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LEGISLATIVE OVERSIGHT: AN ANALYSIS OF L. 1974, CHAPTER 49, THE SUMMARY DISPOSSESS ENACTMENT

On June 25, 1974, the New Jersey Legislature enacted Assembly Bill 1586. The object of this Act was to amend[1] and supplement[2] N. J. S. 2A:18–53,[3] the controlling statute in summary dispossess actions, to insure that tenants' rights are protected against arbitrary and retaliatory actions by the landlord. To this end, Chapter 49 sought to codify the substantive[4] and procedural[5] requirements for the institution of a summary dispossess action.

1 Ch. 49, § 1 [1974] N.J. LAWS 118 (codified but not yet compiled as N.J. STAT. ANN. 2A:18–61.1). The amended section reads:

> 1. Except for residential lessees and tenants included in section 2 of this act, any lessee or tenant at will or at sufferance, or for a part of a year, or for 1 or more years, of any houses, buildings, lands or tenements, and the assigns, undertenants or legal representatives of such tenant or lessee, may be removed from such premises by the county district court of the county within which such premises are situated, in an action in the following cases:
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> a. Where such person holds over and continues in possession of all or any part of the demised premises after the expiration of his term, and after demand made and written notice given by the landlord or his agent, for delivery of possession thereof. The notice shall be served either personally upon the tenant or such person in possession by giving him a copy thereof or by leaving a copy of the same at his usual place of abode with a member of his family above the age of 14 years.
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> b. Where such person shall hold over after a default in the payment of rent, pursuant to the agreement under which the premises are held.
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> c. Where such person (1) shall be so disorderly as to destroy the peace and quiet of the landlord or the other tenants or occupants living in said house or the neighborhood, or (2) shall wilfully destroy, damage or injure the premises, or (3) shall constantly violate the landlord's rules and regulations governing said premises, provided, such rules have been accepted in writing by the tenant or are made a part of the lease; or (4) shall commit any breach or violation of any of the covenants or agreements in the nature thereof contained in the lease for the premises where a right of re-entry is reserved in the lease for a violation of such covenants or agreements, and shall hold over and continue in possession of the demised premises or any part thereof, after the landlord or his agent for that purpose has caused a written notice of the termination of said tenancy to be served upon said tenant, and a demand that said tenant remove from said premises within 3 days from the service of such notice. The notice shall specify the cause of the termination of the tenancy, and shall be served either personally

Unlike the earlier law, this Act applies to a landlord's refusal to renew a lease on expiration, as well as to actions instituted during the term of the lease. Despite the breadth of the changes and the potential benefits to the tenant, the effect of this law is somewhat dampened by drafting inadequacies which will cloud judicial interpretation.

Initially, the new act differentiates between residential[6] and commercial[7] lessees by eliminating the former from the purview of Section 1 of the statute, and by setting up a new section specifically designed for this group. Otherwise, Section 1 remains unchanged. Presumably, prior case law will apply to commercial lessees and

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upon the tenant or such person in possession by giving him a copy thereof, or by leaving a copy thereof at his usual place of abode with some member of his family above the age of 14 years.

[2] Ch. 49, § 2–7 [1974] N.J. LAWS 118 (codified but not yet compiled as N.J. STAT. ANN. 2A:18–61.2–61.5) [hereinafter cited as Chapter 49]. The new section reads:

2. No lessee or tenant or the assigns, undertenants or legal representative of such lessee or tenant may be removed by the county district court or the Superior Court from any house, building, mobile home or land in a mobile home park or tenement leased for residential purposes, other than owner-occupied premises with not more than two rental units or a hotel, motel or other guest house or part thereof rented to a transient guest or seasonal tenant, except upon establishment of one of the following grounds as good cause:

a. The person fails to pay rent due and owing under the lease whether the same be oral or written;

b. The person has continued to be, after written notice to cease, so disorderly as to destroy the peace and quiet of the occupants or other tenants living in said house or neighborhood;

