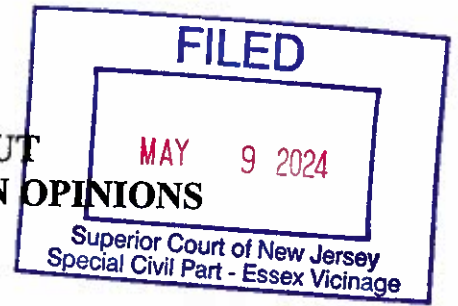


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SUPERIOR COURT OF NEW JERSEY
ESSEX VICINAGE
LAW DIVISION - SPECIAL CIVIL PART

DOCKET NO. ESX-LT-1879-24

FAIRKINGS PARTNERS, LLC,

Plaintiff,

v.

OPINION

ESSENCE DANIELS,

Defendant.

Decided: May 9, 2024

Ehrlich Petrillo Gudín Plaza & Reed P.C., attorney for Plaintiff (Derek D. Reed, Esq. of counsel and Erin Ehrlich Caro, Esq. on the brief)

Essence Daniels, *pro se*

SANTOMAURO, D., J.S.C.

This matter involves the application of N.J.S.A. § 2A:42-10.16a and N.J.S.A. § 46:8-49.3 (the “Stack Amendment”)¹ in circumstances where a landlord has

¹ Courts and litigants in landlord-tenant proceedings in the Special Civil Part routinely refer to these statutory provisions as the “Stack Amendment” because Senator Brian P. Stack was the primary sponsor of the legislation.

obtained a judgment of possession for non-payment of rent against a tenant, a warrant of removal has issued, and a tenant intends to invoke the protections of the Stack Amendment in a subsequent month where additional rent may have become due under the terms of the tenant's lease with the landlord. Specifically, the question before the court is whether the "rent payment" the tenant may pay pursuant to the Stack Amendment in order to avoid an eviction or return to possession within three days of the lockout is: (1) limited to the amount set forth in the judgment of possession that provides the basis for the lockout; or (2) the total amount due and owing at the time the tenant wants to make the rent payment pursuant to the Stack Amendment (i.e. the amount set forth in the judgment of possession plus any additional rent that has become due and owing under the lease). Although landlord-tenant courts confront this issue, this court has not located any published or unpublished decision addressing this specific question of statutory interpretation. For the reasons set forth below, the Stack Amendment requires a court provide a tenant three business days after a warrant for removal is posted or a lockout is executed due to nonpayment of rent for the tenant to submit a rent payment equal to the amount set forth in the judgment of possession. While the operative lease agreement between the parties may ultimately, and separately, obligate the tenant to pay a landlord an additional amount for rent accruing following the judgment of possession, such amounts are not part of the judgment of possession and do not form

the basis of the lockout for which the Stack Amendment provides relief. The Stack Amendment only requires a tenant to pay the amount of rent judicially determined to be due and owing as identified in the judgment of possession.

I. PROCEDURAL HISTORY

Plaintiff filed a complaint for non-payment of rent against defendant on January 30, 2024. Plaintiff alleged that plaintiff leased an apartment to defendant in Fairfield, New Jersey, defendant's rent was due on the first day of each month in the amount of \$1,029.00, and defendant owed plaintiff \$1,656.74 in unpaid rent as of the date the complaint was filed. Plaintiff's filing includes a copy of a New Jersey Department of Community Affairs Certificate of Registration reflecting that defendant's unit was one of 99 units on the property.

On March 13, 2024, a Special Civil Part Officer served the complaint on defendant. Trial was scheduled for March 18, 2024, but defendant did not appear and was defaulted. A judgment of possession by default was filed on April 4, 2024 based on the "landlord having shown that there is rent due and owing to the Landlord in the amount of \$5482.31."² On March 18, 2024, plaintiff filed a request for

² Following defendant's failure to appear for the scheduled trial, plaintiff filed a certification on March 19, 2024 (dated March 18, 2024) in support of plaintiff's request for issuance of a warrant of removal. The certification states that the amount of rent due as of March 18, 2024 was \$5,482.31, which includes certain amounts of unpaid rent for March 2024 and preceding months, utility charges, late fees,

issuance of a warrant of removal. A warrant of removal was subsequently issued on April 4, 2024,³ and served on defendant.

