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AVOIDING COMMON PITFALLS IN RESIDENTIAL LANDLORD-TENANT MATTERS

by **Robert J. Flanagan III**

One of the most commonly filed lawsuits in New Jersey is a residential summary dispossess action (*i.e.*, an action seeking to remove a residential tenant). Each week there are hundreds of these cases scheduled for trial throughout the state. Despite the volume of cases, many landlords, as well as attorneys, are not familiar with the legally required steps they must follow both prior to instituting a summary dispossess action and then after locking the tenant out. This is especially dangerous given the fact that if a landlord is seeking to remove a tenant, he or she is probably anxious to complete the removal as fast as possible. This can result in actions being taken that are contrary to law in an effort

to expedite the removal of a tenant.

This article provides landlord attorneys with a general overview of the grounds for removal of a residential tenant under the New Jersey Anti-Eviction Act¹ as well as the notice requirements that a landlord must provide a tenant prior to filing a summary dispossession action. It should be noted that provisions of the act discussed in this article apply to residential tenancies only, and do not apply to commercial tenancies. Indeed, the grounds for eviction of a commercial tenant can be found at N.J.S.A. 2A:18-53, and a discussion of them is beyond the scope of this article.

Further, this article provides a general discussion of the steps a landlord must take to avoid liability under the New Jersey Abandoned Property Act.² The Abandoned Property Act applies to landlords of both commercial and residential properties.

It is imperative an attorney ensure that his or her landlord client complies with these two acts when seeking to remove a residential tenant. Otherwise, the summary dispossession action could be dismissed for lack of jurisdiction, or worse, the landlord could be civilly liable to the tenant.

Grounds for Removal

A landlord attorney must determine the grounds for removal of a tenant before taking any steps toward removal. A court will not have jurisdiction over a summary dispossession action if the landlord failed to provide the tenant with the proper notification under the Anti-Eviction Act.

The act provides several grounds for eviction of residential tenants.³ All but one of those grounds require the landlord make written demand and give written notice for delivery of possession of the premises prior to instituting a summary dispossession action.⁴ This written notice is called a notice to quit and demand for possession. It must specify

in detail the reason the landlord is terminating the tenancy, and must be personally served upon the tenant. Personal service in this context means providing the tenant directly with a copy; leaving a copy at the premises with a member of the tenant's family who is above the age of 14; or sending a copy by certified mail, and sending again by regular mail if the certified mail is not claimed.

As outlined herein, the amount of time the landlord must wait to file a summary dispossession action after serving the notice to quit and demand for possession varies depending on the grounds for eviction.

No Notice Required

A landlord does not need to provide a tenant with any notice⁵ prior to instituting a summary dispossession action if the grounds for removal are:

- the tenant's failure to pay rent due under the lease;⁶ or
- the tenant's failure to pay rent after a valid notice to quit and notice of increase of rent is served (provided the increase in rent is not unconscionable and is in accordance with the law)⁷

To be clear as to the latter grounds, a landlord must serve the tenant with a notice to quit and notice of increase in rent, which the tenant ignores prior to commencing a summary dispossession. However, once the tenant fails to pay the increased rent, the landlord does not have to issue a second notice to quit or a demand for possession prior to instituting a summary dispossession action. Therefore, as soon as a tenant fails to pay rent a landlord may file a summary dispossession action.

Three Days' Notice

A landlord must provide a tenant with three days' notice⁸ prior to institut-

ing a summary dispossession action if the grounds for removal are:

- The tenant's conduct is so disorderly it destroys the peace and quiet of other occupants and tenants following written notice to cease such conduct.⁹
- The tenant caused or allowed "destruction, damage or injury" to the property due to their willful actions or gross negligence.¹⁰
- The tenancy is conditioned on employment and employment is being terminated.¹¹
- The tenant is convicted of, pleads guilty to, is adjudicated delinquent for, or knowingly harbors or harbored a person who was convicted of or pled guilty to an offense involving the use, possession, manufacture, dispensing or distribution of a controlled dangerous substance (CDS), CDS analog, or drug paraphernalia within the leased premises; the building, complex, or land appurtenant to the building or complex; or the mobile home park in which the premises is located.¹²
- The tenant is convicted of, pleads guilty to, is adjudicated delinquent for, or knowingly harbors or harbored a person who was convicted or pled guilty to an offense involving assault or terroristic threats against the landlord, a member of the landlord's family, or an employee of the landlord.¹³
- The tenant is found liable in a civil action for removal for: 1) an offense involving the theft of property from the landlord, the premises, or other tenants residing in the same building or complex; 2) an offense involving assault or terroristic threats against the landlord, a member of the landlord's family, or an employee of the landlord; or 3) an offense involving the use, possession, manufacture, dispensing or distribution of CDS, CDS analog, or drug paraphernalia within

the leased premises; the building, complex, or land appurtenant to the building or complex; or the mobile home park in which the premises is located.¹⁴

- The tenant is convicted of, pleads guilty to, is adjudicated delinquent for, or knowingly harbors or harbored a person who was convicted of or pled guilty to an offense involving the theft of or property from the landlord, the premises, or other tenants residing in the same building or complex.¹⁵
- The tenant has been found in a civil action to have committed a violation of human trafficking within or upon the leased premises; the building, complex, or land appurtenant to the building or complex; or the mobile home park in which the premises is located. This also applies to tenants who knowingly harbor individuals engaged in human trafficking or allow said individuals to occupy the premises for residential purposes. Further, a criminal conviction or guilty plea is *prima facie* evidence of civil liability.¹⁶

One Month's Notice

A landlord must provide a tenant with one month's notice¹⁷ prior to instituting a summary dispossession action if the grounds for removal are:

- The tenant continues to breach the landlord's rules and regulations following written notice to cease.¹⁸
- The tenant continues to breach provisions of the lease that grant the landlord a right of reentry.¹⁹
- The tenant habitually fails to pay rent after written notice to cease.²⁰
- The tenant refuses to accept reasonable changes to the terms of the lease going forward at the termination of the lease term.²¹

However, 'one month' does not mean

the landlord can serve a notice to quit and demand for possession today and then file to evict the tenants 30 days later. The notice must coincide with the 'anniversary date' of the lease, which in the majority of cases is the first of the month.²² Therefore, if a landlord serves the notice to quit and demand for possession on May 15, the notice must state that the tenancy will terminate on July 1 because one month cannot elapse before the next anniversary date of June 1.

Two Months' Notice

A landlord must provide a tenant with two months' notice²³ prior to instituting a summary dispossession action if the grounds for removal are:

- The property is being constructed or converted to "a condominium, cooperative, or fee simple ownership;" the tenancy began after "the master deed, agreement establishing the cooperative, or the subdivision plat was recorded;" and the owner is selling the unit to a buyer who will personally occupy it and the unit must be vacant at the time of closing.²⁴ However, a tenant cannot be evicted on these grounds if the landlord did not provide the required notice to the tenant prior to the tenancy commencing.²⁵
- "The owner of three or less condominium or cooperative units seeks" to personally occupy or has sold the unit to an individual who seeks to personally occupy the unit, and the contract for sale requires the unit be vacant at closing. The tenancy must have commenced after the master deed or agreement establishing the cooperative was recorded.²⁶
- The owner of three or fewer residential units wants to personally occupy the unit, or sells the unit to a buyer who seeks to personally occupy the unit and the contract for sale requires

the unit is vacant at closing.²⁷

Similar to the one-month notice grounds, an attorney seeking to remove a tenant on any of the foregoing grounds must be cognizant of the anniversary date of the lease. Therefore, the attorney must make certain that two anniversary dates have passed since the serving of the notice to quit and demand for possession prior to filing the summary dispossession.