c. The person has wilfully or by reason of gross negligence caused or allowed destruction, damage or injury to the premises;

d. The person has continued, after written notice to cease, to substantially violate or breach any of the landlord's rules and regulations governing said premises, provided such rules and regulations are reasonable and have been accepted in writing by the tenant or made a part of the lease;

e. The person has continued, after written notice to cease, to substantially violate or breach any of the covenants or agreements contained in the lease for the premises where a right of re-entry is reserved to the landlord in the lease for a violation of such covenant or agreement, provided that such covenant or agreement is reasonable;

f. The person has failed to pay rent after a valid notice to quit and notice of increase of said rent, provided the increase in rent is not unconscionable and complies with any and all other laws or municipal ordinances governing rent increases.

g. The landlord or owner seeks to permanently board up or demolish the premises because he has been cited by local or State housing inspectors for substantial violations affecting the health and safety of tenants and it is economically unfeasible for the owner to eliminate the violations. In those cases where the tenant is being removed because of the existence of substantial violations of law affecting health and safety, no warrant for possession shall be issued until P.L. 1967, c. 79 (C. 52:31B–1 et seq.) has been complied with.

h. The owner seeks to retire permanently the building or the mobile home park from the rental housing market.

those residential tenants outside the ambit of Section 2.[8] The difficulty arises when the notice requirements of N. J. S. 2A:18–56[9] come into play. Clearly, these provisions are still applicable to Section 1 of the Act,[10] but the specific reference in 2A:18–56 to paragraph (a) of 2A:18–53 precludes their applicability to Section 2 of the new Act.

Section 3 of the new Act partially fills the gap left by the removal of the residential tenant from the general notice provisions of 2A:18–56 in that it provides notice requirements tailored to the changes in the Act. Unfortunately, inadequacies in Sections 2 and 3 have resulted in the complete absence of notice requirements in certain situations. Section 2 provides that no tenant or lessee may be removed from the premises without good cause, as enumerated in paragraphs (a) through (j). Section 3 delineates the notice re-

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i. The landlord or owner proposes, at the termination of a lease, reasonable changes of substance in the terms and conditions of the lease, including specifically any change in the term thereof, which the tenant, after written notice, refuses to accept.

j. The person, after written notice to cease, has habitually failed to pay rent.

3. No judgment of possession shall be entered for any premises covered by section 2 of this act, except in the nonpayment of rent under paragraphs a. or f. of section 2, unless the landlord has made written demand and given written notice for delivery of possession of the premises. The following notice shall be required:

a. For an action alleging disorderly conduct under paragraph b. of section 2, or injury to the premises under paragraph c. of section 2, 3 days' notice prior to the institution of the action for possession;

b. For an action alleging continued violation of rules and regulations under paragraph d. of section 2, or substantial breach of covenant under paragraph e. of section 2, or habitual failure to pay rent, 1 month's notice prior to the institution of the action for possession;

c. For an action alleging boarding up because of health violations under paragraph g. of section 2, 3 months' notice prior to the institution of the action;

d. For an action alleging permanent retirement under paragraph h. of section 2, 6 months' notice prior to the institution of the action, provided that, where there is a lease in effect for a period of 1 year or longer, no action may be instituted until the lease expires.

e. For an action alleging refusal of acceptance of reasonable lease changes under paragraph i. of section 2, 1 month's notice prior to the institution of action.

The notice in each of the foregoing instances shall specify in detail the cause of the termination of the tenancy and shall be served either personally upon the tenant or lessee or such person in possession by giving him a copy thereof, or by leaving a copy thereof at his usual place of abode with some member of his family above the age of 14 years, or by certified mail; if the certified letter is not claimed, notice shall be sent by regular mail.

4. No landlord may evict or fail to renew any lease of any premises covered by section 2 of this act except for good cause as defined in section 2.