attorneys' fees, a fine for failing to comply with a recycling policy, a returned check fee, approximately \$3,000 as "reimbursement for repairs to a lightpole." Defendant has not disputed that all of amounts are due and owing as rent or additional rent under the lease (or can properly be assessed as rent in a nonpayment of rent case). The court notes that paragraph 3 of the lease includes a broad "additional rent" provision that, among other things, states that attorney's fees, court costs, late fees, return of payment fees, a \$60 common area fee, utility and insurance charges, and costs to comply incurred by the plaintiff if defendant fails to comply with any agreement in the lease and plaintiff is forced to do so on tenant's behalf are "additional rent."

³ The court notes the judgment of possession is dated, and was filed on, April 4, 2024. The judgment of possession states: "A Warrant for Removal allowing the landlord to take possession of the property may be issued after 04/08/2024." Thus, the April 4, 2024 warrant of removal appears inconsistent with the language in the judgment of possession, and, on its face, appears contrary to N.J.S.A. § 2A:18-57 (noting in relevant part that "[n]o warrant of removal shall issue until the expiration of 3 days after entry of judgment for possession, except as provided for in chapter 42 of this Title"). Defendant has not raised this issue. Moreover, it is not disputed, as noted in the April 4, 2024 judgment of possession, that defendant did not appear for the March 18, 2024 trial. The delay in actual entry and filing of the judgment of possession by default by the clerk until April 4, 2024 is an administrative issue that should not penalize plaintiff who promptly applied for a warrant of removal following defendant's default. See R. 6:6-3(b) ("In summary actions between landlord and tenant for the recovery of premises, judgment for possession may be entered by the clerk on affidavit if the defendant fails to appear, plead or otherwise defend, and is not a minor or mentally incapacitated person, except where the landlord acquired title from the tenant or has given the tenant an option to purchase the property."). See also Cmty. Realty Mgmt. v. Harris, 155 N.J. 212, 228 (1998) ("We recognize that the oral pronouncement of a judgment in open court on the record constitutes the jural act and that the entry of the written judgment is merely a ministerial memorialization thereof.") (internal citations and quotation marks omitted). The court shall treat the April 4, 2024 judgment of possession by default

On April 5, 2024, defendant filed a letter with the Court. Defendant's letter stated defendant had not attended the May 18, 2024 trial due to a death in her family. Significantly, however, defendant did *not* dispute owing plaintiff \$5,482.31 or that she could not currently pay this amount, stating (emphasis added):

"I could not pay the total amount of \$5,482.91 in full, *which was owed to the Plaintiff*, due to residing in an affordable housing unit based on my income, as I am a low-income single mother taking care of a four-year-old daughter and six-year-old son. Seeking aid from the St. James Social Service Corporation for rental assistance became necessary after Plaintiff refused a written agreement to stop the eviction process without any explanation.

* * *

I have submitted an Order to show cause to have the judgment stayed. Since I have contacted St. James Social Service Corporation for rental assistance, they have committed to paying the outstanding rent, but unfortunately, the process takes time to complete. As of April 4, 2024, I could only deposit \$1500 on that specific date with the court. If the case were to stay the judgment of possession, I could put forth a larger payment and the remaining balance of unpaid rent could be settled and paid in full with the help of the rental assistance corporation.

Therefore, I respectfully request that you consider my situation and provide me with additional time to resolve this matter. I am confident that with the assistance of St James Social Service Corporation, the

as *nunc pro tunc* to the actual March 18, 2024 date of default. Accordingly, the April 4, 2024 warrant of removal, while perhaps inconsistent with the literal language of the filed judgment of possession, is consistent with the requirement in N.J.S.A. § 2A:18-57 that a warrant of removal can only issue after the expiration of three days from the judgment of possession by default occurring as of March 18, 2024.

outstanding rent will be paid in full, and I will be able to continue my tenancy.”

