

NEW JERSEY ALLOWS SECURITY DEPOSITS TO BE USED FOR RENT – WILL NEW YORK FOLLOW?

Hodgson Russ Real Estate Alert
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As states grapple with how to handle the burden on individuals impacted by COVID-19 shut downs, some lawmakers are pushing for extreme measures like a national moratorium on rent payments with rent forgiveness. Although those measures are unlikely to gain enough traction to move forward, states have begun to find other ways to provide relief to renters.

Recently, New Jersey Governor Phil Murphy issued Executive Order No. 128 (the “Order”), which permits residential landlords and tenants in the state to use tenant security deposits to cover the payment of rent during the COVID-19 pandemic. The aim of the order is to address the substantial loss of income many New Jersey residents are experiencing in response to the pandemic. The Governor realized that the moratorium on eviction proceedings will only last so long, yet residents may financially struggle long after the end of the state of emergency.

The Order permits landlords, upon a written notice from the tenant, to apply the tenant’s security deposit to cover the payment of rent. The landlord may first apply the security deposit towards amounts, if any, that the landlord has already expended that would ordinarily be reimbursable by the security deposit. Next, the landlord may apply the remaining portion of the security deposit towards any rent payments that are due or will become due from tenant while the COVID-19 pandemic continues and for a period of up to 60 days after the Public Health Emergency terminates (as established in Executive Order 103, and extended by Executive Order 119).

In an effort to further protect tenants, the Order states that a landlord cannot require the tenant to replenish the security deposit during the remainder of the current term of their lease. However, a landlord can require replenishment of the security deposit upon renewal or extension of the lease. In that case, the landlord would be allowed to require a replenishment of the deposit on the later of (i) 6 months following the end of the Public Health Emergency or (ii) on the date when the lease is extended or renewed.

The Order only applies to residential leases, and it’s unlikely to be extended to commercial leases. Commercial landlords and tenants are better equipped to negotiate an arrangement, such as application of the security deposit, than

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individuals trying to negotiate with a large corporate landlord or property management company.

It is clear from the Order that the Governor's intent was to protect both landlords and tenants. This helps put money into the hands of landlords, who too are struggling to collect money to pay the operating expenses of their buildings. It protects tenants also, since the security deposit can only be drawn on upon their written request.

New Jersey is not the first state to issue such an order. On April 10, 2020, Connecticut Governor Ned Lamont issued Executive Order No. 7X, which allows tenants to request that their security deposit be applied by the landlord toward rent due in April, May or June 2020. It also prevents landlords from demanding the security deposit be restored to an amount that exceeds one month's rent prior to the later of (i) the end of the public health emergency or (ii) the date the rental agreement is extended or renewed.

What about New York?

As of now, there are no laws or orders in New York allowing tenants to direct or landlords to apply security deposits to cover rental payments. However, some proposals have been made.

Brooklyn and Manhattan Borough Presidents Eric Adams and Gale Brewer joined New York City Council Housing and Buildings Chair Robert Cornegy Jr., to introduce their plan to help New Yorkers cover rent payments. The proposed "Renter's Relief" plan required landlords to offer tenants the option to use their security deposits in place of April rent payments. Renters who chose to use their security deposits would have been required to replace the deposit within 30 days. The plan had the backing of New York City Mayor Bill De Blasio, but was not passed. Nevertheless, De Blasio has continued to urge the landlords to allow tenants to use their security deposits in lieu of rent.

Hodgson Russ continues to monitor these proposals and orders and the ways they can impact both our landlord and tenant clients. If you have any questions, please contact Sujata Yalamanchili (716-848-1657), Amy Fitch (716-848-1384) or Elizabeth Holden (716-848-1692).

Please check our Coronavirus Resource Center and our CARES Act page to access information related to both of these rapidly evolving topics.

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