

CHAPTER I

INTRODUCTION TO EVICTION PROCEEDINGS IN THE SUPERIOR COURT OF NEW JERSEY

THE SCOPE OF THIS CHAPTER

Early legislation permitted a landlord to evict a tenant by *summary proceedings*, whether the tenant was a commercial tenant or a residential tenant, simply because the term of a lease had ended, regardless of fault. The initial legislative purpose for enacting summary proceedings was to accord landlords an expeditious, inexpensive, uncomplicated, and effective means of regaining possession of leased premises as authorized by statute, thereby avoiding the delays inherent in common law ejectment actions or an “Action for Possession for non-payment of rent” (N.J.S.A. 2A:42-7 et seq. enacted in 1951, i.e., before the Anti-Eviction Act, but still “on the books.”) Although dispossession actions were initially *statutory* proceedings, with the advent of the New Jersey Constitution of 1947, the *procedural* structure for summary actions became the prerogative of the Courts, rather than the Legislature, whereas the Legislature retained the inherent right to establish the substantive rights, or grounds, for eviction. “We therefore conclude that the rule-making power of the Supreme Court is not subject to overriding legislation, but that it is confined to practice, procedure and administration as such.” *Winberry v. Salisbury*, 5 N.J. 240, cert. denied, 340 U.S. 877 (1950). Therefore, Parts I, IV, and VI of the Rules of Court govern the *proceedings* for the dispossession of a person in possession of another’s property; various statutes govern the right, or reasons (“grounds” or “good cause”), to evict tenants or other occupants, defenses and remedies relating to eviction actions.

According to the Rules of Court, a plenary action may be commenced in the Law (or Chancery) Division against either a tenant or “non-tenant,” but **summary actions** for possession may only be brought against a tenant in the Special Civil Part of the Superior Court. Summary actions *against tenants* for possession that are commenced in the Special Civil Part are currently given a docket number with the prefix “LT.” A summary action for possession against a “non-tenant-occupant” may also be commenced in the Special Civil Part pursuant to R. 6:1-2(a)(4). Those actions are customarily given a prefix of “DC,” and see R. 6:2-1 relating to **ejectment** and **unlawful entry** and **detainer actions**. Law and Chancery Division actions bear their own style of docket numbers.

This chapter will consider the factors which determine the procedures necessary to evict a person in possession of another’s property.

A. THE REQUIREMENT OF “GROUNDS” FOR EVICTION

A plaintiff has always been required to prove a particular ground (sometimes called “good cause for eviction”) in order to evict another, whether commenced as a plenary or summary action. Prior to the “Anti-Eviction Act” of 1974, the grounds for eviction were found in N.J.S.A. 2A:18-53, the “Summary Dispossession Act” (referred to in this text as “53”). That Act made no distinction between residential and commercial tenancies. The most common ground was simply that the term of the lease had expired, N.J.S.A. 2A:18-53a, and there was no requirement that a landlord renew a lease. However, the grounds for eviction were significantly amended by the Legislature in 1974 at N.J.S.A. 2A:18-61.1 et seq., commonly referred to as the “**Anti-Eviction Act**” (referred to in this text as “61.1”),

CHAPTER I
INTRODUCTION TO EVICTION PROCEEDINGS

in order to protect most *residential* tenants from arbitrary evictions. Tenants who are within the contemplation of the Anti-Eviction Act (also called the “AEA”) are commonly referred to as “protected tenants.” However, a summary action is still available for *both residential and non-residential* tenancies, regardless of the amount of rent (contrary to the archaic N.J.S.A. 2A:42-7, which required one year’s rent to be in arrears) or damages involved. (All non-residential tenancies are commonly called “**commercial**” tenancies.) The Anti-Eviction Act has been held to be prospective. *2677 Investments, L.P. v. Simonetti*, unreported opinion, Docket No. A-1016-03 (App. Div. 2004), citing *Stamboulos v. McKee*, 134 N.J. Super. 567, 570-571 (App. Div. 1975). But *Stamboulos* cites, *inter alia*, *Rothman v. Rothman*, 65 N.J. 219, 225-232 (1974), a matrimonial action, and *Rothman* discussed the exercise of police power by the legislature in the public interest and the public welfare. *Rothman* also cited *Addison v. Addison*, 399 P.2d 897 (1965), for the “**time of decision**” principle, and that granting a judgment of divorce after certain legislation had been passed was applying it prospectively. The “time of decision” rule has also been defined in *Somers Assoc. v. Gloucester Twp.*, 241 N.J. Super. 323 (App. Div. 1990) as “when an ordinance is amended after the initial administrative or trial court decision, the appellate court should generally apply the amended form of the ordinance” with the example of a municipality revising an ordinance “in order to perfect a legislative policy decision therein expressed by it but imperfectly so ... or where a statute is amended “merely to carry out or explain the intent of the original statute.” [Citations omitted.]