Plaintiff filed an objection to defendant’s letter on April 5, 2024, asserting that defendant had not articulated any basis to vacate the judgment of possession.

On April 8, 2024, the court conducted a hearing. At the hearing, defendant represented that she did not have a written promise to pay from St. James Social Service Corporation. As defendant did not have a basis to vacate the default judgment for possession pursuant to Rule 4:50-1,⁴ the court considered granting an order for orderly removal pursuant to Rule 6:6-6(b). Plaintiff agreed that, if the court issued an order for orderly removal, defendant could make a rent payment to avoid eviction under the Stack Amendment.⁵ However, plaintiff asserted that the rent

⁴ “Rule 4:50-1 ... is made applicable to the Special Civil Part by Rule 6:6-1.” Hous. Auth. of Morristown v. Little, 135 N.J. 274, 282 (1994). As noted, Defendant here asserted that she had been unable to attend the March 18, 2024 trial because of a death in the family, which could potentially constitute excusable neglect under Rule 4:50-1(a). R. 4:50-1(a) (“On motion, with briefs, and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment or order for the following reasons: (a) mistake, inadvertence, surprise, or excusable neglect; ...). However, “a defendant seeking to reopen a default judgment because of excusable neglect must show that the failure to answer was excusable under the circumstances *and that a meritorious defense is available.*” Little, 135 N.J. at 284 (emphasis added). As defendant conceded she owed the amount of nonpayment of rent set forth in the judgment of possession (i.e. \$5,482.31), vacating the default judgment pursuant to Rule 4:50-1(a) was not a remedy available to defendant.

⁵ Rule 6:6-6(b) is entitled “Orders for Orderly Removal” and states: “An application for orderly removal requesting more time to move out, if there is a

payment would need to include the \$5,482.31 set forth in the judgment of possession *plus* rent for April 2024, which plaintiff alleged was currently unpaid.

The court requested briefing on whether amount of rent defendant would need to pay under the Stack Amendment could include rent other than in the amount identified in the judgment of possession. As a result, the court entered an order on April 8, 2024 staying the judgment of possession and warrant of removal and setting forth a briefing schedule. Plaintiff submitted its brief on April 15, 2024, asserting that to obtain the benefit of the Stack Amendment defendant would need to pay \$6,836.68 (i.e. the amount in the judgment of possession plus April rent). Defendant submitted her brief on April 17, 2024, asserting that she can make the payment of \$5,482.31 set forth in the judgment of possession, but not the additional amount. The court heard argument on this issue on April 29, 2024.

II. ANALYSIS

“The jurisdiction of the court in summary-dispossess proceedings is entirely

showing of good reason and applied for on notice to a landlord pursuant to paragraph (a) of this rule, need not have a return date if the sole relief is a stay of execution of a warrant of removal for seven calendar days or less, but it shall provide that the landlord may move for the dissolution or modification of the stay on two days’ notice to the tenant or such other notice as the court sets in the order.” R. 6:6-6(b). As plaintiff and defendant agree the Stack Amendment would apply to an eviction that occurs following entry of an order for orderly removal, the court need not address this point.

statutory.” Little, 135 N.J. at 281. For premises covered by the Anti-Eviction Act, N.J.S.A. §§ 2A:18-61.1 to -61.12, as is the case here, a landlord may only evict a tenant on one of the statutory grounds for summary dispossession identified in the act. See Green v. Morgan Props., 215 N.J. 431, 450 (2013) (noting that “the Anti-Eviction Act only permits eviction for the specified statutory reasons”). “Jurisdiction to grant the statutory remedy is contingent upon the existence of one or more of these grounds for eviction. The statute confers jurisdiction upon the Superior Court, Law Division, Special Civil Part to hear such cases, but they can be tried before a jury upon transfer to the Law Division.” State v. Hinton, 216 N.J. 211, 225 (2013) (citations omitted). A judgment of possession is enforced via a warrant of removal that cannot issue until three days after entry of the judgment of possession. N.J.S.A. § 2A:18-57. Further, the warrant of removal cannot be executed, and the tenant, therefore cannot be evicted, until three days after its issuance.⁶ N.J.S.A. § 2A:42-10.16.

