

## RESIDENTIAL EVICTIONS: WHAT TENANTS NEED TO KNOW

As of July 2, 2021

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### LOCKOUTS

#### **Can I be locked out of my home during the COVID-19 emergency?**

**No.** Two different government orders prevent lockouts at this time.

##### **1. The State Order**

On March 19, 2020, New Jersey Governor Philip Murphy issued [Executive Order 106](#), which suspended evictions throughout the state. This is called an “eviction moratorium,” and it means that, except in rare circumstances, **no tenant may be removed from his or her home as a result of an eviction proceeding**. On June 4, 2021, the Governor terminated the state’s Public Health Emergency, but the state eviction moratorium remains in place. We do not know when the eviction moratorium will be lifted, but it cannot be in effect beyond January 1, 2022 according to recently-enacted [legislation](#) and [Executive Order 244](#). **The Governor can terminate the state eviction moratorium at any time prior to January 1, 2022.**

The state eviction moratorium does **not** affect what rent is due. **Tenants still owe the rent.** The moratorium also does not stop court proceedings; instead, it prevents lockouts and removals. The New Jersey Supreme Court controls court proceedings related to eviction. More information is below.

##### **2. The Federal Order**

The federal Centers for Disease Control and Prevention (CDC) has issued an [order](#) preventing residential lockouts for some residential tenants through July 31, 2021. The CDC has indicated that the order will likely not be extended. The CDC has issued [FAQs](#) interpreting the order. New Jersey tenants can generally ignore the CDC order for now because the state eviction moratorium, which is more protective than the CDC order, controls. For those who want to qualify for the federal moratorium, the CDC has provided an [Eviction Protection Declaration in many languages](#) for tenants to complete and provide to their landlords. Although a federal district court has held that the CDC moratorium is invalid, the Department of Justice has appealed the decision and takes the position that the moratorium [remains in effect](#) as to all landlords other than the plaintiffs in the case.

### **What if a lockout notice or warrant of removal has already been issued?**

The state moratorium applies to all pre-existing orders for removal. Any previously issued order for removal is suspended, and you cannot be removed from your home during the moratorium.

### **What if I live in a hotel/motel? Can I be evicted while the State Order is in place?**

**Maybe.** The state order permits a hotel or motel to evict a “transient guest or seasonal tenant.” Longtime hotel and motel residents, along with many others, are not considered “transient” or “seasonal,” however, and therefore remain protected from eviction under the Order. Administrative Order [2020-09](#) (issued by the State Director of Emergency Management on April 24, 2020), clarified that, in general, residents cannot be evicted if they “have no permanent housing to which they may safely or lawfully return and live at a hotel or motel on a continual basis.”

Others may be protected as well. To discuss your individual circumstances, contact a legal services organization such as [Legal Services of New Jersey](#), [Volunteer Lawyers for Justice – New Jersey](#), [Community Health Law Project](#), [Essex County Legal Aid Association](#), or [City of Newark Office of Tenant Services](#).

### **What if my landlord locks me out illegally?**

It is a crime for your landlord to lock you out. Under New Jersey law, only the courts can order evictions, and only government officials can remove you from your home. If your landlord locks you out, call the local police. They are required to help you get back into your home. The New Jersey Attorney General has issued [guidance to law enforcement](#) on their obligations in responding to illegal lockouts. You can show this to police who may not understand their role.

### **What happens when the eviction moratoria end?**

Local officials will resume removing tenants who are subject to final court orders of eviction.

## **RENT PAYMENTS**

### **Do I still need to pay my rent?**

**Yes.** Rent is still due, and you should pay if you can. If you do not pay, your landlord can still demand the rent and file an action against you in court (see below). If you need guidance on how to address your rent situation with your landlord during this time, you can call the New Jersey Housing and Mortgage Finance Agency for free counseling over the phone. Visit <https://njhousing.gov/foreclosure> for a list of counselors by county.

