

## RELATIVES OF PROTECTED TENANTS DO NOT INHERIT PROTECTED STATUS

Recently, Rosalie Scheckel convinced a New Jersey Appeals Court that family members of a protected tenant do not have the right to continue the tenancy after the protected tenant's death.

Not every case that comes before a tenancy Judge is one with simple questions and answers. "Do you owe the rent?" "How much do you owe?" "Can you pay it?" "When can you pay it?" are the usual questions. In the case of W.G. Associates v. Estate of Matilda Roman, 332 N.J. Super 555 (App. Div. 2000), the Court was asked whether a family member of a protected tenant can establish a landlord tenant relationship with the landlord, after the protected tenant dies. In a decision applauded by landlords across the State, the Appellate Division held that the answer was no.

Rosalie represented a landlord who owned a condominium unit which was occupied by an elderly woman who had a protected tenancy. When the landlord learned that the elderly tenant's daughter and grandson were living in the apartment in violation of the lease, a Notice to Cease was sent to the elderly tenant. The landlord then discovered that the tenant had died more than six (6) months before. Ironically, even though the tenant had died, rent had been paid to the landlord by check or money order which contained the signature of the deceased tenant. Because the daughter

and grandson remained in the apartment, a Notice to Quit was served on the Estate of the named tenant.

When this matter came before the Trial Court, the Judge did not consider the provisions of the Condominium Conversion Act, which states that a protected tenant cannot pass along the protected status to surviving children. The Judge declared that the daughter

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ter was a tenant, and that she should pay market rent, not the rent that had been paid by her mother under rent control.

The daughter appealed on the grounds that the Judge had no jurisdiction to require her to pay the market rent. FRK&B cross-appealed requesting a judgment for possession under the Condominium Conversion Act.

The Appellate Division reversed both decisions by the Trial Court. After finding that the Judge had no right to increase the back rent, the Court held that "a person who occupies an apartment by virtue of being a member of a protected tenant's household cannot extend or create a tenancy relationship by

paying rent to the landlord after the protected tenant dies."

The Appellate Court reiterated that the Landlord Tenant Court must act on and interpret the law strictly in accordance with the statutes. It also held that the Trial Judge cannot make decisions based on equity or his interpretation of "fairness". The Trial Judge had considered issues that were not properly before him, and he made decisions that he had no ability to make.

It is important to note that the Appellate Division criticized the Trial Court for trying to craft a decision that it believed was "fair." The only remedies that can be granted by the Landlord Tenant Court are judgments for possession, an abatement of rent or dismissal of the case.

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FRK&B, L.L.C.

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## FRK&B PRESENTS LANDLORD TENANT SEMINAR

Clients and friends were invited to attend a seminar given by FRK&B on November 7, 2000 at the Mountain Ridge Country Club in West Caldwell, New Jersey. Hosted by Norman Feinstein, and presented by Rosalie Scheckel and Tracey Goldstein, the seminar focused on how to evict a tenant for reasons other than non-payment of rent. Some of the grounds for eviction that were discussed included a tenant's drug activity, overcrowding and a tenant's damage to the landlord's property.

FRK&B also talked about the latest developments in the Courts affecting landlords.

For example, the Courts in Hudson County and Monmouth County now require landlords to present the registration statement in order to obtain a judgment for possession (it is expected that Essex County soon will require it also) and that Passaic County requires landlords to present rental certificates at trial. Also, Rosalie talked about some of the additional requirements that landlords of subsidized housing must comply with for a successful eviction action. Larry Raiss, Richard Kelin, FRK&B's Landlord Tenant Administrator, Ophelia Batalion, along with FRK&B's new associate, Adrienne LePore were also on hand to answer questions.

Property owners, property managers, leasing agents and in-house attorneys attended the seminar. It was a great opportunity for clients to meet each other, exchange ideas and spend time with FRK&B attorneys in a

casual and informal environment. A complimentary buffet breakfast was also available to all who attended.

Based upon the success of the seminar, FRK&B will continue the seminar program on a regular basis. For those of you who attended, we look forward to hearing your comments and seeing you next year. If you did not receive an invitation to this seminar, please contact Pat Desmond to make sure you are on the FRK&B mailing list.



FRK&B welcomes all seminar attendees (from l-to-r: Tracey Goldstein, Larry Raiss, and Rosalie Scheckel).



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## FRK&B Highlights

Adrienne LePore is FRK&B's newest associate. Adrienne clerked for the Honorable John O'Shaughnessy, who is one of the judges hearing landlord tenant cases in Hudson County. Adrienne brings with her a vast amount of knowledge relating to landlord tenant law along with her experience of hearing the cases from the Court's perspective. Adrienne will be representing clients in landlord tenant matters, commercial litigation and real estate transactions.

Richard Kelin was elected to serve on a panel of four attorneys who will serve as legal counsel to the Property Owner's Association. Rich was also reelected to serve on the Board of Directors of the New Jersey Apartment Association.

Rosalie Scheckel took part in the Essex County Bar Association's "Ask a Lawyer" program. She spoke at the Nutley Public Library about landlord tenant law. The audience, which was comprised mostly of tenants, asked questions about notices to cease, notices to quit responsibilities for repairs and the return of security deposits.

Tracey Goldstein and Richard Kelin will be presenting on April 25, 2001 an encore presentation of the seminar entitled, "The Real Estate Closing from Hell". The seminar will be held at the New Jersey Institute of Continuing Legal Education in East Brunswick, New Jersey. The seminar will focus on problems that arise during a closing and how to avoid them.

