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LAW/RWH

§§1,2 -
C.2A:18-61.66 to
2A:18-61.67
§3 - Note to §§1,2

P.L.2013, CHAPTER 206, *approved January 17, 2014*
Senate, No. 2018 (*Fourth Reprint*)

1 AN ACT ²[requiring a residential landlord to pay attorney's fees for
2 a successful tenant where the landlord has reserved the same
3 right through the lease,] concerning attorney's fees and expenses
4 in landlord-tenant disputes² and supplementing ²[chapter 18 of]²
5 Title 2A of the New Jersey Statutes.

6
7 **BE IT ENACTED** *by the Senate and General Assembly of the State*
8 *of New Jersey:*

9
10 1. If a residential lease agreement provides that the landlord is
11 or may be entitled to recover either attorney's fees or expenses, or
12 both, incurred as a result of the failure of the tenant to perform any
13 covenant or agreement in the lease, or if the lease provides that such
14 costs may be recovered as additional rent, the court shall read an
15 additional ¹parallel¹ implied covenant into the lease. This implied
16 covenant shall require the landlord to pay the tenant either the
17 reasonable attorney's fees or the reasonable expenses, or both,
18 incurred by that tenant as the result of the ¹tenant's successful
19 defense of any action or summary proceeding commenced by the
20 landlord against the tenant, arising out of an alleged failure of the
21 tenant to perform any covenant or agreement in the lease, or as the
22 result of any successful action or summary proceeding commenced
23 by the tenant against the landlord, arising out of the¹ failure of the
24 landlord to perform any covenant or agreement in the lease.

25 The court shall ³[², in its discretion,²]³ order the landlord to pay
26 such ¹[costs when] attorney's fees or expenses, or both, that are¹
27 actually and reasonably incurred ¹[in the tenant's successful
28 defense of any action or summary proceeding commenced by the
29 landlord against the tenant, or in any action or summary proceeding
30 commenced by the tenant against the landlord, arising out of the
31 lease] by a tenant who is the successful party in such actions or
32 proceedings¹ ²to the same extent the landlord is entitled to recover
33 attorney's fees and expenses, or both, as provided in the lease².
34 ⁴The court shall have discretion with respect to awards of attorney's
35 fees or expenses, or both, for tenants to the same degree as it has
36 with respect to awards of attorney's fees or expenses, or both, for
37 landlords as provided under the lease either explicitly or implicitly.⁴

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SCU committee amendments adopted March 4, 2013.

²Assembly floor amendments adopted June 20, 2013.

³Senate floor amendments adopted June 27, 2013.

⁴Assembly floor amendments adopted December 19, 2013.

1 An order based on this implied covenant shall require the
2 landlord to pay the tenant such costs either as money damages or a
3 credit against future rent, as determined by the tenant. Any waiver
4 of this section shall be void as against public policy.

5 ²Notwithstanding the foregoing, in an action or summary
6 proceeding for non-payment of rent a tenant who pays all rent
7 currently due and owing on or after the filing of the complaint but
8 prior to entry of a final judgment, and whom the court finds
9 presented no meritorious defense to the complaint other than said
10 payment, shall not be deemed to have successfully defended against
11 the action or summary proceeding for the purposes of the award of
12 attorney's fees or expenses, or both.

13 As used in this act "expenses" shall include expenses directly
14 related to the litigation including, but not limited to, court costs and
15 expenses for witnesses. "Expenses" shall not include personal
16 expenses for travel, reimbursement for missed work time, or child
17 care.²

18
19 2. If a residential lease agreement provides that the landlord is
20 or may be entitled to recover attorney's fees or expenses ², or both²
21 from the tenant for any action ²or summary proceeding² arising out
22 of the lease, as described in section 1 of P.L. , c. (C.) (pending
23 before the Legislature as this bill), the lease clause shall also
24 contain the following provision in ⁴**[no less than 14 point bold**
25 **point type]** a bold typeface in a font size no less than one point
26 larger than the point size of the rest of the lease clause or 11 points,
27 whichever is larger⁴:

28
29 IF THE TENANT IS SUCCESSFUL IN ANY ACTION OR
30 SUMMARY PROCEEDING ARISING OUT OF THIS LEASE,
31 THE TENANT SHALL RECOVER ATTORNEY'S FEES ²**[AND]**
32 **OR²** EXPENSES ², OR BOTH² FROM THE LANDLORD ²TO
33 THE SAME EXTENT THE LANDLORD IS ENTITLED TO
34 RECOVER ATTORNEY'S FEES OR EXPENSES, OR BOTH AS
35 PROVIDED IN THIS LEASE².