### **If I can't afford to pay my rent and fall behind, will I still owe the money?**

**Yes.** Any payments you miss now will become back-rent that you owe. One way or another, you will probably have to pay later whatever you cannot pay now, or you will ultimately face possible eviction. If you get assistance from the government or a nonprofit in paying the rent, you will not owe what is paid on your behalf. **Is rental assistance available?**

**Yes.** The [Consolidated Appropriations Act of 2021](#) provided \$25 billion in federal emergency rental assistance, of which approximately \$589,000,000 was allocated to New Jersey residents. A summary of

the section on emergency rental assistance is [here](#). The Federal government allocated these funds to the State of New Jersey, 14 New Jersey counties, and the cities of Newark and Jersey City for distribution to eligible households. Additional federal dollars ([approximately \\$466 million](#)) for rental assistance are coming to New Jersey under the [American Rescue Plan Act of 2021, enacted on March 11, 2021](#).

The State of New Jersey has recently released information on how it will spend the roughly \$353,000,000 allocated to the State (as opposed to the counties and cities) under the Consolidated Appropriations Act of 2021. This [site](#) has the most updated information on the program. Here are the basics:

**Who is eligible?** New Jersey households who:

- Qualify for unemployment or have experienced a significant reduction in household income, incurred significant costs, or experienced a financial hardship due directly or indirectly to COVID-19 outbreak; and
- Demonstrate a risk of experiencing homelessness or housing instability; and
- Have a household income at or below 80 percent of the area median.

Assistance is available to eligible households regardless of the immigration status of the household members, and such assistance will not create barriers for immigrants seeking to obtain legal status.

**Who can apply?** Tenants or landlords with tenants' consent.

**When can I apply?** Starting at 9 a.m. on Monday, March 22. The [website for submitting applications](#) will be open 24 hours a day after that date, until the State has received an adequate number of pre-applications to distribute all available funds. The State will publish a notice when the application period will close.

**How do I apply?** Go to <https://njdca.onlinepha.com> during the open enrollment period and follow the instructions on the home page to submit a pre-application. You must apply online at this site. No paper applications will be accepted. You must have an email address to apply. If you have a disability, limited English proficiency, or limited internet access, you can call 609-490-4550 for help. A friend, family member, or organization can also help you apply. You may also be able to get help from certified HUD housing counselors through [Housing Help NJ](#).

**What assistance is available?** Rental assistance is available for up to 12 months, with a possible 3-month extension. Unpaid back-rent (retrospective to March 13, 2020) will be paid first, with the remainder available to cover future rent up to the 12-month (or in some cases 15-month) cap.

**How will recipients be chosen?** By computerized lottery. Every pre-application submitted during the open enrollment period will have an equal chance of being selected.

**Can I apply if I have or have had other rental assistance?** Yes, but it seems the State seeks to avoid duplication by permitting a household to receive only one type of assistance for any given month.

**Can my landlord refuse to cooperate or accept the funds?** No. It is a violation of NJ Law Against Discrimination for a landlord not to accept payments or complete the necessary paperwork.

**What is Nan McKay & Associates?** Nan McKay & Associates is the contractor working with the State to implement this program. If you receive communications from Nan McKay, respond!

**Other rental assistance.** In addition, the Department of Community Affairs (DCA) posts [summaries of rental assistance programs](#), and you can use the [DCAid portal](#) to see if you are eligible. The DCA website also offers [some general answers to questions about rental assistance](#). To get financial counseling on meeting your rental obligations, check the website of [New Jersey Housing and Mortgage Finance Agency](#), which lists free counselors in every county. If you fall behind on your rent payments, you can also try speaking with your landlord to work out a payment plan to avoid having an eviction action filed against you. For additional resources, try calling 2-1-1.

### **Can I use my security deposit to cover some of the rent I owe?**

**Yes, until August 3.** On April 24, 2020, Governor Murphy issued [Executive Order 128](#), which allowed tenants to request in writing (including by email or text) that their landlords apply their security deposits to the rent they owe during the Public Health Emergency and for up to 60 days afterwards. The Governor ended the Public Health Emergency on June 4, 2021. This means that your landlord is only required to apply your security deposit to the rent that was owed before **August 3, 2021**; the deposit cannot be applied to rent that became due after that date. If you take advantage of this relief and cause damage to the apartment (beyond ordinary wear and tear), your landlord may require you to pay for that damage if and when your landlord would otherwise have been entitled to recoup the cost from the security deposit. If your lease is renewed, your landlord may also require you to post a new security deposit either six months after the end of the Public Health Emergency (or by December 4, 2021) or when the lease is renewed, whichever is later.