5. Any provision in a lease whereby any tenant covered by section 2 of this act agrees that his tenancy may be terminated or not renewed for other than good cause as defined in section 2, or whereby the tenant waives any other rights under this act shall be deemed against public policy and unenforceable.

quired for the grounds set forth in Section 2, with the exceptions of paragraphs (a) and (f). These exceptions indicate the Legislature's feeling either that notice requirements written into these paragraphs were sufficient or that none were necessary. Paragraph (f) provides that a valid notice to quit is a prerequisite to removal for the cause it sets forth. Paragraph (a), on the other hand, makes no reference to notice. Thus, the inapplicability of N. J. S. 2A:18–56 to this section,[11] coupled with the failure of the new provisions to require notice prior to the institution of an action for failure to pay rent, leaves the tenant devoid of any notice, save that provided by the summons and complaint. Concededly, the interests of the landlord in dealing with delinquent tenants should be protected; but some form of notice would preserve the tenant's rights without substantially impairing the landlord's right to possession.

Paragraph (j) of Section 2 presents an even more complex problem. On its face, it merely repeats paragraph (a), adding the requirement of a written notice to cease and a showing that failure to pay rent is habitual. Assuming the rent is "due and

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3 Sections of the new act will be cited at N.J. STAT. 2A:18–53 and sections 2, 3, 4, 5 and 7 as N.J. STAT. ANN. 2A:18–61.1 through 61.5 respectively.

4 25 Fairmount Avenue, Inc. v. Stockton, 130 N.J. SUPER 276, (Bergen Cty. Ct. 1975). In an action concerning substantive due process, the court held:

> Section 2 provides that 'No lessee or tenant * * * may be removed' except upon the establishment of certain enumerated grounds. When one contrasts this with § 3, which provides that 'No judgment of possession shall be entered * * * unless the landlord has made written demand and given written notice * * *,' it is obvious that a change in the substantive rights of landlords and tenants was achieved in § 2. This conclusion is further buttressed by § 4, which prohibits a landlord from evicting or failing to renew the lease except for the causes established in § 2 at 283.

5 *Id.*

6 Ch. 49 § 2 [1974] N.J. LAWS 118 (codified but not yet compiled as N.J. STAT. ANN. 2A:18-61.2).

7 *Id.* at § 2.

8 Excluded by negative inference from Section 2 are tenants living in owner-occupied two and three family dwellings. In view of the large number of such dwellings in New Jers y, the Legislature might wish to include them in future landlord-tenant enactments.

9 N.J. STAT. 2A:18–56 reads:

No judgment for possession in cases specified in paragraph "a" of section 2A:18–53 of this title shall be ordered unless:

> a. The tenancy, if a tenancy at will or from year to year, has been terminated by the giving of 3 months' notice to quit, which notice shall be deemed to be sufficient; or
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> b. The tenancy, if a tenancy from month to month, has been terminated by the giving of 1 month's notice to quit, which notice shall be deemed to be sufficient; and
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> c. It shall be shown to the satisfaction of the court by due proof that the notice herein required has been given.

10 25 Fairmount Avenue, Inc. v. Stockton, 130 N.J. Super 276, 287 (Bergen Cty. Ct. 1975).

11 *Id.*

owing," the landlord could proceed under paragraph (a) without notice or a showing of habitual delinquency. Apparently, the draftsmen of the act intended paragraph (j) to apply to tenants who are incorrigibly late in making their rent payments. The provision, however, fails to mention the words "on time." If landlords are to have any redress against tenants who habitually fail to pay their rent *on time,* the statute must immediately be amended to so state.

A further distinction between paragraphs (a) and (j), absent the recommended amendatory phrase, lies in the adoption by paragraph (a) of the language used by the Court in *Marini v. Ireland.*[12] The *Marini* court defined "default in payment of rent" as "failure to pay rent due and owing."[13] As Justice Hanneman observed:

> The mere fact of the tenant's failure to pay rent in full as provided in the lease is not in and of itself a sufficient fact to meet the statutory jurisdictional requisite. Thus a tenant's evidence in substantiation of a defense that there is no default or that the default is not in the amount alleged by the landlord, is admissible on the jurisdictional issue.[14]

Through *Marini,* therefore, the tenant has the right to set up equitable defenses to an allegation under paragraph (a) of failure to pay rent. This additional distinction between paragraphs (a) and (j) lends further credence to the proposition that the Legislature intended to differentiate the actions available to a landlord under paragraphs (a) and (j). The addition of the words "on time" to paragraph (j) would make the distinction clear.