36
37 3. ²**[Section 1]** This act² shall take effect immediately, and
38 shall apply to all ²**[residential leases currently in force. Section 2**
39 **shall apply to]**² new lease agreements ²for real property² executed
40 on and after the first day of the ²**[seventh]**² month ²**[next]**²
41 following enactment.

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46 Authorizes award of attorney's fees and expenses in landlord-
47 tenant actions under certain circumstances.

SENATE, No. 2018

STATE OF NEW JERSEY
215th LEGISLATURE

INTRODUCED MAY 31, 2012

Sponsored by:
Senator BRIAN P. STACK
District 33 (Hudson)

SYNOPSIS

Requires landlords to pay attorney's fees for successful tenants if lease reserves the landlord the same right.

CURRENT VERSION OF TEXT

As introduced.



S2018 STACK

1 AN ACT requiring a residential landlord to pay attorney's fees for a
2 successful tenant where the landlord has reserved the same right
3 through the lease, and supplementing chapter 18 of Title 2A of
4 the New Jersey Statutes.

5
6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

8
9 1. If a residential lease agreement provides that the landlord is
10 or may be entitled to recover either attorney's fees or expenses, or
11 both, incurred as a result of the failure of the tenant to perform any
12 covenant or agreement in the lease, or if the lease provides that such
13 costs may be recovered as additional rent, the court shall read an
14 additional implied covenant into the lease. This implied covenant
15 shall require the landlord to pay the tenant either the reasonable
16 attorney's fees or the reasonable expenses, or both, incurred by that
17 tenant as the result of the failure of the landlord to perform any
18 covenant or agreement in the lease. The court shall order the
19 landlord to pay such costs when actually and reasonably incurred in
20 the tenant's successful defense of any action or summary
21 proceeding commenced by the landlord against the tenant, or in any
22 action or summary proceeding commenced by the tenant against the
23 landlord, arising out of the lease. An order based on this implied
24 covenant shall require the landlord to pay the tenant such costs
25 either as money damages or a credit against future rent, as
26 determined by the tenant. Any waiver of this section shall be void
27 as against public policy.

28
29 2. If a residential lease agreement provides that the landlord is
30 or may be entitled to recover attorney's fees or expenses from the
31 tenant for any action arising out of the lease, as described in section
32 1 of P.L. , c. (C.) (pending before the Legislature as this bill),
33 the lease clause shall also contain the following provision in no less
34 than 14 point bold point type:

35
36 IF THE TENANT IS SUCCESSFUL IN ANY ACTION OR
37 SUMMARY PROCEEDING ARISING OUT OF THIS LEASE,
38 THE TENANT SHALL RECOVER ATTORNEY'S FEES AND
39 EXPENSES FROM THE LANDLORD.

40
41 3. Section 1 shall take effect immediately, and shall apply to all
42 residential leases currently in force. Section 2 shall apply to new
43 lease agreements executed on and after the first day of the seventh
44 month next following enactment.

1 STATEMENT

2

3 This bill requires a residential landlord to pay attorney's fees for
4 her tenant when the tenant is successful in a legal action between
5 the two, if the landlord has reserved the same right through the
6 lease.

7 Currently, landlords often provide in lease agreements that the
8 tenant will be responsible for the landlord's attorney's fees if the
9 landlord is successful in a legal action involving the tenant. If such
10 a lease provision exists, this bill would instruct courts to read into
11 the lease an additional requirement for the landlord to pay the
12 tenant's legal fees if the tenant is the successful party. Beginning
13 six months after enactment, any new lease agreement containing a
14 requirement for the tenant to pay the attorney's fees of a successful
15 landlord would also be obligated to contain language clearly
16 indicating a requirement for the landlord to pay the attorney's fees
17 of a successful tenant. This bill would improve the basic fairness of
18 landlord-tenant proceedings, and would create a disincentive for
19 landlords to bring unfounded eviction cases.

SENATE COMMUNITY AND URBAN AFFAIRS COMMITTEE

STATEMENT TO

SENATE, No. 2018

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 4, 2013

The Senate Community and Urban Affairs Committee reports favorably and with committee amendments Senate Bill No. 2018.

As amended by the committee, this bill requires a residential landlord to pay attorney's fees for a tenant whenever the tenant is successful in a legal action between the two, if the landlord has reserved the same right through the lease.

Currently, landlords often provide in lease agreements that the tenant will be responsible for the landlord's attorney's fees if the landlord is successful in a legal action involving the tenant. If such a lease provision exists, this bill would instruct courts to read into the lease an additional requirement for the landlord to pay the tenant's legal fees if the tenant is the successful party. Beginning six months after enactment, any new lease agreement containing a requirement for the tenant to pay the attorney's fees of a successful landlord would also be obligated to contain language clearly indicating a requirement for the landlord to pay the attorney's fees of a successful tenant. This bill would improve the basic fairness of landlord-tenant proceedings, and would create a disincentive for landlords to bring unfounded eviction cases.