One common grounds for eviction under the Anti-Eviction Act is nonpayment of rent pursuant to N.J.S.A. § 2A:18-61.1.a. This statute states in relevant part:

“No lessee or tenant . . . may be removed by the Superior Court from any house, building, mobile home or land in a mobile home park or

⁶ The landlord must also apply for a warrant of removal within 30 days of the judgment of possession, and it must be executed within 30 days of issuance. R. 6:7-1(d).

tenement leased for residential purposes . . . except upon establishment of one of the following grounds as good cause:

a. The person fails to pay rent due and owing under the lease whether the same be oral or written”

Id. Enacted in 2019 and effective March 1, 2020, the Stack Amendment applies only to evictions for nonpayment of rent pursuant to the Anti-Eviction Act.⁷ See P.L. 2019, c.316.

Section 1 of the Stack Amendment amends “The Fair Eviction Notice Act,”

N.J.S.A. § 2A:42-10.15, et. seq., and states:

“a. In an eviction action for nonpayment of rent, pursuant to subsection a. of section 2 of P.L.1974, c.49 (C.2A:18-61.1), the court shall provide a period of three business days after the date on which a warrant for removal is posted to the unit or a lockout is executed due to nonpayment of rent, for the tenant to submit a rent payment. A late fee shall not be imposed in excess of the amount set forth in the application for a

⁷ Defendant’s unit is within a complex of 99 units, which falls squarely within the ambit of N.J.S.A. § 2A:18-61.1 (which applies to “any house, building, mobile home or land in a mobile home park or tenement leased for residential purposes, other than (1) 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; (2) a dwelling unit which is held in trust on behalf of a member of the immediate family of the person or persons establishing the trust, provided that the member of the immediate family on whose behalf the trust is established permanently occupies the unit; and (3) a dwelling unit which is permanently occupied by a member of the immediate family of the owner of that unit, provided, however, that exception (2) or (3) shall apply only in cases in which the member of the immediate family has a developmental disability”). Thus, plaintiff’s eviction of defendant for nonpayment is pursuant to the Anti-Eviction Act, and the Stack Amendment applies.

warrant for removal if all rent due and owing is paid within the three business day period established by this subsection.

b. (1) A landlord shall accept all payments of rent made by a tenant within the three business day period established by subsection a. of this section and upon payment of the rent due and owing, within two business days thereafter, the landlord shall provide the court with written notice that the rent due and owing was paid. A copy of this notice shall be provided to the tenant.

(2) Upon receipt of the written notice as provided in this subsection, the court shall dismiss with prejudice the action for nonpayment of rent.

(3) If the tenant makes a timely payment within the three business day period established by subsection a. of this section, and the landlord fails to provide the court with written notice of the rent payment, the tenant may file a motion to dismiss with prejudice the action for nonpayment of rent upon notice to the landlord.”

N.J.S.A. § 2A:42-10.16a. Section 2 of the Stack Amendment supplements Title 46 of the Revised Statutes and provides:

“a. A landlord shall accept a rent payment made within the three business day period established by subsection a. of section 1 of P.L.2019, c.316 (C.2A:42-10.16a), whether made by cash, certified check, or money order, or through any federal, State, or local rental assistance program or bona fide charitable organization on behalf of the tenant. A landlord shall cooperate with any federal, State, or local rental assistance program or bona fide charitable organization which has committed to pay the rent due and owing. If a landlord does not respond to a tenant’s efforts to resolve the issue of late payment through a third party, the tenant may seek a remedy by requesting an order to show cause.

b. A landlord shall provide the tenant with a receipt after each rent payment is made within the three business day period established by

subsection a. of section 1 of P.L.2019, c.316 (C.2A:42-10.16a), which shall include the date on which the payment was made.

c. In the event that a landlord of a rent-controlled property is entitled to recover attorney's fees or expenses under the lease agreement, incurred as a result of the failure of the tenant to pay rent due and owing, unless otherwise limited by local ordinance, the court shall take into consideration all factors associated with each case and may limit the amount awarded to the landlord to a reasonable fee based on those factors.

d. A landlord who violates any provision of P.L.2019, c.316 (C.2A:42-10.16a et al.), shall be subject to a penalty of not more than \$500 for each offense. The penalty shall be collected and enforced by summary proceedings pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), in a court of competent jurisdiction.

