



Executive Order 128: Allowing Tenants to Use Security Deposit to Pay Rent

With the issuance of Executive Order 128, residential tenants in the State of New Jersey have the option of applying their security deposit to rent that is currently due or will become due.

Overview of Executive Order 128

- Residential tenants may request that they would like their security deposit, including any interest that has accrued, to be applied towards rent that is due or will become due.
- This ability to utilize a security deposit to pay rent began on Friday, April 24, 2020, with the issuance of Executive Order 128 and will end 60 days after the Public Health Emergency established in Executive Order 103 (2020) terminates.
- The request must be made in writing (including electronically). No formal document or form may be required.
- The tenant is not obligated to replenish the security deposit during the current lease term.
- The tenant must replenish the deposit in full either on the 6th month following the end of the Public Health Emergency established by Executive Order No. 103 (2020) or on the date the current lease is extended or renewed, whichever is later.
- Should a tenant not renew his or her lease, the tenant will be responsible for paying the landlord for damages incurred that would have been reimbursable by the security deposit and interest or earnings thereon.
- Provisions of the Security Deposit Act that are inconsistent with Executive Order 128 are waived; however, all other provisions remain in full force and effect.

Important Considerations

- It is important to keep proper documentation in the tenant file that the security deposit was utilized to pay rent and is no longer in deposit as the lease agreement itself will reflect that a security deposit was made. Landlord and tenant may agree to a lease addendum to appropriately reflect the terms of Executive Order 128, but it cannot be required.
- The tenant may utilize the security deposit to pay rent that is already past due or will become due. As such, charges deemed “additional rent” in the lease agreement may be paid by the security deposit. Conversely, charges or fees not deemed additional rent cannot be paid with a security deposit.
- The tenant cannot be obligated to repay the security deposit prior to the timeframe outlined in Executive Order 128. A tenant, however, could choose to repay early. As such, owners may offer tenants repayment plans or other alternatives, but these can only be offered, not required.
- Executive Order 128 imposes requirements on both apartment owners and tenants. Significant penalties for noncompliance can be imposed on either party for violations of the executive order, including being adjudged as disorderly person.

Should you have any questions or would like to discuss this further, please do not hesitate to contact a member of the NJAA government affairs team at 732-992-0600.