The committee adopted amendments to clarify that the implied covenants established by the bill would parallel any provision in a lease that entitles a landlord to recover either attorney's fees or expenses, or both, incurred as a result of the failure of a tenant to perform any covenant or agreement under the lease. Accordingly, the implied covenant would entitle a tenant to recover either attorney's fees or expenses, or both, incurred as a result of the failure of a landlord to perform any covenant or agreement under the lease, depending on whether the lease provision provides for attorney's fees or expenses, or both. The committee also amended the bill to clarify that the implied covenants established by the bill would require a landlord to pay a tenant reasonable attorney's fees or expenses, or both, incurred by that tenant as a result of either the tenant's successful defense of any action or summary proceeding commenced by the landlord against the tenant, arising out of an alleged failure of the tenant to perform any covenant or agreement in the lease, or as the

result of any successful action or summary proceeding commenced by the tenant against the landlord, arising out of the failure of the landlord to perform any covenant or agreement in the lease. A court shall order such attorney's fees or expenses, or both, to a tenant who is the successful party in such actions or proceedings.

COMMITTEE AMENDMENTS

The committee amended the bill to:

- Clarify that an implied covenant under the bill would give tenants a right to recover attorney's fees or expenses, or both, that is parallel to any lease provision that entitles a landlord to recover attorney's fees or expenses, or both, for a violation of any covenant or agreement under the lease.
- Clarify that an implied covenant under the bill would require a landlord to pay a tenant reasonable attorney's fees or expenses, or both, incurred by that tenant as a result of either the tenant's successful defense of any action or summary proceeding commenced by the landlord, arising out of the lease, or as the result of any successful action or summary proceeding commenced by the tenant, arising out of the lease, and that a court shall order such attorney's fees or expenses, or both, to a tenant who is the successful party in such actions or proceedings.

STATEMENT TO
[First Reprint]
SENATE, No. 2018

with Assembly Floor Amendments
(Proposed by Assemblyman COUGHLIN)

ADOPTED: JUNE 20, 2013

This bill would require that a residential landlord pay a tenant's attorney's fees or expenses, or both, when the tenant prevails in a legal action or summary proceeding between the two if the landlord has reserved the same right through the lease. The sponsor seeks to clarify that a landlord is not required by law to include such provision in a written lease. Therefore, this bill is intended to establish parity between tenants and landlords regardless of whether a provision concerning the award of attorney's fees or expenses, or both, is included in the lease. An award of attorney's fees and reasonable expenses is in the court's discretion.

These floor amendments also clarify that the court may only award to the successful party expenses that are directly related to the proceedings. Expenses would include court costs and fees for witnesses but would not include personal expenses for travel, child care, or reimbursement for missed work time.

These floor amendments provide that, in an action or summary proceeding initiated by the landlord for non-payment of rent, a tenant who pays all rent currently due and owing after the filing of the complaint but prior to entry of a final judgment, and whom the court finds presented no meritorious defense to the action other than said payment, would not be deemed to have successfully defended against the action or summary proceeding for the purposes of an award of attorney's fees or expenses, or both.

Additionally, section 2 of the bill currently provides that a lease agreement that includes a provision regarding payment of a landlord's attorney's fees or expenses, or both, must include a provision requiring the landlord to pay the tenant's attorney's fees or expenses, or both. These floor amendments clarify that the tenant would be permitted to recover such attorney's fees or expenses, or both to the same extent as the landlord is entitled to recover as provided in the lease. These floor amendments also add the term "summary proceeding" to section 2 to maintain consistency throughout the bill.

These floor amendments additionally amend the effective date to provide that its provisions apply to all new lease agreements executed on the first day of the month following enactment.

STATEMENT TO

[Second Reprint]

SENATE, No. 2018

with Senate Floor Amendments
(Proposed by Senator STACK)

ADOPTED: JUNE 27, 2013

These floor amendments eliminate the provision in section 1 of the bill which provided that it was in the court's discretion to award attorney's fees or expenses, or both, to a tenant. It is the intent of the sponsor to insure parity between landlord and tenant by eliminating judicial discretion to award attorney's fees, or expenses, or both, only in the case of the tenant, not in the case of the landlord. A landlord who wishes to have judicial discretion apply equally to both landlord and tenant needs only to insert judicial discretion into the lease clause which grants the landlord the right to attorney's fees or expenses, or both. Such a requirement would also apply to awards to tenants, as this bill only grants tenants the right to attorney's fees or expenses, or both, to the same extent the landlord is entitled to recover these costs as provided in the lease. Since the bill's requirements do not take effect until a new lease is entered into, the landlord is not adversely affected by the terms of a lease entered into prior to the effective date.