N.J.S.A. § 46:8-49.3.

The first sentence of section 1.a of the Stack Amendment set forth the court's obligation regarding the issue raised herein: "In an eviction action for nonpayment of rent . . . *the court shall provide a period of three business days* after the date on which a warrant for removal is posted to the unit or a lockout is executed due to nonpayment of rent, *for the tenant to submit a rent payment.*" N.J.S.A. § 2A:42-10.16a(a). Thus, the threshold question for the court is: What is the meaning of the phrase "rent payment"?

When interpreting a statute, the "paramount goal" is to give effect to the Legislature's intent. DiProspero v. Penn., 183 N.J. 477, 492 (2005) (citation omitted).

“The statute's language is ordinarily the ‘surest indicator’ of that intent.” Frugis v. Bracigliano, 177 N.J. 250, 280 (2003) (quoting Cornblatt, P.A. v. Barow, 153 N.J. 218, 231 (1998)). As the Court advised in DiProspero:

“It is not the function of this Court to rewrite a plainly-written enactment of the Legislature [] or presume that the Legislature intended something other than that expressed by way of the plain language. We cannot write in an additional qualification which the Legislature pointedly omitted in drafting its own enactment, or engage in conjecture or surmise which will circumvent the plain meaning of the act. Our duty is to construe and apply the statute as enacted.”

Id. at 492 (internal citations and quotation marks omitted). If the plain language of the statute leads “to a clear and unambiguous result, then [the] interpretive process is over.” Richardson v. Bd. of Trs., Police & Firemen's Ret. Sys., 192 N.J. 189, 195 (2007) (citation omitted). However, when “there is ambiguity in the statutory language that leads to more than one plausible interpretation,” courts can “turn to extrinsic evidence, ‘including legislative history, committee reports, and contemporaneous construction.’” DiProspero, 183 N.J. at 493 (quoting Cherry Hill Manor Assocs. v. Faugno, 182 N.J. 64, 75 (2004)).

Plaintiff asserts that a “plain reading” of the Stack Amendment requires a tenant to “pay all rent due and owing as of the date the payment is made in order to vacate the pending warrant of removal, dismiss the pleading nonpayment of rent eviction and continue the subject tenancy.” Plf. Brf. at p. 1. The court disagrees.

The term “rent payment” is not defined in the Stack Amendment, and the Legislature did provide any explicit language specifying whether the “rent payment” that must be paid is the amount set forth in the judgment of possession or includes additional amounts that may have subsequently accrued under the lease. Plaintiff urges the court to rely on the phrase “all rent due and owing” in the second sentence of section 1.a of the Stack Amendment, which states: “A late fee shall not be imposed in excess of the amount set forth in the application for a warrant of removal if all rent due and owing is paid within the three business day period established by this subsection.” Plf. Brf. at pp. 1-2 (quoting N.J.S.A. § 2A:42-10.16a(a)). However, this sentence suffers from the same infirmity – there is no language clarifying whether “all rent due and owing” refers to the amount due and owing as set forth in the judgment of possession or includes additional amounts that subsequently accrued under the terms of the operative lease agreement.⁸ Accordingly, the court finds the

⁸ Plaintiff argues that “[i]f the legislature had intended to limit the amount to be paid to the ‘judgment amount,’ it would have said that.” Plf. Br., at p. 2. However, the Legislature could not simply refer to a “judgment amount” because a summary dispossess proceeding does not involve money damages but only possession of the subject premise. See Hodges v. Sasil Corp., 189 N.J. 210, 221 (2007) (“Possession of the premises is the only available remedy for nonpayment of rent, because money damages may not be awarded in a summary dispossess action.”). To the extent plaintiff is suggesting that the Legislature could have included language limiting the required payment of rent to the “amount set forth in the judgment of possession for non-payment of rent” (or words to that effect), that is a plausible argument. However, the contrary view is equally plausible. If the Legislature had intended – in a statute specifically addressing an eviction based on a judgment of possession for

plain language of section 1.a of the Stack Amendment is ambiguous and susceptible to more than one plausible interpretation when viewed in isolation.