The issue of “**mixed use**” situations — that is, when a property is used for both residential and business purposes — may be presented in a variety of circumstances, for example, by an employee, as in *Wasserman v. W.R. Grace & Co.*, 281 N.J. Super. 34 (App. Div. 1995), where the court held that: “In the circumstance of hybrid use, when the owner’s occupancy, in terms of time or space, is greater than or equal to the rental occupancy, the property shall be considered residential regardless of whether the rental space generates a profit.” *Id.* at 39. “Thus, the determination of status should focus on use rather than profit.” *Ibid.* The property involved in *Wasserman* was a “four bedroom house located in a typical residential neighborhood.” Other somewhat common mixed uses include properties containing retail space on the ground level and housing either behind or above the store. See also the unreported decision *Grijalba v. Floro and Martins*, Docket No. A-4563-11T4 (App. Div. 2013), and the subject “THE NATURE/USE OF THE PROPERTY,” discussed *infra* in this chapter.

The purpose for the enactment of the Anti-Eviction Act, is found in the following statement attached to the Act when it was proposed to the Assembly, as quoted in *447 Associates v. Miranda*, 115 N.J. 522, 527 (1989):

At present, there are no limitations imposed by statute upon the reasons a landlord may utilize to evict a tenant. As a result, residential tenants frequently have been unfairly and arbitrarily ousted from housing quarters in which they have been comfortable and where they have not caused any problems. This is a serious matter, particularly now that there is a critical shortage of rental housing space in New Jersey. This act shall limit the eviction of tenants by landlords to reasonable grounds and provide that suitable notice shall be given to tenants when an action for eviction is instituted by the landlord. [Statement attached to L. 1974, c. 49.]

N.J.S.A. 2A:18-61.1a was enacted in 1986 (12-years after the Anti-Eviction Act) as an amendment to 61.1. The 1986 Act, chapter 138, section 9, stated that: "P.L.1974 (C. 2A:18-61.1 et seq.) and this 1986 amendatory and supplementary act shall be **liberally construed** to effectuate the purposes thereof." (Emphasis added.) Consistent with that legislative statement, there are numerous cases that say that the Act must be construed "liberally." For example, *447 Associates v. Miranda*, supra, at 529, states; "[I]n establishing tenants' rights to continued occupancy of their rental dwellings the . . . Act is remedial legislation deserving of liberal construction." *Montgomery Gateway East v. Herrera*, 261 N.J. Super. 235 (App. Div. 1992), said "It is remedial legislation expressing a strong **public policy** which should be construed *liberally* to advance its beneficial ends." However, there are also cases that have said that "being in derogation of a landlord's common-law right of ownership, the Act must be **strictly construed**," see *J.M.J. Properties, Inc. v. Khuzam*, 365 N.J. Super. 325, 332, 337 (App. Div. 2004) (emphasis added). *J.M.J.* cited, inter alia, *Morristown Memorial Hospital v. Wokem Mortgage & Realty Co., Inc.*, 192 N.J. Super. 182, 186 (App. Div. 1983).

1. THE REQUIREMENT OF RENEWING A LEASE FOR TENANTS PROTECTED BY 61.1

The Legislature strengthened the requirement of having a ground for eviction when a tenant is "protected" by 61.1, unless there was good cause, by requiring that a lease be renewed:

N.J.S.A. 2A:18-61.3 Residential lease; eviction or failure to renew by landlord or by owner's or landlord's successor in ownership or possession; necessity for good cause or other grounds:

a. No landlord may evict or fail to renew any lease of any premises covered by [61.1] except for good cause as defined in [61.1].

b. A person who was a tenant of a landlord in premises covered by [61.1] may not be removed by any order or judgment for possession from the premises by the owner's or landlord's successor in ownership or possession except:

(1) for good cause in accordance with the requirements which apply to premises covered pursuant to [61.1 et al.[sic]]; or

(2) for proceedings in premises where federal law supersedes applicable State law governing removal of occupants; or

(3) for proceedings where removal of occupants is sought by an authorized State or local agency pursuant to eminent domain or code or zoning enforcement laws and which comply with applicable relocation laws pursuant to the "Relocation Assistance Law of 1967," [N.J.S.A. 52:31B-1 et seq.], the "Relocation Assistance Act," [N.J.S.A.20:4-1 et seq.] or section 3 of [N.J.S.A. 2A:18-61.1g].

Where the owner's or landlord's successor in ownership or possession is not bound by the lease entered into with the former tenant and may offer a different lease to the former tenant, nothing in P.L.1986, c. 138 [sec. 7] shall limit that right.