SUPREME COURT OF NEW JERSEY
Docket No. C-554

HARRY'S VILLAGE, INC.,	:	
Plaintiff-Petitioner,	:	
vs.	:	CIVIL ACTION
FORTY EIGHT STATES RESIDENTS ASSOCIATION,	:	ON CERTIFICATION TO THE SUPERIOR COURT, APPELLATE DIVISION
Defendant-Respondent	:	
and	:	Sat Below: Michaels, Ard and Furman, JJAD
EGG HARBOR TOWNSHIP, et al.,	:	
Defendants.	:	

BRIEF FOR AMICUS CURIAE

HUDSON COUNTY LEGAL SERVICES
TIMOTHY K. MADDEN, DIRECTOR
574 Newark Avenue
Jersey City, New Jersey 07306
(201) 792-6363
On Behalf of Legal Services
of New Jersey
Amicus Curiae

Jorge O. Aviles, Gregory G. Diebold,
and Maureen C. Schweitzer
On the Brief

TABLE OF CONTENTS

	Page
Statement of the Case.....	1
Argument:	
THE FAILURE TO SERVE A VALID NOTICE TO QUIT IS AN ABSOLUTE BAR TO THE EVICTION OF A RESIDENTIAL TENANT UNDER THE TERMS OF THE ANTI-EVICTION ACT.....	4
Conclusion.....	12

TABLE OF CITATIONS

Cases	Page
Bhar Realty Corp. v. Becker, 49 N.J. Super 585 (App.Div.,1958)	7
Cartaret Properties v. Variety Donuts, Inc., 49 N.J. 116 (1967)	11
Guttenberg Savings & Loan Ass'n. v. Rivera, 85 N.J. 617 (1981)	8
Gretkowski v. Wojciechowski, 26 N.J. Super 245 (App.Div.,1953)	5
Helmsley v. Borough of Fort Lee, 78 N.J. 200 (1978)	10,11
Hertzberg v. Siegel, 8 N.J. Super 226 (App.Div.,1950)	6
Kroll Realty, Inc. v. Fuentes, 163 N.J. Super 23 (App.Div., 1978)	9
Saracino v. Captial Properties, Inc., 50 N.J. Super 81 (App.Div.,1958)	6
Schlesinger v. Brown, 116 N.J. Super 500 (Cty. Dist. Ct., 1971)	9
Skyline Gardens v. Mc Garry, 22 N.J. Super 193 (App.Div.,1952)	6
Stamboulos v. Mc Kee, 134 N.J. Super 567 (App.Div.,1975)	5,7
State v. Fearick, 69 N.J. 32 (1976)	11
Steffens v. Earl, 40 N.J.L. 128 (Sup.Ct.,1878))	4,5
Vineland Shopping Center v. De Marco, 35 N.J. 459 (1962)	8

Statutes

N.J.S.A. 2A:18-61.1 4,7,8,9

Other Authority

Adam, "The Notice to Quit Necessary to Determine a Weekly Tenancy", Res Judicatae 98 (1940)..... 5

109 A.L.R. 197 (1937)..... 6

18 N.J. Practice §1541, p.111..... 9

STATEMENT OF THE CASE

Amicus believes that the issues in this case have been misconceived by the plaintiff and the courts below. This misconception is due in large part to the procedural vehicle in which the issues were raised. In order to clarify its position on this point, amicus will attempt to fully explore the procedural history of this case.

On December 12, 1978, plaintiff filed an amended application for several surcharges, including a "hardship" surcharges, with the Egg Harbor Rent Review Board. The purpose of this application was to raise its rental income to enable plaintiff to make a reasonable rate of return on its investment. (Da-27). Following consideration by the Board, it issued a decision which approved rental fees in a substantially increased amount. (Da-57).

Unhappy with the amount of the increase, plaintiff filed a complaint in lieu of prerogative writ. The relief sought in the Complaint (Da-1) is an "Order reversing the decision of the Egg Harbor Township Rent Review Board and granting the relief requested by plaintiff." (Da-4). There was absolutley nothing in the complaint seeking to evict individual tenants if they failed to pay any increased rentals.

