

The Commercial Eviction Process in New Jersey
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Anyone who owns rental property in New Jersey knows that this State is pro-tenant – at least with respect to residential tenancies. Commercial tenants, however, are not accorded the same “protective” approach most tenancy courts in New Jersey take toward residential tenants. For starters, unlike residential tenants, commercial tenants are obligated to leave the premises once their lease expires, unless the parties agree upon a new term, or an extension of the old term. In addition, courts are less hesitant to enforce a lease provision against a commercial tenant, even if it is considered onerous. After all, business is business and unless a lease term is against public policy or requires the doing of something illegal, courts, in a commercial setting, will enforce the lease.

“Self Help” Is No Help

Maybe because of this perception that commercial leases are “business” deals, many commercial landlords are of the mistaken impression that once a tenant fails to pay rent, they can simply avail themselves of what is known in legal circles as “self-help” and lock the tenant out of his rental space. It is rarely a good idea for a landlord to do this. Under most circumstances, a court will look askance at such behavior unless the landlord can show a compelling reason for having done so – particularly in light of the fact that New Jersey has in place statutory provisions that allow for “summary” dispossession of a tenant who is in breach of its lease.

Reasons to Evict

New Jersey law provides several causes of eviction in a commercial setting. They are as follows:

1. Holdover.
2. Nonpayment of rent due and owing.
3. Disorderly tenant.
4. Willful destruction of premises.
5. Violation of rules and regulations accepted in writing.
6. Breach of lease covenant where landlord has reserved the right of re-entry.

The most common reason landlords file summary dispossession complaints is for nonpayment of rent, which will be the focus of this post.



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The Process

The summary dispossession process is initiated by the filing of a tenancy complaint in the Special Civil Part – Landlord /Tenant section – in the county in which the premises are located. The complaint, which must be “verified” by the landlord; that is, attested to by the landlord as true, sets forth the fact that a lease exists between the parties, the address of the premises, together with a detailed computation of the rent, common area maintenance charges, late fees and attorneys’ fees then due and owing. Upon filing the complaint, the clerk of the court may either mail the complaint, along with a summons, by ordinary mail to the tenant at the address supplied by the landlord, or may deliver the complaint personally or by affixing a copy of the summons and complaint on the door of the premises.

Service & Scheduling

Once the summons and complaint are served, a trial date is scheduled. The trial date is usually between 10 and 30 days from the date of service. No answer to the complaint is required; rather, the defendant is directed to appear at the trial and state a defense at that time.

Trial

At trial, a landlord that is a corporate entity or limited liability company must be represented by an attorney. The same prohibition applies to the tenant. At trial, the case is called and, if the tenant fails to appear, then the landlord obtains a default judgment for possession upon the filing of a certification setting forth the amount of rent due. If the tenant appears, the case is usually mediated by a law clerk or trained mediator in an effort to dispose of the case. If the case does not settle, then it is tried. The court will determine the amount of rent due, unpaid and owing and award possession to the landlord (assuming the tenant has no defense to its failure to pay the rent).

Right to Redeem

Even after a judgment for possession is entered, a tenant has an opportunity to redeem the premises by paying the rent due to the landlord, or to the court clerk, by the close of business on the date of the trial. By doing so, the tenant is permitted to remain in the premises. Alternatively, the tenant does have a right of appeal from a final judgment in a summary dispossession action.

Enforcement of Judgment For Possession

A judgment for possession is enforced by the issuance of a warrant of removal. A landlord must make a written application for the warrant within 30 days after a judgment for possession has

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been entered, which time period may be extended by court order or by written agreement signed by the parties and filed with the clerk. Once a court officer (known as a “constable”) is assigned, he or she executes the warrant by removing all persons from the premises, by force if necessary, and returning possession to the landlord. A constable is not required to remove a tenant’s goods from the premises, but he must give the tenant an opportunity to remove his goods or the constable may remove them himself as agent of the landlord.

Disclaimer: Please note that this answer does not constitute legal advice, and should not be relied on, since each state has different laws, each situation is fact specific, and it is impossible to evaluate a legal problem without a comprehensive consultation and review of all the facts and documents at issue. This answer does not create an attorney-client relationship.