Three Months' Notice

A landlord must provide a tenant with three months' notice²⁸ prior to instituting a summary dispossession action if the grounds for removal are:

- The landlord or owner of the premises wants to "permanently board up or demolish the premises" due to citations by housing inspectors for substantial health or safety violations that are not economically feasible to remediate.²⁹
- The landlord or owner wants to comply with housing inspector citations for substantial health or safety violations, and it is "unfeasible to...comply without removing the tenant."³⁰
- The landlord or owner wants to correct an illegal occupancy that has been cited by housing inspectors or zoning officers and it is "unfeasible" to do so without removing the tenant.³¹
- The landlord or owner is a governmental agency that desires to "permanently retire the premises from the rental market" as a part of "a redevelopment or land clearance plan[.]"³²

Similar to the one-month notice grounds, an attorney seeking to remove a tenant on any of the foregoing grounds must be cognizant of the anniversary date of the lease. Therefore, the attorney must make certain that

three anniversary dates have passed since the serving of the notice to quit and demand for possession prior to filing the summary dispossess.

Eighteen Months' Notice

A landlord must provide a tenant with 18 months' notice³³ prior to instituting a summary dispossess action if the grounds for removal are:

- The owner of the premises wants to permanently retire the premises or mobile home park "from residential use or use as a mobile home park" (aside from the grounds listed above).³⁴

Removing a tenant on these grounds is not as simple as declaring that the premises will be permanently retired. The notice to quit and demand for possession must also include a disclosure of the proposed nonresidential use, and a tenant cannot be removed until all state and local permits required by law for the nonresidential use are obtained.³⁵ Additionally, the landlord must provide a copy of the notice to quit and demand for possession to the Department of Community Affairs (DCA) within five days of the date that it is provided to the tenant. Thereafter, the DCA cannot approve any applications for registration of conversion under the Planned Real Estate Development Full Disclosure Act³⁶ for a period of five years.³⁷

Further, if the municipality where the premises is located has rent restrictions, the landlord must send a notification to the municipal rent agency.³⁸ Moreover, there are strict restrictions on the amount of rent a landlord can charge a new tenant after the original tenant vacates a premises following the service of a notice to quit and demand for possession on these grounds.³⁹ Further, it is always best practice to check the ordinances of the municipality, as there may be additional restrictions with which a

landlord must comply.

In the event a tenant vacates a unit following a notice to quit, and then later the landlord decides against permanently retiring the premises, the landlord must provide the tenant with a written notice 90 days in advance of any return to residential use, which discloses the owner's intention to return the unit to residential use. Further, the notice must inform the tenant that he or she has the right to return to possession of the unit, and if this is not possible, the right to possession of affordable housing relocation. The notice must also inform the tenant of the method for the tenant to respond to the landlord to exercise the aforementioned rights, and must be transmitted to the municipal rent board or the municipal clerk if no such board exists. Failure to provide the tenant with such notice shall render the landlord liable to a civil penalty of at least \$2,500 but no more than \$10,000 for each offense, and liable for treble damages and attorneys' fees and costs for any loss or expenses the former tenant incurred due to the failure to provide notice.⁴⁰ The landlord will not be subject to the aforementioned penalties if it restores the property to residential use more than five years after the date the premises are vacated or if the owner made all reasonable efforts to locate the former tenant.⁴¹

Finally, the courts have strictly enforced compliance with these procedures against landlords.⁴² This is true regardless of whether "the landlord's action may have been in good faith, the tenant may not have been prejudiced, and public policy may not have been offended."⁴³ Therefore, the failure to follow the above requirements can result in not only a court not having jurisdiction over a summary dispossess action, but also the landlord being subject to harsh civil penalties, treble damages, and the attorneys' fees of the tenant, regardless of whether the landlord acted

in good faith.