### **Can my landlord increase my rent during the COVID crisis?**

**Maybe.** The state government has not banned rent increases during the crisis. In the absence of statewide protection, tenants retain whatever protections may already have applied, including lease provisions and rent control ordinances, which normally permit rent increases only once a year.

In addition, some tenants have special protections:

- On April 16, 2020, [Governor Murphy announced](#) that the New Jersey Housing and Mortgage Finance Agency (NJHMFA) had voted to prohibit rent increases until the expiration of Executive Order 103 (in which the Governor declared a Public Health Emergency and State of Emergency) in the 36,000 rental units the agency oversees. While the Governor has now declared an end to the Public Health Emergency, the State of Emergency is still in effect. It therefore appears that the NJHMFA rent freeze remains in place. After the State of Emergency ends, landlords in NJHMFA-regulated properties may raise rents up to 1.4% on 30 days' notice to tenants.
- On May 18, 2020, Newark's Mayor Baraka announced a [temporary moratorium on all rent increases](#) for tenants living in properties covered by the [Newark Rent Control Ordinance](#). Newark's prohibition on rent increases is retroactive to April 1, 2020 and will last up to two months following the end of Newark's declared State of Emergency.

## COURT PROCEEDINGS

### **Are the courts accepting cases that landlords file against tenants?**

**Yes.** Landlords are permitted to file eviction complaints against tenants, even though trials will be held only in emergencies at this time. You may therefore receive an eviction complaint in the mail and/or posted at your residence.

### **Is the court holding eviction trials?**

**Right now, eviction trials are only occurring in emergency cases, but trials in all landlord-tenant cases will likely resume on September 1, 2021.** On July 24, 2020, the [New Jersey Supreme Court ordered](#) that most trials in landlord-tenant court continue to be “suspended until further notice.” The order makes clear, however, that trials may proceed when the court determines that there is an emergency. Under the order, nonpayment of rent does not constitute an emergency “except in the case of the death of the tenant.” The Administrative Office of the Courts issued a [directive](#) on July 28 that includes model papers for emergency landlord-tenant filings. Check the [New Jersey Courts website](#) for further updates.

On July 1, 2021, the New Jersey Supreme Court issued a [Notice](#) stating that trials in all landlord-tenant cases will likely resume on **September 1, 2021**.

### **Is the court holding settlement conferences? Do I have to attend them if the eviction moratorium is still in place?**

**Yes, if you receive a notice for a settlement conference you must attend.** On July 1, 2021, the [New Jersey Supreme Court ordered](#) mandatory settlement conferences for pending landlord tenant cases. According to the [July 1 Order](#), the court will prioritize scheduling settlement conferences in cases that have been pending for more than one year or in which more than 12 months of rent is claimed to be due. Most settlement conferences will be held remotely (by telephone or videoconference). The [July 1 Order](#) is a significant change from a prior order that said settlement conferences were voluntary.

The [July 1 Order](#) is **effective immediately** and requires tenants to participate in the settlement conference or risk having a default judgment entered against them if they do not show up. If both parties show up, a settlor will assist the parties in reaching a settlement agreement. If an agreement cannot be reached, the court will schedule a trial. The court has targeted September 1, 2021 as the date that it will begin holding trials. If you receive a notice from the court directing you to appear at a mandatory settlement conference by telephone or video, you should:

- Contact a legal services organization such as [Legal Services of New Jersey](#), [Volunteer Lawyers for Justice – New Jersey](#), [Community Health Law Project](#), [Essex County Legal Aid Association](#), or [City of Newark Office of Tenant Services](#).
- Share the complaint you received with any organization or lawyer who agrees to help you. If you did not receive a complaint, let your lawyer and the court know that.
- Remember that **you must participate in the settlement conference at the scheduled time!** If you do not show up, a judge will proceed to hear from only the landlord and you risk being evicted if the landlord proves his/her case.

- You do not have to settle your case at this conference. If you cannot reach an agreement with your landlord, the court will schedule a trial for when the courts start holding eviction trials again.

### **Does federal law prevent my landlord from filing an eviction case against me?**

**Maybe.** The federal [CARES Act](#) prohibited covered landlords (see below) from filing an eviction complaint for nonpayment of rent, or charging fees related to nonpayment of rent, between March 27 and July 25, 2020. If a landlord covered by the CARES Act filed such an eviction complaint during this period, the tenant can request that the case be dismissed. A dismissal will not stop the landlord from filing a new complaint, but the landlord must first give the tenant 30 days' notice.

