

How The Global Covid-19 Pandemic Has Affected Landlord Tenant Practice In New Jersey

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It was March 16, 2020, when the pronouncement was made that the Courts were going to transition from in-person to remote proceedings. Landlord/tenant trial calendars would be suspended in the interests of public health and safety to curb the spread of COVID-19. No one could have imagined what was to unfold. Pending court cases were rescheduled, as were pending executions of warrants of removal (lockouts). Then they were rescheduled again, and then again, this time, “without a trial date.”

We are now well into 2021. As of the writing of this article, the court situation is “status quo” in a sense, and in flux in another sense. Most cases, including all routine nonpayment of rent cases, are not even being scheduled for mediation, much less trial dates, and no lockouts based upon a rent default or otherwise are proceeding. Eviction cases originally filed in February 2020, and those filed since, have been issued docket numbers with no hearing dates, something that used to be a simultaneous occurrence. As of this writing the state has surpassed 60,000 active eviction cases, all of which are now officially in backlog; a number that is no cause to celebrate.



On March 27, 2020, the President of the United States signed the Coronavirus Aid, Relief, and Economic Security Act into law. The law included protections for tenants and homeowners and implemented a federal eviction moratorium for tenants living in certain types of housing. The eviction moratorium was intended to last 120 days, and as of the writing of this article was extended until March 31, 2021. The CARES Act also restricted lessors of “covered properties and programs” from filing new eviction actions for non-payment of rent, and also prohibited charging fees, penalties, or other charges to the tenant related to nonpayment of rent. The federal moratorium also provides that a lessor (of a covered property or program) may not evict a tenant after the moratorium expires, except on 30 days’ notice. The CARES Act is worthy of mention as it impacts all new tenancy cases to be filed as well as pending cases, as will be discussed below.

Aside from declaring a state of emergency in general, the New Jersey governor has broad emergency powers.¹ They can declare a public health emergency if there is “the appearance of a novel or previously controlled or eradicated biological agent.”² Public health emergencies expire after 30 days unless renewed by the governor.³ On March 13, 2020, the governor issued Executive Order 103 which implemented a state of emergency *and* public health emergency. The governor has followed that order with a host of additional pronouncements. Notably, Executive Order 106 signed by the governor on March 19, 2020, suspended residential evictions for two months *after the conclusion* of the public health emergency *or* state of emergency. Through a series of additional executive orders, the governor has extended the public health emergency. The Feb. 17, 2021, executive order renewed and extended the state public health emergency for an additional 30 days. Given the surge of the virus this winter, it is

reasonable to expect that the public health emergency will be extended. The result is that with limited exceptions, evictions of residential tenants cannot proceed until Executive Order 106 is rescinded or the governor does not renew the public health emergency status, in which case evictions (lockouts) can proceed 60 days thereafter.

The Governor’s Executive Order 128, issued on April 24, 2020, permits residential tenants to use their security deposit to pay rent that is due, or to become due, provided that they notify the landlord in writing. Tenants will not need to submit an additional security deposit unless they extend or renew their lease. If the tenant and landlord extend or renew the lease, the security deposit must be replenished in full no later than six months following the end of the public health emergency established by Executive Order 103, or upon renewal of the lease, whichever is later.

The New Jersey Supreme Court has issued a series of omnibus orders that affect “LT” practice. On June 11, 2020, the Fourth Omnibus Order directed that: (a) lockouts of residential tenants (evictions) continue to be suspended in accordance with Executive Order 106; (b) landlord/tenant complaints may continue to be filed with the courts, and new complaints shall include an email address for the landlord and to the extent available an email address for the tenant; (c) the courts shall schedule conferences, including to obtain or confirm contact information from the parties and conduct settlement negotiations in an effort to resolve matters; and (d) trials continue to be suspended until further notice. The Court has continued those provisions in their subsequent omnibus orders, including the current (as of this writing) Ninth Omnibus Order dated Oct. 8, 2020.

Consistent with the Court’s orders, settlement conferences have been conducted, but unfortunately, not many. By order dated July 14, 2020, the state

Supreme Court authorized several steps to support the resumption of landlord/tenant case processing during the “ongoing COVID-19 crisis.” Pursuant to a “Notice To The Bar” from Hon. Glenn A. Grant, J.A.D. dated July 14, 2020.

“[C]urrent circumstances require the New Jersey courts to implement a cohesive strategy for landlord/tenant cases pending service and landlord/tenant cases pending trial. To that end, with input from tenant advocates and landlord representatives, the Court has authorized both permanent and interim measures to support the resumption of service of landlord/tenant complaints and the scheduling of settlement conferences while landlord/tenant trials remain suspended. Those measures are critical to facilitating the best possible outcomes for tens of thousands of New Jersey residents who face potential loss of housing in the coming months.”

