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Landlords - Evicting Tenants for Non- Payment of Rent



Kenneth Vercammen was the
Middlesex County Bar Municipal
Court Attorney of the Year

This article will briefly explore certain remedies and recommendations to landlords. Unlike big apartment complexes, many landlords in New Jersey do not have full time management companies handling the collection of rent. Yet all landlords should handle their payments as a business, just as big corporate landlords.

WRITTEN LEASE A written lease is recommended for all rentals even for a month to month. Your lease should specifically require that the tenant pay the landlords attorneys fees if they fail to pay rent or breach the lease in any way. If a written lease does not provide for attorneys fees, the court cannot award attorneys fees. In addition, your lease should provide in writing for re-renting cost if the tenant breaches the lease. Many leases also provide for late fees.

NON-PAYMENT OF RENT If your tenant fails to pay and you want to evict the tenant, a Tenancy Summons Dispossess Eviction Complaint must be filed in the Supreme Courts Special Civil Part. The court filing fee is less than \$50. Different attorneys charge different fees depending upon the amount of

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charge different fees depending upon the amount of work to be done. Your attorney can prepare the mandatory complaint and summons. The court constable is required to personally serve the tenant with a copy of the complaint. The court clerk will fill out the date and time for hearing on the summons, which also will be served on the tenant. You and your attorney should appear on the date for hearing. If the tenant appears, parties sometimes work out a payment plan for rent with a stipulation of settlement and stay of eviction. The landlord and tenant usually agree if all rent is not paid according to the schedule, the court is directed to issue a warrant for possession.

FAILURE OF TENANT TO APPEAR If the tenant fails to appear by the second call, you can pay an additional fee for a warrant of removal. This is obtained at the Special Civil Part Clerk, Tenancy Section Office. After waiting three days, the constable is given the warrant to serve at the tenants property. If the tenant still fails to move, arrangements can be made with the constable and locksmith to physically remove the tenants and change locks.

REGISTRATION OF PROPERTY Most residential units must be registered with the town. It is a good idea to bring proof of registration when you go to court.

FILE A SPECIAL CIVIL PART COMPLAINT FOR MONEY OWED Most eviction complaints are evictions based only on non-payment of rent. The New Jersey Anti-Eviction Act places substantial notice requirement on landlords who wish to evict tenants for reasons other than non-payment of rent. If the tenant is able to pay the rent in full prior to warrant of possession, the court will let the tenant remain in the property.

HOW TO GET YOUR MONEY The Tenancy Judge will not require the tenant to pay attorneys fees, damages and other costs. This court can only evict tenants, or permit tenants to remain if they paid the rent in full. To protect yourself and get all money due, file a money owed complaint in the Special Civil Part. The filing fee is less than \$50.

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Kenneth Vercammen was the Middlesex County Bar Municipal Court Attorney of the Year

Evicting tenants- NJ Statute as of 2002 2A:18-61.1
Grounds for removal of tenants.

2.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; provided that, for the purposes of this section, any portion of rent unpaid by a tenant to a landlord but utilized by the tenant to continue utility service to the rental premises after receiving notice from an electric, gas, water or sewer public utility that such service was in danger of discontinuance based on nonpayment by the landlord, shall not be deemed to be unpaid rent.

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 landlords 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.

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 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 tenants 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 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 persons 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 landlords 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 persons 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 landlords 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.

For purposes of this section, (1) "developmental disability" means any disability which is defined as such pursuant to section 3 of P.L.1977, c.82 (C.30:6D-3); (2) "member of the immediate family" means a persons spouse, parent, child or sibling, or a spouse, parent, child or sibling of any of them; and (3) "permanently" occupies or occupied means that the occupant maintains no other domicile at which the occupant votes, pays rent or property taxes or at which rent or property taxes are paid on the occupants behalf.

L.1974,c.49,s.2; amended 1975, c.311, s.1; 1981, c.8, s.1; 1981, c.226, s.13; 1989, c.294, s.1;1991, c.91, s.68; 1991, c.307; 1991, c.509, s.19; 1993, c.342, s.1; 1995, c.269; 1996, c.131; 1997, c.228, s.1; 2000, c.113, s.3.

