

# **No Rent Abatement for Small Businesses in New Jersey: Landlord/Tenant Trials Remain Suspended Through June 14, 2020**

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One of the questions frequently asked when the lockdown began over two months ago was from small business owners who wanted to know whether they had the right to suspend their rent payments. In response, the New Jersey Legislature introduced a bill on April 9, 2020, that would authorize Governor Murphy to permit emergency rent suspensions for a small business tenant economically distressed as a result of the pandemic.

On May 28, 2020, Governor Murphy vetoed the bill.

## **Small Business Tenant**

A “small business tenant” is defined in the bill to mean a business that:

1. employed 50 persons or fewer on February 10, 2020;
2. leases real property for non-residential purposes; and,
3. as a result of the pandemic, does not have monthly revenue that exceeds 80% of the tenant’s reasonable expectations of monthly revenue during the same season prior to the pandemic.

The tenant would have six to nine months to repay the unpaid rent beginning on the first day of the second month next following the lifting of the state of emergency and public health emergency.

## **Rent Suspension**

The bill provided that during the public health emergency the Governor may issue a rent suspension executive order to provide that a Distressed Small Business tenant may assert an emergency rent suspension, meaning a period of time during which rent payment obligations would not be paid. An emergency rent suspension, according to the bill, would commence upon notification from the tenant

to the landlord, or landlord's agent, that the tenant is asserting an emergency rent suspension. The bill further provided that the rent suspension executive order would indicate a length of time, not to exceed three months, that an emergency rent suspension may remain in effect. Nonetheless, the bill included flexibility for the parties to negotiate a longer suspension period.

The bill also provided that any landlord filing an eviction action for rent unpaid in accordance with a tenant's assertion of an emergency rent suspension, or intentional misrepresentation by a tenant of its economic circumstances in an attempt to obtain an emergency rent suspension, would be in violation of the New Jersey Consumer Fraud Act.

In vetoing the bill, Governor Murphy pointed to the financial impact an emergency rent suspension would have on commercial landlords which in many instances are themselves small businesses. Instead of rent suspensions, Governor Murphy stated that direct financial support is a better tool for helping small businesses impacted by the pandemic, including a grant program offered by the state Economic Development Authority.

## **Landlord/Tenant Trials**

In addition, the New Jersey Supreme Court issued its Third Omnibus Order on May 28, 2020, continuing its suspension of landlord/tenant trials through June 14, 2020, and encouraged landlords and tenants to resolve their differences. In light of these circumstances, it has become increasingly important for landlords and their tenants to engage in a dialogue in an effort to address each party's legitimate concerns during this unprecedented time.

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