However, the Stack Amendment includes more than section 1.a. Importantly, in reviewing a statute, a court must read the statutory words “in context with related provisions so as to give sense to the legislation as a whole.” W.S. v. Hildreth, 252 N.J. 506, 519 (2023) (quoting DiProspero, 183 N.J. at 492). Indeed, it is a cardinal rule of statutory construction that statutes “must also ‘be read in their entirety; each part or section should be construed in connection with every other part or section to provide a harmonious whole.’” In re D.J.B., 216 N.J. 433, 440 (2014) (quoting Burnett v. Cnty. of Bergen, 198 N.J. 408, 421 (2009)). Thus, the court will consider the import of section 1.b on the statutory construction analysis.⁹

Section 1.b establishes a mechanism for dismissing the judgment of possession as follows:

(1) A landlord must accept all payments of rent made by a tenant during the three-day period established by section a., N.J.S.A. § 2A:42-10.16a(b)(1);

non-payment of rent – to require payment of rent not found due and owing in the judgment of possession it would have said that.

⁹ The court also reviewed section 2 of the Stack Amendment, which is quoted above. Sections 2.a. and 2.b. both refer back to section 1.a of the Stack Amendment by referencing the “rent payment” that can be made by the tenant pursuant to section 1.a.

(2) Within two days of receipt of the rent “rent due and owing” the landlord must advise the court in writing that the rent due and owing was paid, id.;

(3) The Court is required to “dismiss with prejudice the action for nonpayment of rent” upon receipt of the landlord’s notice, N.J.S.A. § 2A:42-10.16a(b)(2); and

(4) In the event that the landlord does not provide the notice despite the tenant’s payment of rent, the tenant “may filed a motion to dismiss with prejudice the action for non-payment of rent upon notice to the landlord,” N.J.S.A. § 2A:42-10.16a(b)(3).

These provisions indisputably link payment of the rent due and owing to the dismissal with prejudice of the action for nonpayment of rent. Critically, the action for nonpayment results, if in landlord’s favor after a trial (or as the case here, default), in a judgment of possession that establishes the landlord’s right to dispossess the tenant based on a judicial determination of the amount of rent that it is due and owing. See Musselman v. Carroll, 289 N.J. Super. 549, 555 (App. Div. 1996) (stating that it is the “judgment of possession . . . which will terminate a tenancy”). Stated differently, sections 1.a and 1.b of the Stack Amendment create a statutory scheme centered on the tenant’s submission of “a rent payment” to obtain a dismissal with prejudice of the judgment of possession. N.J.S.A. § 2A:42-10.16a.

It would be anomalous to require that a “court provide a period of three business days after the date on which a warrant for removal is posted to the unit or a lockout is executed due to nonpayment of rent, for the tenant to submit a rent payment,” *id.*, but then make the amount of that “rent payment” subject to consideration of additional amounts of rent that may or may not accrue under the terms of the lease agreement *after the judgment of possession*. Indeed, while a complaint seeking possession for nonpayment of rent is essentially self-amending to include unpaid rents up until the time of trial, R. 6:3-4(c),¹⁰ there is nothing to suggest that a judgment of possession can similarly amend itself after entry.¹¹

¹⁰ Rule 6:3-4(c) states: “Complaints in summary actions for possession of residential premises based on non-payment of rent must be verified in accordance with R. 1:4-7, must expressly state the owner’s identity, the relationship of the plaintiff to the owner, *the amount of rent owed as of the date of the complaint and that if this amount and any other rent that comes due is paid to the landlord or the clerk at any time before the trial date*, or before 4:30 p.m. on the day of trial, the case will be dismissed. The amount of rent owed for purposes of the dispossession action can include only the amount that the tenant is required to pay by federal, state or local law and the lease executed by the parties. The complaint shall be substantially in the form set forth in the model verified complaint contained in Appendix XI-X to these Rules.” *Id.* (emphasis added).

