



New Jersey Evictions in the COVID-19 Era

Eviction proceedings in New Jersey are generally governed by N.J.S.A. 2A:18-51 through 2A:18-61.67. On March 19, 2020, Governor Murphy signed Executive Order (“EO”) 106, suspending evictions in New Jersey. The eviction moratorium set forth in EO 106 prohibits the removal of any tenant from his or her home as a result of an eviction proceeding, except in certain circumstances. These circumstances include when a tenant is violent or is endangering other tenants. Pursuant to the EO, a landlord can initiate an eviction proceeding in court. However, the EO stays enforcement of all judgments for possession, warrants of removal, and writs of possession. Additionally, the EO does not affect any schedule of rent that is due. As a result, tenants must still pay rent while the EO remains in effect.

The EO protections will last for 60 days from the end of the health crisis, which is currently January 20th, 2021. Hence, under the current order, the eviction moratorium will last until March 20, 2021. Although vaccinations are starting to become available to New Jersey residents, it remains to be seen if there will be enough individuals vaccinated to prompt Governor Murphy to extend the March 20, 2021 deadline.

It should be noted that on September 4, 2020, the federal Centers for Disease Control and Prevention (CDC) issued an order preventing lockouts for covered residential tenants through December 31, 2020. On December 27, 2020, President Trump signed into law a new COVID-19 relief bill extending the CDC’s moratorium until January 31, 2021. Notably, the order does not apply in any state that provides the same or greater level of public-health protection than the requirements listed in this Order. New Jersey’s eviction moratorium is more protective and has a longer duration than the CDC order, so New Jersey’s moratorium controls in this jurisdiction.

Additionally, on April 24, 2020, Government Murphy signed EO 128, which allows tenants to request, in writing (including electronic communication), that landlords apply their security deposits to rent during and owing during the Public Health Emergency and 60 days afterwards. In addition to the amount of the security deposit, the EO also allows the tenant to apply his or her portion of the interest and earnings accumulated on the security deposit to rent payments. Should the tenant make such a request in writing, the landlord must apply the security deposit, interest, and/or accumulated earnings towards the tenant’s rent payments. When a tenant elects this remedy, landlord may recoup from the tenant any monies the landlord expended that would have been reimbursed by the security deposit, interest, and accumulated earnings, at the time when the reimbursement from those funds would have taken place. If the tenant and landlord extend or renew the relevant lease, the tenant must replenish the security deposit in full either on the date six months following the Public Health Emergency or on the date when the current lease is extended or renewed, whichever is later.

Notably, if the eviction moratorium ends in 2021, it is critical for landlords and their agents to remember that they cannot eject a tenant by locking him or her out or engaging in any of the following conduct without a lawful warrant of possession: 1) threatening violence against the tenant; 2) inciting or attempting to incite fear in the tenant; 3) putting the tenant’s furniture or personal effects outside of the premises; 4) entering the premises peacefully and then, by force



or threats, turns the tenant out of possession; 5) padlocking or changing the locks; 6) shutting off vital services like heat, electricity, and/or water; and 7) by any means other than compliance with lawful eviction procedures. This is a disorderly persons offense under New Jersey law and, if found guilty, is a crime of the fourth degree.

In consideration of the current legal framework for evictions outlined above, below is a list of proposed tips for navigating the eviction process during the pandemic. Given the anticipated availability of vaccines to the general public during 2021, it is likely that the legal landscapes of evictions may shift during the course of this year. However, we believe these tips will give landlords and their agents the tools to prepare for and address these shifts.

1. **Consider whether you want to file an eviction action.** As discussed above, while there is currently a moratorium on *removing tenants from their homes* as a result of an eviction proceeding, landlords can commence eviction proceedings. However, any court order obtained as result of an eviction proceeding will not be enforced, except under certain circumstances. These circumstances include when the tenant is violent or is endangering other tenants. If a tenant has not paid their rent, you should consider whether the advantage of obtaining a court order for eviction during the moratorium outweighs the risk to your reputation amongst the general public and the costs of renting the unit to a new tenant during a pandemic.
2. **If you chose to seek eviction, be prepared to participate in a settlement conference.** The Supreme Court of New Jersey has suspended landlord-tenant trials until further notice and has directed that these matters be scheduled for pre-trial/settlement conferences for early resolution. These conferences typically occur over Zoom, Microsoft Teams, or over the phone. When you receive a notice scheduling your settlement conference, be sure to download the appropriate application listed on the notice and practice using the application prior to the live conference. Also be sure to gather all documentation related to the tenant you are seeking to evict, as this information will be necessary to support your position during the conference.
3. **Respond to tenants' request to apply their security deposits to their rent.** Under the current rules governing the eviction process during the COVID-19 pandemic, a tenant is allowed to request, in writing, that their security deposit and their portion of interest and earnings accumulated on the deposit be applied to their rent balance. If a tenant makes this request in writing, you must comply. Be sure to respond to the tenant's request, in writing, to confirm your receipt of their request and keep a copy of your response in your files.
4. **Do not illegally lock out a tenant facing eviction.** The eviction process can be an emotional one for all parties involved. Under New Jersey law, it is a crime to force a tenant out of a leased premises by locking the tenant out of his or her unit or forcing the tenant out by threatening violence, inciting fear, deception, and shutting off vital services without a lawful court order. Please note that even if you have a court order to evict a tenant, there are rules currently in place due to the COVID-19 pandemic that prevent enforcement of that order absent exceptional circumstances.



5. **Consult with your attorney.** Be sure to speak with your attorney before initiating any eviction action against a tenant, responding to any inquiries by tenants regarding their security deposits, or attempting to enforce a court order. Your attorney will be familiar with the standard eviction process and the complex series of rules that a landlord must follow, including notice requirements for evicting a tenant. Also, your attorney will be aware of any new rules that have been put in place to address the challenges of the pandemic on the landlord-tenant court system.

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NOTE that the information contained in this document is for general education and knowledge. It is not designed to be, and should not be used as, the sole source of information when analyzing and resolving a legal problem or claim. Additionally, the situation surrounding COVID-19 is evolving and the subject matter discussed herein may change on a daily basis. Please contact an attorney for timely advice as to any specific issue that may arise.