The Court, in the July 14, 2020, order, adopted amendments to the Landlord/Tenant Summons Form (Appendix XI-B) and the Complaint Form (Appendix XI-X). Both forms now include fields for party email addresses and to indicate whether the case involves a residential or commercial tenancy, in order to facilitate communications and differentiated case management. Based on the ongoing suspension of landlord/tenant trials, the summons also was amended to remove the trial date field. The July 14, 2020, order relaxes Rules 6:2-1 (“Form of Summons”) and 6:2-2 (“Process; Filing and Issuance”) as necessary for implementation of those amendments to the forms. It also temporarily relaxes Rule 1:13-7(d) (“Dismissal of Civil Cases for Lack of Prosecution”), so as to prevent the dismissal of landlord/tenant complaints that have not yet been served or scheduled for trial, and Rule 1:40-7(b) (“Tenancy Actions”), so as to temporarily eliminate

the requirement of same-day trials if landlord/tenant matters are not resolved via complementary dispute resolution.

Rule 6:2-2(a) (“Delivery to Clerk; Issuance”), is relaxed so as (1) to require landlords who have filed a complaint between March 25, 2020, and July 24, 2020, seeking to evict a tenant for non-payment of rent to submit a CARES Act Compliance Certification in a form promulgated by the Administrative Director of the Courts; and (2) to eliminate the requirement for landlords that file electronically to submit an original and two copies of landlord/tenant pleadings. All landlord tenant filings *must* now be done “paperless” using the courts’ Judiciary Electronic Document Submission system.

While landlord/tenant trials remain suspended, the Court has provided an “Exception for Orders to Show Cause in Emergencies.” The Court’s July 14, 2020, order permits landlords to apply for an Order to Show Cause for eviction. The basis of that landlord/tenant action cannot be nonpayment of rent, except in the case of the death of the tenant. All applications for an Order to Show Cause will be reviewed and will proceed to a trial only if the court determines that an emergency exists. Examples of such emergencies, according to the Court, “include but are not limited to, documented violence, criminal activity, or other health and safety concerns.” The Court’s Order also acknowledges that an eviction may proceed in the “interest of justice” as provided by Executive Order 106.

An application based upon the allegation of an emergent circumstance is permitted in New Jersey. There are four factors the court must consider.⁴ They are: (1) whether there would be immediate and irreparable harm if relief is not granted, (2) whether the application involves a settled area of law, (3) the likelihood of success on the merits, and (4) balancing the hardship to the parties in granting or denying relief.

The meaning of “interest of justice” requires some perspective. There has been a distinction drawn between the serious injustice standard compared to the interest of justice standard in the realm of sentencing in a criminal case. In *State v. Megargel*,⁵ the New Jersey Supreme Court found that to meet the “interest of justice standard” there must be a compelling reason to reduce certain criminal sentences. In *Wellington Belleville, L.L.C. v. Belleville Tp.*,⁶ the Tax Court found “interest of justice” meant that the court had limited discretion because the:

circumstances must be (1) beyond the control of the property owner, not self-imposed, (2) unattributed to poor judgment, a bad investment or a failed business venture, and (3) reasonably unforeseeable

Our Supreme Court has recognized that cases involving:

(1) important and novel constitutional questions; (2) informal or ex parte determinations of legal questions by administrative officials; and (3) important public rather than private interests which require adjudication or clarification”

have satisfied the “interest of justice” standard in *Rule 4:69-6(c)*.⁷

The “interest of justice” in general terms means that the court is satisfied that the decision clearly needs to be made. Aside from the interest of justice standard, there are times when a court can exercise some degree of discretion. “The Appellate Division enjoys considerable discretion in determining whether the ‘interest of justice’ standard has been satisfied and, as a result, whether to grant a motion for leave to file an interlocutory appeal.” *Brundage v. Estate of Carambio*, 195 N.J. 575, 599 (2008).

The phrase “necessary in the interest of justice” has also been employed when the court felt constrained to make a

decision because that was the only way to have a fair and correct result.⁸ So, the “necessary in the interest of justice” standard is more restrictive than the plain “interest of justice” standard.

Whether to employ the serious injustice, interest of justice, discretionary, or any other standard would seem to be informed by the type of decision to be made and whether there was intent toward flexibility or strict adherence. Adding the word “necessary” to the phrase “interest of justice” is a standard that is higher than plain “interest of justice,” but not so high as a serious injustice.

EO 106 states:

While eviction and foreclosure proceedings may be initiated or continued during the time this Order is in effect, enforcement of all judgments for possession, warrants of removal, and writs of possession shall be stayed while this Order is in effect, unless the court determines on its own motion or motion of the parties that enforcement is necessary in the interest of justice. This Order does not affect any schedule of rent that is due.

The July 14, 2020, Supreme Court order states in paragraph 5:

landlords/plaintiffs may in emergent circumstances apply for an Order to Show Cause for eviction. The basis of that landlord/tenant action cannot be nonpayment of rent, except in the case of the death of the tenant. In determining whether to issue the Order to Show Cause, the court will review the complaint and determine whether an emergency exists (e.g., violence against other tenants; criminal activity; extreme damage to residence; death of tenant resulting in vacancy of the rental unit) and based on that determination may schedule a landlord/tenant trial. As permitted by Executive Order 106, an eviction may proceed in the “interest of justice.”