Jurisdiction

Jurisdiction takes on a unique meaning in the area of summary dispossess actions, and connotes the existence of one of the factual situations delineated in N. J. S. 2A:18–53.[15] The importance of the issue of jurisdiction is reflected in the fact that summary dispossess proceedings are not appealable except on grounds of lack of jurisdiction.[16] In *Vineland Shopping Center, Inc. v. De Marco,*[17] the Supreme Court resolved any doubt on this issue:

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12 56 N.J. 130, 265 A.2d 526 (1970).
13 *Id.,* at 139. Emphasis added.
14 *Id.,* at 139.
15 Vineland Shopping Center, Inc. v. De Marco, 35 N.J. 459, 464, 173 A.2d 270 (1961).
16 N.J. STAT. 2A:18–59 (1952).
17 35 N.J. 459, 173 A. 2d 270, (1961).

> The established principle is that the trial court had jurisdiction if there was evidence from which it could find a statutory basis for removal. If that test is met, the judgment must be affirmed, even though it is otherwise infected with error.[18]

Thus, the basic jurisdictional question facing any party to a summary dispossess action is whether one of the statute's criteria has been met.

Traditional jurisdictional problems also plague the new act. The original act affirmatively placed jurisdiction in the county district courts.[19] If of sufficient importance, the cause could be transferred to the Superior Court.[20] This provision for removal has not been altered by Chapter 49. However, the general language of the new section does not specifically limit the forum for initiation of a summary dispossess action to the county district courts. Chapter 49 provides, in part, "No lessee or tenant . . . may be removed by the county district court or the Superior Court. . . ."[21] The previous act used different language:

> Any lessee or tenant . . . of any houses, buildings, lands or tenements . . . may be removed from such premises by the county district court of the county within which such premises are situated. . . .[22]

The specific wording of the previous act, compared with the general terminology used by the drafters of Section 2 of the new act, leaves the distinct impression that the Legislature intended to expand the forums available for the disposition of summary dispossess actions.

N. J. S. 2A:6–34 is the controlling statute conferring jurisdiction on the county district courts in landlord-tenant actions.[23] In addition, the New Jersey Constitution grants general jurisdiction

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18 *Id.*, at 464.

19 N.J. STAT. 2A:18–53 (1952).

20 N.J. STAT. 2A:18–60 (1952). The Superior Court (Law Division) has stated that sufficient grounds for removal to the Superior Court include: The importance to the public good of the issues presented; the complexity of the issues presented; the amount in controversy; the need of equitable relief of a permanent nature; the need for clarification or reexamination of the substantive law involved; the presence of multiple actions; the appropriateness of class relief; the need for uniformity of result; and the necessity of joining additional parties or claims. Morrocco v. Felton, 112 N.J. SUPER 226, 235, 236, 270 A.2d 739 (L. Div. 1970).