Landlords covered by the CARES Act include:

- Those who hold a federally backed mortgage, such as a mortgage from Fannie Mae, Freddie Mac, or the Federal Housing Administration.
- Those who rent to federally subsidized tenants, including tenants who:
  - live in public housing,
  - have a Section 8 Housing Choice voucher,
  - live in Section 8 project-based housing, or
  - live in other types of federally funded housing, including, among others, certain housing programs for seniors, people with disabilities, people with HIV/AIDS, and people at risk of homelessness.
- The National Low Income Housing Coalition has constructed a [searchable database](#) of many (but not all) of the properties covered by the CARES Act.

The CARES Act gives tenants additional protection if they live in a building with five or more units and the owner got permission to delay payments on a federally backed mortgage loan. In that case, the owner may not file an eviction action for nonpayment of rent, or charge late fees related to nonpayment of rent, during the period when the owner is allowed to delay making mortgage payments. When this period ends, the owner must give tenants 30 days' notice before taking the tenant to court to get an order requiring the tenant to vacate the property (but the lockout cannot happen in any case until the moratorium under the [state order](#) is lifted).

The state Supreme Court has required landlords to [certify their compliance with the CARES Act](#), and the Administrative Office of the Courts issued a form certification as Attachment 6 to its [July 28 directive](#).

### **What if my landlord has already started an eviction proceeding against me in housing court and I have an upcoming court date?**

While landlord-tenant court is suspended, you should not go to court, and you will not be penalized for not going to court. The court may still send you a notice to appear at a telephone- or video-conference, however (see above).

### **Can I still get emergency repairs in my apartment?**

You always have a right to [safe and decent housing](#). If you have concerns about issues such as inadequate heat, exposure to lead, infestations, leaks, crumbling walls and ceilings, or other hazardous conditions, you should ask your landlord in writing to make repairs (keep a copy). If repairs are not made quickly, you can call 2-1-1, contact the state [Bureau of Housing Inspection](#), or call your municipality to report the problem. Due to closures, enforcement agencies may be working with limited staff and it may take longer to get repairs or inspections. As an alternative, if you can manage the repairs on your own, and your landlord fails to respond to your requests for repairs, you can make them or pay someone to make them. You can then withhold the money you spent on repairs from your rent (save all receipts for the repairs!).

### **SUBSIDIZED TENANTS**

#### **Can my landlord file an eviction action against me if I live in public housing or have a Section 8 Voucher?**

**Generally, yes.** Your landlord can file an eviction action unless your building has five or more units and the owner has permission to delay payments on a federally backed mortgage loan. See discussion of the federal [CARES Act, above](#). Even if your landlord files an eviction action, however, the case will not go to trial except in unusual circumstances. See discussion of court filings, above.

### **ELECTRICITY, GAS, WATER**

#### **Can my utilities, water, phone, and internet be shut off during the COVID-19 crisis?**

**No, but the utility moratorium has ended and shut offs may occur for some residences as of January 1, 2022.** [Executive Order 229](#), which suspended residential utility and water shutoffs, ended on June 30, 2021. The Governor announced a state-ordered "[grace period](#)" through December 31, 2021 that will continue many of the protections of Executive Order 229 (such as requiring cable and telecommunications providers to offer specified payment plans to their customers, prohibiting utility companies from cutting customers off so long as they make timely payments under such plans, and protecting households with residential internet service accounts currently being used by school-aged children for educational purposes from disconnection).

The grace period until December 31, 2021 is intended to give utility customers who are behind in their payments time to enroll in payment assistance plans. The end of the grace period will fall during the state's annual winter utility service shutoff ban, which protects certain vulnerable families from utility shutoffs from [November 15 to March 15](#) each year.

#### **Do I still have to pay for utilities, water, phone, and internet?**

**Yes.** You still have to pay whatever electric, gas, water, phone, or internet bills you normally pay. If you cannot pay now, you will have to pay later. DCA offers low-income tenants [assistance with some utility bills](#); you can call the customer service number on your utility bill, or look up the number [here](#), to try to work out a payment plan; or you can check the [website](#) of the Board of Public Utilities for a list of agencies that offer assistance.