STATEMENT TO
[Third Reprint]
SENATE, No. 2018

with Assembly Floor Amendments
(Proposed by Assemblyman COUGHLIN)

ADOPTED: DECEMBER 19, 2013

These floor amendments add to section 1 of the bill a provision that the court shall have discretion with respect to awards of attorney's fees or expenses, or both, for tenants to the same degree as it has with respect to awards of attorney's fees or expenses, or both, for landlords as provided under the lease either explicitly or implicitly.

In addition, the floor amendments modify the requirements for the font size of the typeface used to set out the attorney fee provisions in the residential lease agreement. Prior to the amendments, the provisions were to be set out in "no less than 14 point bold point type." The floor amendments provide that the provisions must be set out in "a bold typeface in a font size no less than one point larger than the point size of the rest of the lease clause or 11 points, whichever is larger."

ASSEMBLY, No. 3851

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED FEBRUARY 21, 2013

Sponsored by:

Assemblyman CRAIG J. COUGHLIN

District 19 (Middlesex)

Assemblyman TIMOTHY J. EUSTACE

District 38 (Bergen and Passaic)

SYNOPSIS

Requires landlords to pay attorney's fees for successful tenants if lease reserves the landlord the same right.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/8/2013)

A3851 COUGHLIN, EUSTACE

2

1 AN ACT requiring a residential landlord to pay attorney's fees for a
2 successful tenant where the landlord has reserved the same right
3 through the lease, and supplementing chapter 18 of Title 2A of
4 the New Jersey Statutes.

5

6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

8

9 1. If a residential lease agreement provides that the landlord is
10 or may be entitled to recover either attorney's fees or expenses, or
11 both, incurred as a result of the failure of the tenant to perform any
12 covenant or agreement in the lease, or if the lease provides that such
13 costs may be recovered as additional rent, the court shall read an
14 additional implied covenant into the lease. This implied covenant
15 shall require the landlord to pay the tenant either the reasonable
16 attorney's fees or the reasonable expenses, or both, incurred by that
17 tenant as the result of the failure of the landlord to perform any
18 covenant or agreement in the lease. The court shall order the
19 landlord to pay such costs when actually and reasonably incurred in
20 the tenant's successful defense of any action or summary
21 proceeding commenced by the landlord against the tenant, or in any
22 action or summary proceeding commenced by the tenant against the
23 landlord, arising out of the lease. An order based on this implied
24 covenant shall require the landlord to pay the tenant such costs
25 either as money damages or a credit against future rent, as
26 determined by the tenant. Any waiver of this section shall be void
27 as against public policy.

28

29 2. If a residential lease agreement provides that the landlord is
30 or may be entitled to recover attorney's fees or expenses from the
31 tenant for any action arising out of the lease, as described in section
32 1 of P.L. , c. (C.) (pending before the Legislature as this bill),
33 the lease clause shall also contain the following provision in no less
34 than 14 point bold point type:

35

36 IF THE TENANT IS SUCCESSFUL IN ANY ACTION OR
37 SUMMARY PROCEEDING ARISING OUT OF THIS LEASE,
38 THE TENANT SHALL RECOVER ATTORNEY'S FEES AND
39 EXPENSES FROM THE LANDLORD.

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41 3. Section 1 shall take effect immediately, and shall apply to all
42 residential leases currently in force. Section 2 shall apply to new
43 lease agreements executed on and after the first day of the seventh
44 month next following enactment.

STATEMENT

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This bill requires a residential landlord to pay attorney's fees for her tenant when the tenant is successful in a legal action between the two, if the landlord has reserved the same right through the lease.

Currently, landlords often provide in lease agreements that the tenant will be responsible for the landlord's attorney's fees if the landlord is successful in a legal action involving the tenant. If such a lease provision exists, this bill would instruct courts to read into the lease an additional requirement for the landlord to pay the tenant's legal fees if the tenant is the successful party. Beginning six months after enactment, any new lease agreement containing a requirement for the tenant to pay the attorney's fees of a successful landlord would also be obligated to contain language clearly indicating a requirement for the landlord to pay the attorney's fees of a successful tenant. This bill would improve the basic fairness of landlord-tenant proceedings, and would create a disincentive for landlords to bring unfounded eviction cases.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3851

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 14, 2013

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 3851.