21 Ch. 49, § 2 [1974] N.J. LAWS 118, (codified but not yet compiled as N.J. STAT. ANN. 2A:18–61.1 through 61.5).

22 N.J. STAT. 2A:18–53 (1952).

23 N.J. STAT. 2A:6–34 (1952).

to the Superior Court "in all causes."[24] Prior case law has held that Chapter 18 of Title 2A grants jurisdiction, but does not affect the *substantive* rights of landlords and tenants.[25] Chapter 49 goes much further toward affecting substantive rights in its establishment of grounds for removal of tenants in Section 2. Construing the effects of the new statute, the Court, in *25 Fairmount Ave., Inc. v. Stockton,*[26] held that the new statute alters the substantive rights of landlords and tenants. The *Stockton* court placed great emphasis on the wording of the title of the new sections,[27] noting the change in wording from the previous title.[28] The previous title had made no reference, directly or inferentially, to substantive rights,[29] while the new title, in the court's estimation, marked precisely such a change.[30] There is further substantiation for the presumption that the new sections of Chapter 49 alter substantive rights and thereby vest the Superior Court with jurisdiction. Paragraphs (a) through (j) are denoted by the enabling clause of the section as "grounds" for removal.[31] Section 2 is devoid of any procedural requirements; these are the exclusive province of Section 3. Indeed, the very structure of Section 2, with its careful delineation of grounds and causes, when considered with the segregation of procedural requirements into Section 3, and the change in the title of the Act itself, leaves little doubt that the Legislature intended to indicate grounds over which the Superior Court would gain jurisdiction by virtue of its right to hear "all causes."[32] Since the county district courts are also granted jurisdiction in landlord-tenant disputes,[33] it is obvious that concurrent jurisdiction exists in both courts to hear these matters.

On its face, concurrent jurisdiction poses no untenable problem. However, the nature of the proceedings for landlord-tenant disputes differs in each court and may ultimately be disruptive of the judicial process.

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24 N.J. CONST. ART. VI, § 3, para. 2 (1947) states: "The Superior Court shall have original general jurisdiction throughout the State in all causes."

25 Jonas Glass Co. v. Ross, 69 N.J.L. 157, 53 A. 675 (Sup. Ct. 1903).

26 25 Fairmount Avenue, Inc. v. Stockton, 130 N.J. SUPER 276 (Bergen Cty. Ct. 1975).

27 The new title reads: "An Act establishing grounds for evicting tenants and lessees of certain residential property." *Id.*

28 N.J. STAT. 2A:18–53 as amended Ch. 49 [1974] N.J. Laws 118, (codified but not yet compiled as N.J. STAT. ANN. 2A:18–53).

29 N.J. STAT. 2A:18–53 (1952) as amended N.J. STAT. 2A:18–53 (Supp. 1974).

30 25 Fairmount Avenue, Inc. v. Stockton, 130 N.J. Super 276 (Bergen Cty. Ct. 1975).

31 Ch. 49 § 2 [1974] N.J. LAWS 118 (codified but not yet compiled as N.J. STAT. ANN. 2A:18–61.1).

32 N.J. CONST. *supra,* note 24.

33 N.J. STAT. 2A:6–34 (1952).

Dispossess actions brought pursuant to N. J. S. 2A:18–53 have been held to be necessarily summary, negating the right to a trial by jury.[34] In *Alfour Inc. v. Lightfoot,*[35] the court found that several factors coalesce to justify the denial of a right to a jury. First, the statute, as amended in 1966, contains the words "summary actions for recovery."[36] Second, few, if any, modern practitioners would consider bringing this action in the Superior Court and demanding a jury.[37] Third, the smooth operation of the court system virtually precludes the empanelment of a jury in such an action.[38] Changes in the wording of the title of Chapter 49 have rendered the court's first rationale invalid.[39] However, the court's practical reasoning lends credence to the notion that summary dispossess actions in the county district courts retain their vitality not because of careful draftsmanship, but because of their long acceptance in New Jersey practice.[40]

Apparently, then, only habitual practice precludes the possibility of an action being brought in the Superior Court without the traditional right to a trial by jury afforded by that court. A simple change in the Court Rules would restore the right to a jury trial in dispossess actions brought in Superior Court.[41] However, such action would be responsive only to matters brought before the Superior Court. Tenants involved in actions in county district court would have no right to trial by jury, while tenants brought before the Superior Court would enjoy that option. The argument that a landlord would not bring an action in the Superior Court and risk the likelihood of an unsympathetic jury ignores the fact that inexact drafting has resulted in substantial and apparently unintended change in New Jersey landlord-tenant law.