The answer filed by respondents raised two general separate defenses but did not raise the issue of the failure of the plaintiff to serve a notice to quit. (Da-24).

It is not clear from the record exactly how the issue of the necessity to serve a notice to quit was raised. Nevertheless, in its oral opinion, the trial court determined that the requirements of N.J.S.A. 2A:18-61.1(f) need not be followed where the tenant has received "appropriate" notice of rent increase proceedings before a local rent review board (4T-p.163, L8 to p. 164, L4). However, the final judgment of the Law Division merely adjudged that the local agency decision was arbitrary and capricious, and set the rents at between $103.00 and $128.00, effective May 1, 1979. (Da-59). The final judgment was entered June 20, 1979.

On August 1, 1979, the tenants appealed to the Appellate Division. However, it does not appear that the tenants sought a stay of the increased rentals. Rather, they apparently paid the increased rent as determined by Judge Francis.

In an opinion filed January 30, 1981, a three judge panel of the Appellate Division unanimously held that the trial court erred in not requiring the landlord to follow the mandate of N.J.S.A. 2A:18-61.1(f). That section provides that a tenant may not be removed by the Superior or County District Court absent, among other causes, failure "to pay rent after a valid notice to quit and notice of increase of said rent..." The Court reasoned, citing a number of Appellate Division cases, that the local rent board's decision merely granted permission to raise the rent. A notice to quit and notice of rent increase was necessary, however, to effectuate that increase.

Accordingly, the Court reversed the Law Division in part. However, its judgment contained no mandate to repay rent collected pursuant to the Law Division's judgment.

On June 3, 1981, the Supreme Court granted plaintiff's petition for certification.

ARGUMENT

THE FAILURE TO SERVE A VALID NOTICE TO QUIT IS AN ABSOLUTE BAR TO THE EVICTION OF A RESIDENTIAL TENANT UNDER THE TERMS OF THE ANTI-EVICTION ACT

At the outset, amicus seeks to have this Court draw a crucial distinction between the common law of landlord-tenant relations, and the statutory law governing the removal of residential tenants - N.J.S.A. 2A:18-61.1. For while this Court has the authority to alter the common law even to the point of eliminating a notice to quit prior to an increase in rent, it has no authority (absent constitutional violation) to eliminate or alter a statutory prerequisite to an action for possession. And it must be made clear: this case is not an action against a residental tenant for possession of property. Accordingly, the case does not implicate the provisions of N.J.S.A. 2A:18-61.1.

Amicus agrees with the Appellate Division that this state requires a notice to quit and notice of rent increase prior to the imposition of an increase in rents.

At common law since 1522, a notice to quit, equivalent to the period of the letting, was required to terminate a periodic tenancy, Steffens v. Earl, 40 N.J.L. 128, 133 (Sup. Ct., 1878). The periodic tenancy from year to year emerged

from the tenancy at will because of the inconvenience and uncertainty resulting from a tenancy that could be ended at any time:

> Convenience demanded that if either party desired to determine the tenancy some notice of this should be given...as early as 1522 it was settled law that half a year's notice must be given, such notice, of course, expiring at the end of a year of tenancy.

Adam, "The Notice to Quit Necessary to Determine a Weekly Tenancy, 1 Res Judicatae 98 (1940).

Thus, the purpose of the notice to quit was to protect the tenant and to give him time to readjust his affairs, Gretkowski v. Wojciechowski, 26 N.J. Super 245, 250 (App.Div., 1953); Stamboulos v. Mc Kee, 134 N.J. Super 567, 570 (App.Div., 1975).

Since 1878, New Jersey has recognized the rule that a month's notice to quit is necessary to terminate a month to month tenancy:

> In cases of tenancies for periods running less than a year, the rule enunciated by the text-writers is that the notice must be regulated by the letting and must be equivalent to a period... . Whatever the reason of the rule, it seems to have been well grounded in the general understanding of the English people. The cases cited by the books of authority in support of the rule already stated are merely recognitions of what was obviously a custom and, as such, the cases would seem to have as much weight as authority as if they had expressly ruled the point.

Steffens v. Earl, 40 N.J.L. 128, 133-34 (Sup.Ct.,1878).