Three Years' Notice

A landlord must provide a tenant with three years' notice⁴⁴ prior to instituting a summary dispossess action if the grounds for removal are:

- the conversion of the property from the rental market to a condominium, cooperative or fee simple ownership of two or more dwelling units.⁴⁵

There are several additional requirements a landlord must meet if seeking to evict a residential tenant on these grounds. Regardless of the notice provided, if the tenant has a written lease, a summary dispossess action cannot be instituted until that lease expires.⁴⁶ Further, a warrant for possession cannot issue until the Anti-Eviction Act is complied with, and a summary dispossess

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action cannot be brought on these grounds against tenants protected by the Senior Citizens and Disabled Protected Tenancy Act⁴⁷ or the Tenant Protection Act of 1992.⁴⁸

The Abandoned Property Act

A common problem landlords and their attorneys face following the proper removal of a tenant is the tenant leaving belongings behind at the premises. Personal property of both residential and commercial tenants is governed by the Abandoned Property Act. Under this act, the landlord must provide the tenant with written notice that the property is deemed abandoned, it must be removed within 30 days, and if it is not removed then it will either be sold at public auction or destroyed.⁴⁹ Residential landlords must advise their tenants that “if the tenant claims the property within the time provided in the notice, the landlord must make the property available for removal by the tenant without payment by the tenant of any unpaid rent.”⁵⁰ This notice must be sent by certified mail, return receipt requested, or by receipted first class mail to the tenant’s last known address and any alternative addresses known to the landlord in an envelope marked “Please Forward.”⁵¹ The last known address may be the rented premises.⁵²

Once the notice is provided, the landlord can remove the property, but must keep it in storage for the remainder of the 30 days.⁵³ If the tenant (or a lienholder over the property) retrieves the property from storage, they must pay the landlord for storage and removal costs.⁵⁴ The property will be deemed abandoned under this act if: 1) the tenant or lienholder over the property responds that they will retrieve the property, and then fails to do so within the 30 days provided in the notice or 15 days after responding to the notice, whichever is later; or 2) fails to respond to the written notice for at least 30

days.⁵⁵ Once the property is deemed abandoned, the landlord may either sell it at a public auction or destroy it if the landlord finds the value is such that it would cost more to store and sell than would be received.⁵⁶ The landlord then may deduct from the proceeds of the sale the reasonable costs of notice, storage and sale of the property and any unpaid rent and charges not covered by a security deposit.⁵⁷ Any leftover funds must be returned to the tenant.⁵⁸

Failure to comply with these requirements will relieve a tenant from any liability for reimbursement to the landlord for removal and storage of the property.⁵⁹ Further, the tenant shall be entitled to up to twice the actual damage he or she sustains due to the landlord’s failure to comply.⁶⁰

Conclusion

As the foregoing demonstrates, a landlord’s attorney must be cognizant of the obligations a landlord faces prior to instituting a summary dispossess action, as well as the obligations the landlord faces following the removal of the tenant. The failure to properly follow these obligations will result, at a minimum, in a dismissal of the summary dispossess action for lack of jurisdiction, and could result in the landlord facing civil liability to the tenant. While following these obligations may result in delays in removing a tenant and placing a new tenant in the premises, they pale in comparison to the delays and exposure the landlord faces if they are not followed. ☞

Endnotes

1. N.J.S.A. 2A:18-61.1 *et seq.*
2. N.J.S.A. 2A:18-72 through 84.
3. N.J.S.A. 2A:18-61.1(a)-(r).
4. N.J.S.A. 2A:18-61.2(a)-(h).
5. N.J.S.A. 2A:18-61.2.
6. N.J.S.A. 2A:18-61.1(a).
7. N.J.S.A. 2A:18-61.1(f).
8. N.J.S.A. 2A:18-61.2(a).

