

LANDLORD/TENANT LAW

I. Presenters

A. Robert Ramsey, Esquire, Garden State CLE Senior Instructor

B. Scott E. Becker, Esquire

1. Practicing for 44 years

2. Firm is located in Pleasantville, NJ.

II. Anti-Eviction Act

A. Codified at *N.J.S.A.* 2A:18-61.1 through 2A:61-12.

B. Weighs heavily in favor of tenants.

C. Actions filed pursuant to this act are heard in the Special Civil Part.

D. Tenant for Life – At the end of the lease, a tenant may basically remain in the property for life. Unreasonable changes by the landlord in the lease are prohibited. An exception is made when the landlord decides to personally occupy the property.

E. When a one-year lease expires, it converts to a month-to-month tenancy, unless a new lease is negotiated.

F. If a tenant decides to move on, thirty days' notice is generally required.

III. Prohibition on Entities

A. Contained in *R.* 1:21-1(c).

B. Requires business entities to be represented by counsel when appearing or filing any action in any New Jersey court.

IV. Hypothetical

A. Assume that an attorney representing a landlord faces a *pro se* tenant who claims there is a breach of the warrant of habitability for lack of utilities, vermin infestation, etc.

B. The attorney must first determine if the alleged breach is true.

C. If the allegation is true, the landlord must provide a solution, which may include an abatement of rent.

D. If the landlord disputes the claim, there is a trial.

E. If the tenant paid for utilities that were the landlord's responsibility, there will be an abatement.

IV. Justifications for Eviction Under the Anti-Eviction Act

A. Most common is the nonpayment of rent.

B. Nonpayment of rent is the only case where a landlord can simply go into court and file an eviction notice.

C. Other justifications, such as tenants destroying or damaging the property, causing disturbances, and convictions for drug offenses committed while on the property, require the landlord to first file a written notice to cease. Infractions easily remedied must be taken care of in a few days.

D. Procedure for Eviction

1. First, a judgment for possession must be entered in favor of the landlord.
2. Three days after the judgment for possession is entered, the landlord obtains a warrant for removal.
3. The tenant may object to the warrant for removal, but this amounts to no more than a delaying tactic.
4. The landlord has no standing unless there is a certificate of registration form filed pursuant to *N.J.S.A. 46:8-28*.

V. The Case for Nonpayment of Rent

A. Either the landlord or the person responsible for collecting the rent is called to testify.

B. The lease is entered into evidence.

C. Testimony regarding the months that are due.

D. Testimony regarding late fees, attorney costs, and filing fees.

E. It is never a defense for a tenant to say that he will pay the rent by a certain date. No matter how sympathetic the tenant's situation is, the court does not have the authority to order the landlord to make his property available rent-free for any period of time. The tenant must come up with the total amount due to avoid the execution of a warrant for removal.

F. If the landlord is successful, the sergeant-at-arms serves the tenant with the warrant for removal.

G. The tenant has three days to object to the warrant for removal. The court will schedule a hearing in a week or so thereafter.

H. If the warrant for removal is upheld, arrangements will be made for the landlord to meet the sergeant-at-arms at the premises to change the locks. The tenant's belongings will literally be put out on the sidewalk.

VI. Settlement – There can always be an agreement between the parties for the tenant to pay the back rent over time. This is the only way for a tenant to avoid having an eviction on his record. Having a record for eviction will cause great difficulty in renting property in the future.

VII. Executive Order 106 provides for a moratorium on evictions. This is not to say that tenants may live rent-free; it simply means that evictions are postponed.

VIII. Bid to Protect Landlords – The governor’s attempt to protect landlords through the use of security deposits is probably unconstitutional because it amounts to an interference with existing contracts.

IX. Security Deposits

A. The maximum security deposit allowed by law is equal to one and one-half month’s rent.

B. Security deposits must be held in a separate interest bearing account. The tenant must be notified as to the location of the money, the account number, etc.

C. Damages are doubled if the landlord fails to return part or all of a security deposit. For example, if the landlord withholds \$2000 of a security deposit claiming \$2000 in damages, but the judge determines that the damages are \$1400, the landlord is liable for \$1200, not \$600.

D. The landlord must inform the tenant in a certified document why part or all of a security deposit is being withheld.

X. Represented Landlord v. *Pro Se* Tenant – Why is it a fair fight?

A. Pro se litigants are presented with a film, approximately thirty minutes in length, explaining their rights.

B. For lower income people, legal services are available for assistance and representation.

XI. Landlord/Tenant Court

A. The judge’s law clerk will generally mediate.

B. A landlord/tenant court may have 150 cases scheduled for one day. Approximately 50% will settle.

C. If the tenant who has been given proper notice fails to appear, a judgment for possession is awarded to the landlord. After three days, the landlord will secure a warrant for removal and schedule an eviction. If the landlord fails to appear, the case is dismissed. The landlord may re-file without any required waiting period.

D. *Martini v. Ireland*, 56 N.J. 130 (1970) – *Martini* hearings are contested habitability actions. They are usually scheduled for a day other than a regular landlord/tenant day. These hearings generally take less than thirty minutes, even when there are attorneys on both sides.

XII. Effects of the COVID Crisis

A. Due to actions by the governor and the judiciary, the landlord/tenant courts shut down. To date, the shut-down has caused a statewide backlog of 17,000 cases.

B. Courts are supposed to be conducting conferences on cases that were in the pipeline prior to the crisis.

C. Even if a landlord prevails, Executive Order 106 prohibits evictions. When the emergency comes to an end, *i.e.*, the order is no longer extended on a month-to-month basis, tenants still may not be evicted for 60 days.

D. During the shut-down, landlords may file actions for money damages in the Special Civil Part. Judgments will not be enforced, but they may motivate the tenant to pay the rent that is due.

E. As a result of the COVID moratorium, thousands of people in New Jersey are living rent-free and their landlords have no recourse.

XIII. What does the future hold for landlord/tenant court?

A. Many cases, particularly nonpayment actions, may be dealt with virtually.

B. To eventually get out from under the backlog, judges and court days must be added.

XIV. Advice for Young Attorneys Considering Landlord/Tenant Law

A. Landlord/tenant law does not require a lot of legal research or brief writing.

B. Make sure that after all the time and money spent on your legal education that you want to spend your time going into court to convict people who haven't paid their rent.