



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



Jon S. Corzine
Governor

Charles A. Richman
Acting Commissioner

FORECLOSURES TENANT'S RIGHTS

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Due to the national mortgage crisis, many properties are being foreclosed upon in New Jersey. Tenants may receive letters from landlords, realtors or attorneys that appear to be official notices threatening tenants with eviction due to foreclosures. These notices may contain “cash for keys” offers, whereby tenants are offered money to move out of a property in a specific timeframe. Tenants are not required by law to accept these “offers,” and may not be evicted for not accepting them. A landlord must have good grounds under the New Jersey Eviction Law, N.J.S.A. 2A:18-61.1 to evict a tenant. Tenants should be aware that they retain their rights under landlord-tenant laws even in properties that are being or have already been foreclosed.

A foreclosure may occur when a landlord defaults on paying his mortgage. In New Jersey, the lender can bring suit for foreclosure against the defaulting borrower (landlord) for delinquency of payments and force a sale of the property to recover money due on a loan.

Recent changes to federal law have strengthened a tenant’s rights in foreclosure proceedings. However, the federal law does not preempt any State or local law that provides longer time periods or other additional protections for tenants. Pursuant to 12 USC § 5220, before a tenant can be evicted due to foreclosure, the landlord must provide the tenant with a 90 day notice to quit when the foreclosed property has been purchased by a buyer who wants to personally occupy it as his or her primary residence. However, if a tenant has a lease agreement that goes beyond the 90 days the landlord may not take action to evict the tenant until after the lease expires and the 90 day notice to quit has been given. The 90 day notice may be given 90 days before the lease expires. Month-to-month tenants and two and three-family owner-occupied units are not exempt from the 90 day notice requirements.

The New Jersey Supreme Court case of *Chase Manhattan Bank v. Josephson, et al.* 135 N.J. 209 (1994) established the rights of tenants to remain in possession of rental units after the property has been foreclosed upon. Even after a property has been foreclosed, any subsequent owners, including banks, lenders and private buyers, must have a good cause to evict tenants under the New Jersey Eviction Law, N.J.S.A. 2A:18-61.1 **Tenants must continue to pay their current landlord rent throughout the foreclosure process**, until notified of a change in ownership. See our *Grounds for an Eviction Bulletin* for good causes and notice requirements.

SELF-HELP EVICTIONS OR LOCKOUTS

A landlord may not attempt a self-help eviction or lockout. Self-help evictions occur when the landlord or someone acting on the landlord's behalf enters into the dwelling unit without the permission of the tenant and without a judgment from the Court and forces the tenant to move, by removing the tenant's personal property from the premises or shutting off utilities in an attempt to force the tenant to move. A lockout occurs when the landlord padlocks the door or changes the locks while tenants are not home and then refuses to allow them back into the premises. **Self-help evictions or lockouts made by the landlord are illegal in New Jersey.**

If the landlord shuts off the utilities voluntarily or if the utilities are discontinued due to non-payment, the tenant may contact the electric, gas, or water and wastewater public utilities company and have the utilities placed in the tenant's name for continued service to be billed to the tenant, if a landlord-tenant relationship can be ascertained. This can usually be accomplished by providing a copy of the lease agreement. See the regulations for public utilities at N.J.A.C. 14:3-3A.6. If the landlord was responsible for the payment of those utilities, the tenant may deduct the utility costs paid by the tenant from the rent. The tenant may not be evicted for nonpayment of rent if the tenant used the unpaid portion of the rent to continue utility services to the rental premises after receiving notice that the services were in danger of being discontinued or were discontinued.

If a landlord performs an illegal lockout, the tenant should call the police immediately. Under the New Jersey Criminal Code, N.J.S.A 2C:33:11, if the landlord refuses to allow the tenant back into the premises after the police have warned the landlord about the illegal procedure, the landlord may be charged with a disorderly person's offense. "It shall be the duty of the (police) officer to prevent the landlord or any other person from obstructing or hindering the reentry and reoccupancy of the dwelling by the displaced occupant." The landlord must take a tenant to court before he can be evicted. Only a judge can order a legal eviction. If the tenant does not show up to court on the hearing date the tenant may be evicted by default.

UNREASONABLE RENT INCREASES

Furthermore, if a landlord imposes an unconscionable or unreasonable rent increase on a tenant in an attempt to get the tenant to move, the tenant should contact the local rent control board in the city or town where the property is located to file a complaint. If the rental unit is not controlled by rent leveling, then the tenant must dispute the unreasonable increase by going to court. See our *Rent Increase Bulletin* for information on unconscionable rent increases.

JUDGMENT FOR POSSESSION

If the landlord is granted a judgment for possession, the landlord may apply to the Clerk of the Special Civil Part for a warrant for possession, which allows the landlord to force the tenant to move out of the premises. The warrant for removal may not be issued until three (3) business days after the judgment for possession is granted. The tenant has three (3) business days to move all persons and belongings from the premises. If the tenant does not move after three (3) business days from the time the warrant for removal was served on the tenant, the landlord may arrange for the Court Officer to have the tenant evicted or locked out. A landlord must apply for a warrant for removal within 30 days from the date of the judgment for possession unless the judgment is stopped through a court order or other written agreement signed by the landlord and tenant.

If you are a tenant who is being wrongly evicted, you should consult an attorney for legal assistance. If you can't afford an attorney, you may contact Legal Services of New Jersey at 1-888-576-5529 to see if you qualify for free or reduced services. Please visit our website for additional landlord-tenant information: http://www.nj.gov/dca/codes/lt/table_of_contents.shtml.

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