The reason underlying the requirement of a notice to quit is the view that the tenancy relationship is a continuing one. New Jersey has long rejected the theory that the relationship expires at the end of each month and is renewed on the first day of the following month. Stamboulos v. Mc Kee, 134 N.J. Super 567, 570 (App.Div.,1975); Saracino v. Capital Properties, Inc., 50 N.J. Super 81,87 (App.Div.,1958). Because the relationship is a continuing one, the tenant is entitled to continue in possession indefinately at the same terms in the absence of a notice to quit. To avoid the anomoly inherent in giving effect to a notice of a rent increase unaided by a termination of a tenant's continuing rights, New Jersey has devised a conditional or optional notice to quit. See, Annot. 109 A.L.R. 197, 216 (1937).

In Hertzberg v. Siegel, 8 N.J. Super 226 (App.Div., 1950) where the landlord served a notice to quit, demand for possession and notice of the Expeditor's order raising the rent ceiling, the Court found for the landlord in a summary disposses action for non-payment of rent:

> The Order of the Area Rent Director was not self-executing... . The relationship of landlord and tenant is contractual and may be express or implied... . Here there is no express contract but an implied contract arose out of the voluntary holding over in the face of the notice to quit and the notice of the increased rent.

Skyline Gardens, Inc. v. Mc Garry, 22 N.J. Super 193 (App.Div.,1952) involved an action at law for the difference

between the old rent and the amount authorized by the Federal Office of Rent Stabilization. The Order of the Federal Authority merely empowered the landlord to effectuate a rent increase.

> The notice in question was not a "notice to quit" and it is well established that a month to month tenant has the right to continue in possession indefinately in the absence of a notice to quit which is the prerequisite to the termination of the tenancy so as to create a new tenancy at an increased rental.

Id. at 195-196; Bhar Realty Corp. v. Becker, 49 N.J. Super 585 (App.Div.,1958); Stamboulos v. Mc Kee, 134 N.J. Super 567, 570-71 (App.Div.,1975).

Plaintiff has furnished no compelling reason why this common law requirement should be altered. But even if the Court were to disagree with this position, the requirements of N.J.S.A. 2A:18-61.1 go well beyond common law.

As set forth above, N.J.S.A. 2A:18-61.1 governs eviction of residential tenants in the Superior or County District Courts. In pertinent part, it provides:

> No lessee or tenant or the assigns, under-tenants or legal representatives of such leassee or tenant may be removed by the county district court or the Superior Court from any house, building, mobile home or land in a mobile home park or tenament leased for residential purposes, other than owner-occupied premises with not more than two rental units or a hotel, motel or other guest house or part thereof rented to a transient guest or seasonal tenant except upon establishment of one of the following grounds as good cause:

> f. The person has failed to pay rent after a valid notice to quit and notice of increase of said rent, provided the increase in rent is not unconscionable and complies with any and all other laws or municipal ordinances governing rent increases. (Emphasis supplied.)

The Anti-Eviction Act was passed to aleviate what the Legislature saw as a critical shortage of rental housing in New Jersey, and a proclivity on the part of landlords to arbitrarily evict tenants without cause. (Statement attached to L 1974, c. 49). The statute accomplished two purposes. First, as did the prior landlord-tenant act, it continued the jurisdictional limitations on the power of the county district court in summary dispossess actions. Vineland Shopping Center v. De Marco, 35 N.J. 459 (1962). However, it also imposed substantive limitations on the rights of landlords to evict tenants regardless of the Court in which the action was commenced. Guttenberg Savings & Loan Ass'n. v. Rivera, 85 N.J. 617, 628 (1981). The failure of the landlord to prove all of the elements of one of the grounds stated for removal deprives the Court of power to order the tenant's eviction. In this way, it was hoped that the housing shortage would not be further exasperated by the causeless eviction of tenants and their consequent re-entry into the rental housing market.

