure the premises, or (3) shall constantly violate the landlord's rules and regulations governing said premises, provided, such rules have been accepted in writing by the tenant or are made a part of the lease; or (4) shall commit any breach or violation of any of the covenants or agreements in the nature thereof contained in the lease for the premises where a right of re-entry is reserved in the lease for a violation of such covenants or agreements, and shall hold over and continue in possession of the demised premises or any part thereof, after the landlord or his agent for that purpose has caused a written notice of the termination of said tenancy to be served upon said tenant, and a demand that said tenant remove from said premises within 3 days from the service of such notice. The notice shall specify the cause of the termination of the tenancy, and shall be served either personally upon the tenant or such person in possession by giving him a copy thereof, or by leaving a copy thereof at his usual place of abode with some member of his family above the age of 14 years.

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