9. N.J.S.A. 2A:18-61.1(b).
10. N.J.S.A. 2A:18-61.1(c).
11. N.J.S.A. 2A:18-61.1(m).
12. There are restrictions on this ground for removal, the discussion of which is beyond the scope of this article. Therefore, if an attorney believes this ground for removal is applicable, he or she should first consult N.J.S.A. 2A:18-61.1(n) to verify that these restrictions do not apply.
13. There are restrictions on this ground for removal, the discussion of which is beyond the scope of this article. Therefore, if an attorney believes this ground for removal is applicable, he or she should first consult N.J.S.A. 2A:18-61.1(o) to verify that these restrictions do not apply.
14. There are restrictions on this ground for removal, the discussion of which is beyond the scope of this article. Therefore, if an attorney believes this ground for removal is applicable, he or she should first consult N.J.S.A. 2A:18-61.1(p) to verify that these restrictions do not apply.
15. N.J.S.A. 2A:18-61.1(q).
16. There are restrictions on this ground for removal, the discussion of which is beyond the scope of this article. Therefore, if an attorney believes this ground for removal is applicable, he or she should first consult N.J.S.A. 2A:18-61.1(r) to verify that these restrictions do not apply.
17. N.J.S.A. 2A:18-61.2(b).
18. N.J.S.A. 2A:18-61.1(d).
19. In a lease for a premises controlled by a public housing authority or redevelopment agency, a breach of a lease provision regarding illegal activities will be grounds for removal, regardless of whether the right of reentry was set forth in the lease, so long as the provision was

- in the lease at the outset and is in compliance with federal guidelines.
N.J.S.A. 2A:18-61.1(e)(2).
20. N.J.S.A. 2A:18-61.2(b); (e).
 21. N.J.S.A. 2A:18-61.1(i).
 22. *Harry's Village, Inc. v. Egg Harbor Tp.*, 82 N.J. 576, 587 (1982).
 23. N.J.S.A. 2A:18-61.2(f).
 24. N.J.S.A. 2A:18-61.1(l)(1).
 25. The notice a landlord must provide the tenant can be found at N.J.S.A. 2A:18-61.9.
 26. N.J.S.A. 2A:18-61.1(l)(2).
 27. N.J.S.A. 2A:18-61.1(l)(3).
 28. N.J.S.A. 2A:18-61.2(c).
 29. N.J.S.A. 2A:18-61.1(g)(1).
 30. The landlord must also notify the Department of Community Affairs of the intention to file a summary dispossess action if this is the grounds for removal, and comply

- with any and all regulations.
N.J.S.A. 2A:18-61.1(g)(2).
31. N.J.S.A. 2A:18-61.1(g)(3).
 32. N.J.S.A. 2A:18-61.1(g)(4).
 33. N.J.S.A. 2A:18-61.2(d).
 34. N.J.S.A. 2A:18-61.1(h).
 35. N.J.S.A. 2A:18-61.1b.
 36. N.J.S.A. 45:22A-21 *et seq.*
 37. N.J.S.A. 2A:18-61.1c.
 38. N.J.S.A. 2A:18-61.1d.
 39. N.J.S.A. 2A:18-61.1d.
 40. N.J.S.A. 2A:18-61.1e.
 41. N.J.S.A. 2A:18-61.1e.
 42. *Weise v. Dover General Hosp. and Medical Center*, 257 N.J. Super. 499, 504 (App. Div. 1992)(*quoting Sacks Realty Co. v. Batch*, 248 N.J. Super. 424, 426 (App. Div. 1991)).
 43. *Weise v. Dover General Hosp. and Medical Center*, 257 N.J. Super. 499, 504 (App. Div. 1992)(*citing Sacks*

- Realty Co. v. Batch*, 248 N.J. Super. 424, 426 (App. Div. 1991)).
44. N.J.S.A. 2A:18-61.2(g).
 45. N.J.S.A. 2A:18-61.1(k).
 46. N.J.S.A. 2A:18-61.1(k).
 47. N.J.S.A. 2A:18-61.22 *et seq.*
 48. N.J.S.A. 2A:18-61.40 *et seq.*
 49. N.J.S.A. 2A:18-74(a)-(b).
 50. N.J.S.A. 2A:18-74(c).
 51. N.J.S.A. 2A:18-73.
 52. N.J.S.A. 2A:18-73.
 53. N.J.S.A. 2A:18-75.
 54. N.J.S.A. 2A:18-77.
 55. N.J.S.A. 2A:18-76(a)-(c).
 56. N.J.S.A. 2A:18-78(a)-(c).
 57. N.J.S.A. 2A:18-80.
 58. N.J.S.A. 2A:18-80.
 59. N.J.S.A. 2A:18-82.
 60. N.J.S.A. 2A:18-82.

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