¹¹ A party may seek to alter or amend a final judgment by serving a motion “not later than 20 days after service of the judgment or order upon all parties.” R. 4:49-2. While Rule 4:49-2 is applicable to the Special Civil Part, see R. 6:6-1, the court need not address whether it would permit a landlord to apply to amend a judgment of possession for nonpayment of rent to include rent payments that became due and owing subsequent to the entry of the judgment of possession. Plaintiff did not make any such application here.

The court, therefore, finds that the “rent payment” identified in the Stack Amendment must only be in the amount identified in the judgment of possession. This conclusion is consistent with caselaw emphasizing the importance of fixing, at the time of trial and in the judgment of possession, the amount of rent that is owed and provides the basis for the eviction for nonpayment. See, e.g., Green, 215 N.J. at 449 (“Although the only judgment entered at the conclusion of the summary dispossess proceeding is a judgment for possession of the premises, part of the court's findings include the amount of rent, including additional rent, that is due and owing. That sum fixes the amount that the tenant may post into court or pay to the landlord in order to prevent the eviction from taking place. It thus protects the tenant by identifying the sum the tenant must pay or post to prevent the eviction.”) (internation citations omitted); Id. at 450 (“[L]andlords seeking to evict for nonpayment of rent technically, can only look to the amount of rent that is due and owing, and it is that calculation that is used to fix the obligations of the parties as to possession. . . . Fixing the rent, including any additional rent, that is due is a crucial step in the process of entering a judgment of possession.”).

The court’s conclusion is further buttressed by the fact that the Legislature used the qualifier “under the lease” in describing the good cause ground to assert a claim for eviction against a tenant or lessee pursuant to N.J.S.A. § 2A:18-61.1.a. Id. (identifying as good cause for eviction when “[t]he person fails to pay rent *due and*

owing under the lease whether the same be oral or written”) (emphasis added). The absence of the “under the lease” qualifier in section 1.a of the Stack Amendment reflects Legislative intent to distinguish between the rent due and owing in order to obtain a judgment of possession (i.e. “the rent due and owing under the lease”) and the amount of the rent payment that a tenant must make to realize the benefits of the Stack Amendment (i.e. the amount judicially determined as due and owing in the judgment of possession). See State v. Ryan, 249 N.J. 581, 599 (2022) (“It is the Legislature’s prerogative to impose a requirement in one context but not another; it is our duty to treat that distinction as meaningful.”); Ge Solid State v. Dir., Div. of Taxation, 132 N.J. 298, 308 (1993) (“Under the established canons of statutory construction, where the Legislature has carefully employed a term in one place and excluded it in another, it should not be implied where excluded.”).

Plaintiff asserts that any interpretation of the Stack Amendment that limits the “rent payment” to the amount of nonpayment set forth in the judgment of possession would make the second sentence of section 1.a of the Stack Amendment impermissibly superfluous. Specifically, plaintiff claims that “if the legislature had intended for the amount to be paid by the tenant under the Stack Amendment to be limited to the judgment amount, there would be no reason for it to specifically prohibit the assessment of an additional late fee, because all that would be relevant, for the purpose of satisfying the statute, is whether the tenant paid the judgment

amount.” Plf. Brf. at p. 3 (citing Bd. of Ed. Of City of Hackensack v. City of Hackensack, 63 N.J. Super. 560, 569 (App. Div. 1960)). This argument is unavailing. The court construes this language as providing that, if the tenant pays the rent that is due and owing – i.e. the amount that forms the basis of and is set forth in the judgment of possession – within three business days, the landlord cannot thereafter add late fees that accrue to the tenant’s detriment for the delay in payment between the time of the judgment of possession and the tenant’s payment. While the language could be clearer, it is not rendered superfluous by the court’s interpretation of the Stack Amendment.¹²