The availability of appellate review has been similarly clouded by the enactment of Chapter 49. Under N. J. S. 2A:18–59,[42] appeals are not allowed from "proceedings had by virtue" of Article 9 "except on grounds of jurisdiction."[43] Actions brought pursuant to the new Section 2 of Chapter 49 are included in Article

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34 Alfour, Inc. v. Lightfoot, 123 N.J. SUPER 1, 301 A. 2d 197, (Essex Cty. Ct. 1973).

35 *Id.*

36 N.J. STAT. 2A:18–53 (1952) as amended N.J. STAT. 2A:18–53 (Supp. 1974). The new title fails to include the words "summary action."

37 Alfour, Inc. v. Lightfoot, 123 N.J. SUPER 1, 301 A. 2d 197 (Essex Cty. Ct. 1973).

38 *Id.*

39 Ch. 49 [1974] N.J. LAWS 118 (codified but not yet compiled as N.J. STAT. ANN. 2A:18–61.1).

40 *Cf.* Alfour, Inc. v. Lightfoot, 123 N.J. SUPER 1, 301 A. 2d 197, at 11-13.

41 N.J.R. 2:2–3 (a).

42 N.J. STAT. 2A:18–59 (1952).

43 *Id.* Article 9 of Chapter 18 includes N.J. STAT. 2A:18–51 through N.J. STAT. 2A:18–61.

9 of Chapter 18. Thus, under N. J. S. 2A:18–59, appeal is severely restricted in landlord-tenant actions, whether initiated in the county district court or the Superior Court. However, the New Jersey Rules of Court allow appeals as a matter of right "from final judgments of the Superior Court trial division."[44] Thus, the statutory and judicial provisions for appeal from a landlord-tenant decision in the Superior Court are in direct conflict. While the Supreme Court's supremacy of rulemaking power would most likely prevail[45] to make actions brought originally or transferred to Superior Court appealable on all grounds,[46] the inequities of leaving the county district courts' appealability unaffected are obvious. Appeals would be allowed on all grounds from a decision in Superior Court, but it is unlikely that a landlord-tenant action would ever be commenced there.[47] Appeals would remain unavailable from county district court decisions where virtually all dispossess actions originate.[48]

It is arguable that because Chapter 49 will be compiled as N. J. S. A. 2A:18–61.1 through 61.5, and in all other respects is procedurally self-sufficient, there is no reason to read N. J. S. 2A:18–59 as having any application to the new act. Appeals from Chapter 49 proceedings could then be determined solely by the Rules of the Court. However, the explicit language of N. J. S. 2A:18–59 encompasses *all* of Article 9 of Chapter 18. If read to exclude the new Chapter 49, the force of 2A:18–59 is lost; if read to include the new statute, a gross inequity in appellate procedure will result.

Whatever the Legislature's intent in enacting Chapter 49, serious jurisdictional problems exist. If the Legislature truly intended to extend jurisdiction in summary dispossess actions to the Superior Court, the present appellate procedure is inherently inequitable. If the intent, on the other hand, was to maintain the present jurisdiction and procedure, an immediate amendment of the statute will be necessary to make the intent absolutely clear.

Payment of Arrearages to the Court

Under the old act, a tenant threatened with expulsion for nonpayment of rent was provided with a remedy by which he could put

44 N.J.R. 2:2–3 (a) as amended July 14, 1972.

45 *Cf.* Winberry v. Salisbury, 5 N.J. 240, 24 A. 2d 406 (1950).

46 *See,* N.J. STAT. 2A:18–61 (1952), providing that actions transferred to Superior Court shall be appealable on all grounds.

47 *See,* Alfour, Inc. v. Lightfoot, 123 N.J. SUPER at 12, where Judge Walsh discusses the statistical breakdown of summary dispossess actions in the county court.