2A:18-61.1a. Findings The Legislature finds that:

a. Acute State and local shortages of supply and high levels of demand for residential dwellings have motivated removal of blameless tenants in order to directly or indirectly profit from conversion to higher income rental or ownership interest residential use.

b. This has resulted in unfortunate attempts to displace tenants employing pretexts, stratagems or means other than those provided pursuant to the intent of State eviction laws designated to fairly balance and protect rights of tenants and landlords.

c. These devices have circumvented the intent of current State eviction laws by failing to utilize available means to avoid displacement, such as: protected tenancies; rights to purchase; rent affordability protection; full disclosures relevant to eviction challenges; and stays of eviction where relocation is lacking.

d. It is in the public interest of the State to maintain for citizens the broadest protections available under State eviction laws to avoid such displacement and resultant loss of affordable housing, which, due to housings uniqueness as the most costly and difficult to change necessity of life, causes overcrowding, unsafe and unsanitary conditions, blight, burdens on community services, wasted resources, homelessness, emigration from the State and personal hardship, which is particularly severe for vulnerable seniors, the disabled, the frail, minorities, large families and single parents.

e. Such personal hardship includes, but is not limited to: economic loss, time loss, physical and emotional stress, and in some cases severe emotional trauma, illness, homelessness or other irreparable harm resulting from strain of eviction controversy; relocation search and moving difficulties; anxiety caused by lack of information, uncertainty, and resultant planning difficulty; employment, education, family and social disruption; relocation and empty unit security hazards; relocation to premises of less affordability, capacity, accessibility and physical or environmental quality; and relocation adjustment problems, particularly of the blind or other disabled citizens.

f. It is appropriate to take legislative notice of relevant legislative findings adopted pursuant to section 2 of the "Senior Citizens and Disabled Protected Tenancy Act," P.L. 1981, c. 226 (C. 2A:18-61.23) and section 2 of the "Prevention of Homelessness Act (1984)," P.L. 1984, c. 180 (C. 52:27D-281), which, with the findings of this section, have relevance to this 1986 amendatory and supplementary act and P.L. 1974, c. 49 (C. 2A:18-61.1 et seq.).

g. This 1986 amendatory and supplementary act is adopted in order to protect the public health, safety and welfare of the citizens of New Jersey.

L. 1986, c. 138, s. 10, eff. Oct. 29, 1986.

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Kenneth Vercammen is the Managing Attorney at Kenneth Vercammen & Associates in Edison, NJ. He is a New Jersey trial attorney has devoted a substantial portion of his professional time to the preparation and trial of litigated matters. He has appears in Courts throughout New Jersey each week for litigation and contested Probate hearings.

Mr. Vercammen has published over 125 legal articles in national and New Jersey publications on elder law, probate and litigation topics. He is a highly regarded lecturer on litigation issues for the American Bar Association, NJ ICLE, New Jersey State Bar Association and Middlesex County Bar Association. His articles have been published in noted publications included New Jersey Law Journal, ABA Law Practice Management Magazine, and New Jersey Lawyer.

He is chair of the Elder Law Committee of the American Bar Association General Practice Division. He is also Editor of the ABA Estate Planning Probate Committee Newsletter and also the Criminal Law Committee newsletter. Mr. Vercammen is a recipient of the NJSBA- YLD Service to the Bar Award. And past Winner "General Practice Attorney of the Year" from the NJ State Bar Association. He is a 22 year active member of the American Bar Association. He is also a member of the ABA Real Property, Probate & Trust Section.

He established the NJlaws website which includes many articles on Elder Law. Mr. Vercammen received his B.S., cum laude, from the University of Scranton and his J.D. from Widener/Delaware Law School, where he was the

Case Note Editor of the Delaware Law Forum, a member of the Law Review and the winner of the Delaware Trial Competition.

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