April 26, 2020

New Jersey Executive Order No. 128, Allowing Security Deposit To Be Used for Residential Rent During COVID-19

In anticipation of looming rent payments and the impact of the COVID-19 crisis, New Jersey Gov. Phil Murphy signed Executive Order No. 128 on April 24. The directives of the executive order take effect immediately and will remain in effect until the end of the public health emergency established by Executive Order No. 103 (2020), which was extended by Executive Order No. 119 (2020).

Recognizing that tenants may be suffering from economic hardships caused by or related to COVID-19, and that pursuant to N.J.S.A. 46:8-19 et seq. a security deposit and any accumulated interest and earnings of such deposit remain the property of the tenant, the executive order allows tenants to use their security deposit for the payment of rent.

Upon a tenant's written request, which may be an electronic communication, a security deposit that is governed by the provisions of N.J.S.A. 46:8-19 et seq. and the tenant's portion of any interest or earnings that have accumulated thereon may be applied or credited toward rent payments due during the public health emergency established by Executive Order No. 103 (2020) or up to 60 days after the public health emergency terminates. The use of a security deposit for the payment of rent is not to be considered a violation of N.J.S.A. 46:8-19 et seq.

After a tenant has applied or credited the security deposit, interest or earnings to pay rent for the duration of the tenant's current contract, lease or license agreement, the landlord may recoup from the tenant any money the landlord expends that would have been reimbursable by the security deposit and interest or earnings thereon at the time such reimbursement would have taken place. Additionally, the tenant is not obligated to make any further security deposit relating to the current contract, lease or license agreement.

If the tenant and landlord extend or renew their contract, lease or license agreement following the date of Executive Order No. 128, the tenant will be obligated to replenish the security deposit in full if it is used for the payment of rent, either on the date six months following the end of the public health emergency established by Executive Order No. 103 (2020), which was extended by Executive Order No. 119 (2020), or on the date on which the current contract, lease or license agreement is extended or renewed, whichever is later.

For more Day Pitney alerts and articles related to the impact of COVID-19, as well as information from other reliable sources, please visit our COVID-19 Resource Center.

COVID-19 DISCLAIMER: As you are aware, as a result of the COVID-19 pandemic, things are changing quickly and the effect, enforceability and interpretation of laws may be affected by future events. The material set forth in this document is not an unequivocal statement of law, but instead represents our best interpretation of where things stand as of the date of first publication. We have not attempted to address the potential impacts of all local, state and federal orders that may have been issued in response to the COVID-19 pandemic.

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