48 *Id.*

an end to litigation and avoid dispossession.[49] N. J. S. 2A:18–55 provides that, upon payment of an arrearage to the clerk of the court, the proceedings shall be terminated.[50] The clear implication to be drawn from this section is that the Legislature intended to provide a means for tenants to remain in possession without substantially impairing the landlord's right to enjoyment of the premises. Clearly, there is a need for application of this provision to the new sections of Chapter 49. However, application of 2A:18–55 to the new law seems to be prevented by its wording. Section 55 specifically applies only to "... actions instituted under paragraph 'b' of section 2A:18–53 ...." This limitation prevents application of the arrearage payment provisions to the residential tenants most likely to need and to use it. Although some commentators might assume that the Legislature intended 2A:18–55 to apply to the new summary dispossess provisions,[51] it is obvious that such intent does not find expression in Section 55 of Chapter 18. The Legislature should amend N. J. S. 2A:18–55 as expeditiously as possible to avoid confusion and needless litigation to landlords and tenants alike.

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[49] N.J. STAT. 2A:42–9 contains provisions similar to those in N.J. STAT. 2A:18–55. The statute reads:

> If the tenant or his assignee shall at any time before the trial in the action for possession of the demised premises, pay or tender to the lessor or landlord, his executor, administrator or attorney, or pay into the court where the action for possession of the demised premises shall be pending, all the rents and arrears, together with the costs, all further proceedings in the action shall be dismissed. If the lessee, his executors, administrators or assigns, shall be granted equitable relief, he shall have, hold and enjoy the demised lands, according to the lease thereof made, without a new lease being made to him, provided the court shall so adjudge.

This statute could arguably fill the void left by the inapplicability of N.J. STAT. 2A:18–55 to the new statute, making amendment unnecessary. However, 2A:42–9 is limited in application to trials for possession of a demised premises. It is conceivable that a judge might, in his equity power, extend the ambit of 2A:42–9 to encompass a tenant facing summary dispossession who is willing to pay his back rent to the court. The far better course, though, would be to amend 2A:18–55 to extend to the new provisions of 2A:18–53, and avoid complicating the construction of 2A:42–9.

[50] N.J. STAT. 2A:18–55 (1952).

[51] *See e.g.*, Sheehan, excerpt from *N.J. Residential Leasehold Law and Practice*, presented to New Jersey Institute for Continuing Legal Education, at 6. The author states: "It should be noted that in dispossess actions involving a tenant in default of rent, the tenant may wrest jurisdiction from the Court by paying the rent due plus accrued cost to the Clerk of the Court at any time before the entry of final judgment and execution of the warrant of removal." The author cites Vineland v. Demarco, 35 N.J. 459 (1969), and Academy Spires v. Jones, 108 N.J. SUPER 395 (L. Div., 1970) as authority, but these cases both predate the enactment of Chapter 49, and as their interpretation of N.J. STAT. 2A:18–55 is by no means a part of the common law, the application of the section to Chapter 49 is limited.

Rules and Regulations

Paragraph (d) of Chapter 49's Section 2 makes consistent violation of landlord rules and regulations "good cause" upon which summary dispossession may be had.[52] This cause is substantially similar to paragraph (c) (3) under the old law, which remains unchanged. The new paragraph's requirement of "reasonable" rules and regulations is the only notable difference between the commercial and residential sections of the new act. Many questions remain unanswered by this section and the case law which construes it. Must the tenant accept the landlord's rules and regulations? Does the statute contemplate acceptance in writing? Assuming the rules are reasonable, can a landlord force a tenant to agree to them under threat of summary dispossession? Must rules and regulations be proffered before the lease is signed? May they be promulgated or amended during the life of the lease? What are the landlord's remedies against a tenant who refuses to acquiesce to the landlord's request that the rules and regulations be accepted in writing? Litigation may be necessary to clarify each of these points, but careful drafting would have obviated the need.

Substantive Change

Perhaps the most sweeping changes wrought by the new law are contained in Sections 4 and 5 which affect the substantive rights of landlords and tenants. Section 4 provides:

> No landlord may evict or fail to renew any lease of any premises covered by Section 2 of this Act except for good cause as defined in Section 2.[53]

Previously a tenant's right to renewal received only limited protection.[54] Under N. J. S. A. 2A:42–10.10,[55] a tenant could not be

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52 Ch. 49, § 2, ¶ (d) [1974] N.J. LAWS 119 (codified but not yet compiled as N.J. STAT. ANN. 2A:18–61.2 (d)).

