



## **New Jersey Department of Community Affairs Division of Codes and Standards Landlord-Tenant Information Service**



### **LEASE INFORMATION BULLETIN**

May 2010

This bulletin provides basic information based on New Jersey statutory laws and case law regarding establishing and breaking leases for residential rental properties in New Jersey. This bulletin is for informational purposes only and should not be used for legal interpretations or legal advice. Please consult an attorney for legal services and advice when necessary.

#### **The Lease**

A lease is an agreement between a lessor (landlord) and a lessee (tenant) which may be verbal or written. A lease grants possession to the tenant for use of a dwelling unit for a specified period of time in return for rent. A lease is considered a contract and must be written in plain language. This means that the lease must be written so that the average person can understand it. Parties to a lease must be at least 18 years of age and mentally competent. A written lease does not take effect until it is signed by the lessor.<sup>1</sup>

#### **Terms of Lease**

Lease terms begin on the date specified in the lease agreement. If the beginning date of the lease is not specified, the term will begin from the time the lease was dated. If the lease is not dated the term will begin when the lease is delivered. If the lease is verbal the term will begin on any day agreed upon by the parties to the lease. There is no limitation to the length of the term of the lease. If a lease is for a term of more than three years it must be written, pursuant to N.J.S.A. 25:1-12. The landlord may not unilaterally change the terms of the lease agreement while there is a written lease in effect. If a new landlord acquires a rental property with a tenant, the new landlord must honor any existing lease agreement. Once the lease expires the landlord may make reasonable changes to the lease. Any changes to a written lease must be in writing and accepted by all parties.

#### **Reviewing the Lease**

Before signing a lease, tenants should read it thoroughly to be sure they understand it and agree with the terms of the lease. There is an attorney review period allowed for leases that are prepared by Real Estate Brokers or Salespersons licensed by the New Jersey Real Estate Commission. Either party may have an attorney review the lease. The attorney review period must be completed within three business days from the delivery of the lease to the tenant and landlord. Unless an attorney disapproves of the lease it will become legally binding after the attorney review period. N.J. Bar Assoc. v. N.J. Assoc. of Realtor Boards, 93 N.J. 470

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<sup>1</sup> Spear and Co. v. Empire Lace, 88 N.J.L. 153

### **Lease Renewal**

A landlord must allow the tenant to renew the lease unless the landlord has good cause for an eviction under the Anti-Eviction Act. (This does not apply to two or three-family owner occupied dwellings, motels, hotels, transients or seasonal tenants). Yearly and month-to-month leases will automatically renew for another term unless a valid notice to quit is given by the landlord or unless the tenant gives notice to the landlord that the tenant will return possession of the premises to the landlord.

If the tenant or landlord does not renew the lease and the lease was for a term of more than one month and the tenant holds over (stays after the expiration of the lease), the tenancy will become a month-to-month tenancy, if the landlord continues to accept the rent and there is no other agreement between the landlord and the tenant. SDG v. Inventory Control, 178 N.J. Super. 411. This tenancy is still subject to all the terms and conditions of the written lease other than its duration term. Heyman v. Bishop, 15 N.J. Super. 266.

If the landlord does not accept the rent and the lease has expired and the tenant has been given proper notice to quit, the tenant becomes guilty of unlawful detainer and may have to pay the landlord double the rent for as long as the tenant holds over. (See Right of Entry Bulletin)

### **Notice to Terminate the Lease**

A month-to-month tenant must give written notice of lease termination at least one full month prior to moving. Most yearly leases require a 60 to 90 day notice from the tenants in order to terminate the lease. Tenants who have a written lease agreement must give written notice to terminate the lease in accordance with their lease agreement.

### **Breaking the Lease**

A tenant may not break the lease because of a job transfer, unemployment or any other reasons, except:

1. In certain circumstances, a tenant can terminate a lease due to the ***death of a spouse***, pursuant to N.J.S.A. 46:8-9.1.
2. In certain circumstances, a tenant can break a lease due to ***disabling illness or accident***, if the tenant has a loss of income, ***or the dwelling place is not handicapped accessible***, N.J.S.A. 46:8-9.2(a) and (d).
3. A person age 62 or older may break his or her lease if he or she is moving into an assisted living facility, nursing home, continuing care retirement community or low or moderate income housing, N.J.S.A. 46:8-9.2(b) and (c).
4. Under the ***Sailor and Soldiers Civil Relief Act***, a person leasing an apartment ***before*** entering the military has the legal right to give a 30-day notice to the landlord and break the lease with no further monetary responsibility. He is also entitled to the return of his security deposit.
5. A tenant may break a lease by means of ***constructive eviction***, if the landlord has done any wrongful act or is guilty of neglect or default, which makes the premises unsafe, unfit or unsuitable for occupancy. The tenant has to notify the landlord of the deficient condition and allow the landlord reasonable time to fix the problem before breaking the lease. In the case of constructive eviction, the tenant is entitled to the return of the security deposit and is not responsible for the rent for the balance of the lease or the cost of re-renting the property.
6. If by continuing to live at the rental unit, a tenant, or a tenant's child faces an imminent threat of serious physical harm from another named person. The tenant must give a 30 day notice in order to terminate the lease. The rent must be pro-rated up until the date of the lease termination. (New Jersey Safe Housing Act, N.J.S.A. 46:8-9.4 et seq.)

A tenant who breaks a lease for any other reason may be sued by the landlord for the costs of re-renting the premises. In addition, the tenant may also be required to make rental payments until the expiration of the lease or until the unit is re-rented, whichever comes first. After the landlord re-rents the apartment the tenant has no further obligation to pay rent unless the landlord has had to re-rent the unit at a lower rental rate. The landlord must be able to demonstrate that he tried to mitigate damages by making a reasonable effort to re-rent the unit. Sommer v. Kridel, 74 N.J. Super. 446.

***Note: A Tenant should check his lease for specific notice requirements and notify the landlord as soon as possible when breaking the lease. If the lease does not prohibit subletting, the tenant may be able to find a new tenant. However, if the tenant sublets he is still responsible for the apartment until the lease expires.***