Currently, a landlord may provide in a residential lease agreement that the tenant will pay the landlord's attorney's fees or expenses, or both, if the landlord prevails in a legal action against the tenant. This bill provides that if a residential lease contains such a provision, an implied covenant will be read into the lease specifying the converse: if the tenant is successful in a legal action involving the landlord, the landlord will pay the tenant's attorney's fees or expenses, or both.

Under section 1 of the bill as amended, if a residential lease provides that the landlord is or may be entitled to recover attorney's fees or expenses or both, incurred as a result of the failure of the tenant to perform any covenant or agreement in the lease, or if the lease provides that such costs may be recovered as additional rent, the court would read an additional parallel implied covenant into the lease. The additional covenant would require the landlord to pay the tenant the reasonable attorney's fees or reasonable expenses, or both, incurred by the tenant as the result of his successful defense of an action brought by the landlord arising out of the tenant's alleged failure to perform any covenant or agreement in the lease, or as the result of any successful action or summary proceeding commenced by the tenant against the landlord arising out of the failure by the landlord to perform any covenant or agreement in the lease.

Section 1 of the bill would take effect immediately and be applicable to all residential leases currently in force.

Under section 2 of the bill, any new lease agreement containing a requirement for the tenant to pay the attorney's fees of a successful landlord would also be required to contain a notice in no less than 14 point bold type that if the tenant is successful in any action or summary proceeding arising out of the lease, the tenant shall recover attorney's fees and expenses from the landlord.

Section 2 of the bill would apply to new lease agreements executed on and after the first day of the seventh month next following enactment.

COMMITTEE AMENDMENTS:

1. In section 1, insert the word “parallel” into the phrase “an additional implied covenant” so that the phrase now reads “an additional parallel implied covenant.”

2. In section 1, add language concerning the tenant’s successful defense of any action or summary proceeding commenced by the landlord against the tenant, arising out of an alleged failure of the tenant to perform any covenant or agreement in the lease, or as the result of any successful action or summary proceeding commenced by the tenant against the landlord, arising out of the failure of the landlord to perform any covenant or agreement in the lease.

3. In section 1, clarify that the court would order the landlord to pay attorney’s fees or expenses that are actually and reasonably incurred by a tenant who is the successful party in such actions or proceedings.

STATEMENT TO
[First Reprint]
ASSEMBLY, No. 3851

with Assembly Floor Amendments
(Proposed by Assemblyman COUGHLIN)

ADOPTED: MAY 20, 2013

This bill would require that a residential landlord pay a tenant's attorney's fees or expenses, or both, when the tenant prevails in a legal action or summary proceeding between the two if the landlord has reserved the same right through the lease. The sponsor seeks to clarify that a landlord is not required by law to include such provision in a written lease. Therefore, this bill is intended to establish parity between tenants and landlords regardless of whether a provision concerning the award of attorney's fees or expenses, or both, is included in the lease.

These floor amendments also clarify that the court may only award to the successful party expenses that are directly related to the proceedings. Expenses would include court costs and fees for witnesses but would not include personal expenses for travel, child care, or reimbursement for missed work time.

These floor amendments provide that, in an action or summary proceeding initiated by the landlord for non-payment of rent, a tenant who pays all rent currently due and owing after the filing of the complaint but prior to entry of a final judgment, and whom the court finds presented no meritorious defense to the action other than said payment, would not be deemed to have successfully defended against the action or summary proceeding for the purposes of an award of attorney's fees or expenses, or both.

Additionally, section 2 of the bill currently provides that a lease agreement that includes a provision regarding payment of a landlord's attorney's fees or expenses, or both, must include a provision requiring the landlord to pay the tenant's attorney's fees or expenses, or both. These floor amendments clarify that the tenant would be permitted to recover such attorney's fees or expenses, or both to the same extent as the landlord is entitled to recover as provided in the lease. These floor amendments also add the term "summary proceeding" to section 2 to maintain consistency throughout the bill.

STATEMENT TO
[Second Reprint]
ASSEMBLY, No. 3851

with Assembly Floor Amendments
(Proposed by Assemblyman COUGHLIN)

ADOPTED: JUNE 20, 2013

This bill would require that a residential landlord pay a tenant's attorney's fees or expenses, or both, when the tenant prevails in a legal action or summary proceeding between the two if the landlord has reserved the same right through the lease.

These floor amendments provide that an award of attorney's fees or expenses, or both, to a tenant is in the court's discretion, and that the tenant may only recover to the same extent that the landlord would be entitled to recover under the lease. These amendments additionally revise the effective date to make the bill applicable to all new residential lease agreements executed on and after the first day of the month following enactment.