53 Ch. 49 § 4, [1974] N.J. LAWS, 120 (codified but not yet compiled as N.J. STAT. ANN. 2A:18–61.4).

54 N.J. STAT. 2A:18–53 (1952) provided protection against eviction during the term of the lease. No such protection was afforded in the event of landlord's failure to renew the lease.

55 N.J. STAT. ANN. 2A:42–10.10. The statute reads:

> No landlord of premises or units to which this act is applicable shall serve a notice to quit upon any tenant or institute any action against a tenant to recover possession of premises, whether by summary dispossess proceedings, civil action for the possession of land, or otherwise:
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> a. As a reprisal for the tenant's efforts to secure or enforce any rights under the lease or contract, or under the laws of the State of New Jersey or its governmental subdivisions, or of the United States; or

removed in reprisal for his efforts to secure or maintain his contractual or legal rights. The statute prevented institution of any action by a landlord to dispossess a tenant in retaliation for his efforts to secure rights under the lease or contract, or under state or federal law.[56] In addition, activities in support of tenant associations or complaints about health or safety violations were protected against landlord reprisal.[57] The reprisal statute does not specifically address a landlord's failure to renew a lease. However, a tenant facing dispossession at the end of his lease could assert the statute's proscription of "any actions" by a landlord if the reason for the tenant's removal was one of the activities enumerated by the act. As a result, a landlord's right to possession at the expiration of a lease was marginally restricted. The overall import of this statute was that it codified the constitutional right of freedom of association.[58] The court in *Engler v. Capital Management Corporation*[59] held that membership in a tenants association is "constitutionally protected within freedom of speech and in furtherance of the legislative objectives of health codes, building codes and related legislation."[60]

The absolute prohibition against failure to renew without good cause, enunciated by the new law's Section 4, provides for greater protection of tenants' rights than either N. J. S. A. 2A:42–10.10 or the common law. In addition, Section 5 embodies the firm public

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b. As a reprisal for the tenant's good faith complaint to a governmental authority of the landlord's alleged violation of any health or safety law, regulation, code of ordinance, or State law or regulation which has as its objective the regulation of premises used for dwelling purposes; or

c. As a reprisal for the tenant's being an organizer of, a member of, or involved in any activities of, any lawful organization; or

d. On account of the tenant's failure or refusal to comply with the terms of the tenancy as altered by the landlord, if the landlord shall have altered substantially the terms of the tenancy as a reprisal for any actions of the tenant set forth in subsection a, b, and c of section 1 of this act. Substantial alteration shall include the refusal to renew a lease or to continue a tenancy of the tenant without cause.

Under subsection b of this section the tenant shall originally bring his good faith complaint to the attention of the landlord or his agent and give the landlord a reasonable time to correct the violation before complaining to a governmental authority.

A landlord shall be subject to a civil action by the tenant for damages and other appropriate relief, including injunctive and other equitable remedies, as may be determined by a court of competent jurisdiction in every case in which the landlord has violated the provisions of this section.

[56] N.J. STAT. ANN. 2A:42–10.10 (1) (b), (c), (d) (1970).

[57] N.J. STAT. ANN. 2A:42–10.10 (1) (b) (1970).

[58] Engler v. Capital Management Corp., 112 N.J. SUPER 445, 449, 271 A. 2d 615 (Ch. 1970).

[59] *Id.*

[60] *Id. Accord,* Edwards v. Habib, 130 U.S. App. D.C. 126, 397 F. 2d 687 (1968).

policy that any contractual waiver of this right cannot be enforced. Sections 4 and 5 mark a drastic and much needed change in the legal relationship between landlords and tenants. Similarly, the Act's other provisions are vital. However, the overall effectiveness of the Act is severely handicapped by drafting inadequacies and lack of legislative foresight.

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