The Good Cause Eviction Statute legislatively enacted the common law rule that a notice to quit is necessary to terminate a month to month tenancy and to offer one at an increased rental, N.J.S.A. 2A:18-61.1(f). In an action for possession,

the Court has no jurisdiction to evict a tenant for failing to pay a rent increase without service of:

(i) a notice to quit terminating the month to month tenancy N.J.S.A. 2A:18-61.1(f), and

(ii) a notice of increase of rent complying with local ordinances, N.J.S.A. 2A:18-61.1(f).

Kroll Realty, Inc. v. Fuentes, 163 N.J. Super 23 (App.Div.,1978); Schlesinger v. Brown, 116 N.J. Super 500, 504 (Essex County, D.Ct., 1971); 18 N.J. Practice, §1541, p. 111.

The tenant is given a thirty day period following service of the notice to quit to determine if he wishes, or is able, to pay the increase. If not, then of course he must vacate the premises or face eviction.

However, to force the tenant to make that choice at the time the landlord applies for the rental increase would mean that the tenant's choice would not be made with any awareness of the rent he would have to pay in the future. It is true that the tenant has notice of the amount of rent applied for, but neither party knows what rent will eventually be approved by the local agency. Landlords, like other litigants, are likely to ask for far more than they reasonably hope to obtain in the litigation. To compel the tenant to guess at what rental increase will eventually be approved would defeat the entire purpose of a notice to quit. More importantly, it would defeat the entire purpose of the Anti-Eviction Act. Upon receiving notice of an application for increased rentals, the

tenants might choose to vacate the premises because of their inability to pay the increase sought, even though if they had waited, they never would have had to pay so substantial an increase.

Therefore, we submit that a valid notice to quit may only be served after the lcoal agency determines the exact amount of rent which the landlord may charge. The notice then would fulfill the objective of giving the tenant the choice of either vacating the premises within thirty days, paying the increased rental, or facing eviction.

In this case, the local agency and the Law Division made the rental increase retroactive to May 1, 1979. In our experience, this is becoming an increasingly common practice by local boards. Retroactive increases are seen as an equitable method of relieving the effects of administrative delay. See Helmsley v. Borough of Fort Lee, 78 N.J. 200, 242 (1978) for a discussion of the constitutional problems of administrative delay. Thus, there may be some justification for imposing civil liability on the tenant, through an action for damages, for the amount of the retroactive increase.

However, different considerations prevail where the landlord is seeking to evict the tenant. The Legislature has determined that the Courts are powerless to remove a residential tenant unless, among other grounds, he fails to:

> pay rent after a valid notice to quit and notice of increase of said rent, provided the increase in rent is not unconscionable and complies

with any and all other laws or municipal ordinances governing rent increases.

To summarize our position, in order to evict a residential tenant, a landlord must await a determination by the local agency as to the amount of rental increase, must then serve a valid notice to quit stating the new approved rent, and must prove that the tenant thereafter failed to pay said rent. Any retroactive increase might be recoverable in an action at law but cannot be the basis for an action for possession. The landlord's remedy for any administrative delay is an action in lieu of prerogative writs. See Helmsley v. Fort Lee, supra.

This distinction in the treatment of evictions and civil suits for monetary damages finds support in at least two fashions. First, there is the general principal that Courts have always abhored forfeitures. See Cartaret Properties v. Variety Donuts, 49 N.J. 116, 127 (1967). Secondly, while the Legislature showed no apparent concern with allowing a landlord to maintain his common law rights in other regards, it very definitely altered these rights as they concerned evictions. It is the eviction of residential tenants, rather than the imposition of a money judgment, which exasperates the housing crisis and defeats the legislative purpose of the Anti-Eviction Act. It is this legislative determination which the Court has a duty to effectuate. State v. Fearick, 69 N.J. 32, 37-38 (1976).

CONCLUSION

For the reasons set forth above, the judgment of the Appellate Division should be affirmed.

Respectfully submitted,

HUDSON COUNTY LEGAL SERVICES
TIMOTHY K. MADDEN, DIRECTOR

By: /s/ Jorge O. Aviles, Esq.
JORGE O. AVILES, ESQ.

By: /s/ Gregory G. Diebold, Esq.
GREGORY G. DIEBOLD, ESQ.

By: /s/ Maureen C. Schweitzer, Esq.
MAUREEN C. SCHWEITZER, ESQ.