Join Rosalie Scheckel and Tracey Goldstein will be presenting the landlord tenant seminar at the New Jersey Apartment Association's Convention which will be held May 8-10, 2001. Also, be sure to visit the FRK&B booth at the convention.

## FILING A TAX APPEAL MAY SAVE YOU MONEY

A property tax appeal is a very effective way of reducing some of the overhead costs of real estate investments. FRK&B files numerous tax appeals for clients each year and has been successful in reducing their overhead costs.

A real estate tax appeal is an appeal of the value of property, which is assessed by the municipality. The purpose of filing an appeal is to demonstrate to the municipality that the assessed value of the property is unreasonable or inaccurate and should be reduced to reflect the property's true value.

Once a determination has been made that property has been over assessed, a tax appeal can be filed. A property owner has



to be careful when filing the appeal because if the property is under assessed, the tax assessment can be raised.

The deadline for filing a tax appeal is the first day of April in the year in which the property owner wishes to appeal. A property owner must be current in all real estate taxes and municipal charges up to and including the first quarter for the current year, in order to be granted a hearing. If you have any questions about tax appeals or would like FRK&B to file an appeal for you, please contact Gary Gordon or Pat Desmond.

## TAX CONSIDERATIONS FOR ONE MEMBER LLCs

In recent years, it has been the common practice of owners of commercial real estate to take title through a limited liability company ("LLC"). The unique advantage of an LLC over other types of entities is that it combines the limited liability protection of a corporation with the pass through tax benefits of a partnership. For income tax purposes, the Internal Revenue Service allows the LLC the option of being treated as a partnership or as a corporation. As a practical matter, LLCs usually elect to be treated as a partnership.

If an LLC only has one member, which is becoming more common today, the LLC cannot be treated as a partnership for tax

purposes, since a one member LLC cannot constitute a partnership. If there is one member, the LLC is taxed similarly to an individual, in that the income/loss from the LLC appears on a separate schedule on the member's individual return.

Some accountants believe that partnerships are audited less frequently than individuals who are required to report income from an LLC on their individual tax return. It is advisable that an LLC have two members, so that the LLC can prepare its tax return similar to that of a partnership. This point should also be kept in mind if there are two members of an LLC and one member is purchasing the interest of the other member.

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FRK&B recently held a landlord tenant seminar for all of the property managers of one of its clients. The group gathered together for a picture after the seminar.

## Recent Changes In The Law

### LANDLORDS MAY NOT BE RESPONSIBLE TO A TENANT FOR FAILING TO RETURN A SECURITY DEPOSIT

A residential landlord who does not receive a security deposit for a particular tenant from the prior owner of the property is no longer responsible to return the security deposit to that tenant. In Mauricio v. First Fidelity Bank, 329 N.J. Super. 342 (March 2000), the Appellate Division overturned an earlier lower Court decision which required a landlord to return a security deposit to a

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tenant, even if the landlord did not receive it from the prior owner. The Appellate Division found that the previous case was not consistent with the language in the security deposit statute. The Court reached this conclusion by reviewing the statute which requires a landlord, upon a sale or foreclosure, to turn over a tenant's security deposit to the new grantee or purchaser and to notify the tenant that the security deposit was turned over to the new landlord.

Therefore, under this new case, before returning a security deposit to a tenant, land-

lords should check their records to determine whether they received it from the prior landlord. If they did not, the prior landlord remains responsible for repayment of the deposit to the tenant, even though the prior landlord is no longer the owner of the property.

Also, even if a landlord did not receive the security deposit from the former owner, the landlord should notify the tenant within the thirty day period that a security deposit will not be returned to the tenant since the landlord did not receive it from the prior owner.

### RESTRAINING ORDERS CAN NOW BE ENTERED AGAINST TENANTS

A new law was enacted which assists landlords in preventing a person who has been charged with a drug related crime from living in or visiting the landlord's property.

*The New Jersey Legislature recognized that the manufacture, distribution, possession and use of controlled dangerous substances are serious threats that undermine the quality of life of all that live in the neighborhoods where this illegal activity occurs.*

More specifically, when a person has been charged or convicted with a violation of the Comprehensive Drug Reform Act of 1987 (i.e. possession, distribution, distribution

within 1000 feet of a school etc...), the new statute requires the Court to issue a Restraining Order prohibiting the offender from returning to the place where the violation took place. Therefore, if a tenant is charged with a violation of that law and the violation took place on the landlord's property, that tenant will be prohibited from returning to his or her apartment under the Restraining Order entered by the Court. The Court may permit the offender to return to the property only to retrieve property and may limit the amount of time the offender is permitted to do so. The Restraining Order may remain in effect for up to two (2) years.

The New Jersey Legislature recognized that the manufacture, distribution, possession and use of controlled dangerous substances are serious threats that undermine the quality of life of all that live in the neighborhoods where this illegal activity occurs. Removing and restraining the offender from the premises helps to protect the public by separating the drug offenders from their known markets.

If a tenant or resident has violated the Comprehensive Drug Reform Act, the landlord may begin eviction proceedings by

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serving a Notice to Quit, then filing a holdover eviction action, if the tenant does not vacate by the termination date in the Notice. If the offender is not a tenant but returns to the landlord's property (which was the site of his illegal actions), the offender can be removed from the premises by security or by the local police if a Restraining Order was entered.

Landlords should keep in mind that the Court is not obligated under the law to notify the landlord that a Restraining Order was entered against a particular offender. Therefore, once a landlord learns that an individual was charged with a violation of the Comprehensive Drug Reform Act and that the violation occurred on the landlord's property, the landlord should contact the Court and/or the police to make sure the Restraining Order was entered and to obtain a copy.