That provision was then rephrased in the Supreme Court's Eighth Omnibus order, dated Sept. 17, 2020, in paragraph (4)(a)(iv). Regarding landlord tenant trials, the order provides:

(iv) Trials continue to be suspended until further notice, except that landlords/plain-tiffs may in emergent circumstances (e.g., drug offenses, threats against landlord, theft) apply for an Order to Show Cause for eviction. The basis of that landlord/tenant action cannot be nonpayment of rent, except in the case of the death of the tenant. In determining whether to issue the Order to Show Cause, the court will review the complaint and determine whether an emergency exists, and, based on that determination may schedule a landlord/tenant trial. As permitted by Executive Order 106, an eviction may proceed in the "interest of justice."

Directive 20-20 issued by the Acting Administrative Director of the Courts on July 28, 2020, provides some guidance as to when landlord tenant trials can proceed during the public health crisis. It states:

The court will review all applications for an Order to Show Cause with the case proceeding to trial only if the court determines that an emergency exists. The Anti-Eviction Act, N.J.S.A. 2A:18-61.1, and the Summary Dispossession Act, N.J.S.A. 2A:18-53, provide the following grounds for the removal of tenants that may constitute emergent circumstances justifying an LT trial:

- Disorderly tenant (N.J.S.A. 2A:18-53(c) or 2A:18-61.1(b));
- Willful or gross negligent damage to premises (N.J.S.A. 2A:18-53(c) or 2A:18-61.1(c));
- Abating housing or health code violations (landlord seeks to permanently board up or demolish premises because cited by authorities/inspectors for sub-

stantial health and safety of tenants) (N.J.S.A. 2A:18-61.1(g));

- Occupancy as consideration of employment (N.J.S.A. 2A:18-61.1(m));
- Offenses under comprehensive drug act (N.J.S.A. 2A:18-61.1(n));
- Assaults or threats against landlord or certain other persons ((N.J.S.A. 2A:18-61.1(o));
- Eviction for civil violations (tenant found by preponderance of evidence that theft of property, assault, terroristic threats against landlord or member of their family, employee of landlord's, etc.)(N.J.S.A. 2A:18-61.1(p));
- Eviction for theft (N.J.S.A. 2A:18-61.1(q)); and
- Human trafficking (N.J.S.A. 2A:18-61.1(r)).

The above list is not meant to be exclusive. The court will take into consideration the circumstances of each case in determining whether a trial is warranted.

Since ejectment cases filed pursuant to R. 6:1-2(a)(4) are filed with a DC docket, ejectment cases may proceed to trial. Ejectment cases are causes of action based on N.J.S.A. 2A:35-1 to 3 and N.J.S.A. 2A:39-1 to 8. However, ejectments following foreclosures are subject to a "necessary in the interest of justice" standard to allow a lockout. The governor only mentioned eviction and foreclosure proceedings. The governor did not mention unlawful detainer actions or ejectment actions. Notwithstanding, many courts have held that EO 106 prohibits the execution of any writ of possession. Paragraph 2 of Executive Order 106 specifically says, "all judgments for possession, warrants of removal, and writs of possession in eviction and foreclosure cases shall be stayed." An order for possession can be obtained based on a foreclosure action either within the foreclosure case or by an ejectment action in the Special Civil Part.⁹

So, having provided the foregoing as a backdrop (in the limited space allotted for this article) as to "what's happening

out there," it is easy to conclude that the practice of Landlord/Tenant law has seen quite a few changes due to the COVID-19 pandemic, and I would issue this caveat: be extremely careful if you are going to test the practice waters in this field of law. It would be like learning to swim in a tsunami. As a further personal observation, the implementation of the various governmental protections foisted upon us during the pandemic were well-intended. As we're taught in law school, the law abhors a forfeiture, and we are witnessing the government doing whatever they can do to help landlords and tenants avoid such forfeitures. State legislation that became effective Jan. 4, 2021 requires a landlord, with limited exception, to accept rent by credit card. Although the wording of the act may require interpretation, it signals that there is a tremendous and frequent flux in the relationship and obligations of landlords and tenants during this indefinite period of the pandemic. You are advised to "keep posted" as the rollout of the vaccine hopefully restores some stability and normalcy to all of our lives—and we will see the laws and rules undoubtedly change, again. ☹️

Endnotes

1. N.J.S.A. App. A:9-33.
2. N.J.S.A. 26:13-2 and 3(a).
3. N.J.S.A. 36:13-3(b).
4. *Crowe v. DeGioia*, 90 N.J. 126, 132-5 (1982).
5. 143 N.J. 484, 499 (1996)
6. 20 N.J. Tax 331, 335-6 (2002)
7. *Mullen v. Ippolito Corp.*, 428 N.J. Super. 85, 106 (App. Div. 2012).
8. *Windsor Contracting Corp. v. Budny*, 93 N.J. Super. 235, 245 (App. Div. 1966) (requiring a new trial); *State v. Illario*, 10 N.J. Super. 475, 479 (App. Div. 1950) (use of court's contempt power).
9. *Chase Manhattan Bank v. Josephson*, 135 N.J. 209, 225 (1994).