¹² Plaintiff asserts that “if the tenants are required to pay ‘all rent due and owing’ at the time, as specifically stated in the statute, then the second sentence of subsection (a) is not rendered superfluous at all. Rather the statute directs us that if the tenant pays all rent due, the landlord cannot also assess an additional late fee that accrued after the filing of the warrant of removal.” Plf. Brf. at p. 3. The court agrees that “if the tenant pays all rent due, the landlord cannot also assess an additional late fee that accrued after the filing of the warrant of removal.” But the court departs from Plaintiff’s view that the foregoing means that the “rent payment” referenced in the Stack Amendment must constitute all rent due and owing at the time the payment is made rather than what is set forth in the judgment of possession. Plaintiff’s position might be correct *if* the language stated that such a late fee “may not be included in the amount due and owing” or words to that effect. Such language could potentially be construed as superfluous under the court’s interpretation of the statute. But the Stack Amendment does not so state. Instead, a plain reading reflects a cause and effect at odds with plaintiff’s interpretation – the tenant must pay the rent due and owing within the three-day period and, if so, the landlord cannot then impose an additional late fee associated with the delay in payment. Practically, this makes sense. The tenant is paying to remain in the tenancy and dismiss the judgment of possession – it would be odd for the Legislature to create such a remedy and immediately start the tenant behind the proverbial 8-ball by allowing the tenant to

Plaintiff also argues that a finding that “the amount to be paid is only the amount set forth in the [judgment of possession]” would impermissibly “lead to an absurd result or be inconsistent with the statute’s overall purpose.” Plf. Brf. at p. 3 (quoting Pfannenstein v. Surrey, 475 N.J. Super. 83, 95 (App. Div. 2023)).

Specifically, plaintiff asserts:

“If the Court were to find that the only amount to be paid was the amount set forth in the [judgment of possession], which had been entered weeks (sometimes over a month) before the lockout is scheduled, then landlords would be forced to immediately refile for eviction for the subsequent months that come due. As a result, tenants tendering payment in reliance on the Stack Amendment will not gain the peace of mind and security of knowing that they have cured their arrearages and saved their tenancy. Rather, these tenants will find themselves right back in court, within a matter of weeks, to address the arrearages that have accrued between the time of the application for the Warrant of Removal and the execution of the lockout. And because every [judgment of possession] will quickly become stale while tenants remain in the unit for weeks after the entry of the [judgment of possession], this cycle will just keep repeating itself.”

Plf. Brf. at p. 3.

Plaintiff’s reference to the tenant’s “peace of mind” is curious. The court will not speculate on how hypothetical tenants may feel by the court’s construction of the Stack Amendment. The court notes only that under plaintiff’s interpretation a tenant is evicted under the circumstances presented herein, while under the court’s

assess late fees on the payment of the very amount that restored the tenancy. The language in the second sentence of section 1.a of the Stack Amendment ensures this cannot occur.

construction a tenant remains in the tenancy. Further, the court's decision is consonant with defendant's request here.

Regardless, the risk that tenants *may* find themselves soon back in court is not reason to depart from the court's statutory construction. If a landlord files a subsequent summary dispossession action against the tenant regarding alleged nonpayment of rent that accrued following the judgment of possession in a prior action, the validity of such a claim (as well as any defenses) and a determination of any amount of nonpayment can be properly adjudicated at a trial in the subsequent action. Further, the potential for subsequent proceedings always exists in landlord-tenant matters when a summary dispossession action for nonpayment is dismissed and the tenancy continues. However, this does preclude tenants from obtaining dismissal of actions for nonpayment of rent when payment is made for the amount owed in a pending action. See Green, 215 N.J. at 450 ("If the tenant pays the amount fixed by the court in a timely fashion, the tenant is restored to possession and the landlord can gain the benefit of receiving payment of the rent that was due.").

Plaintiff also contends that landlords will be adversely impacted because they would "find themselves on a potential 'merry-go-round' with tenants." Plf. Brf. at p. 3. As noted above, the potential for subsequent action is not compelling. Moreover, the endless "merry-go-round" feared by plaintiff is seemingly more imaginary than real as the landlord has alternative remedies. Indeed, a tenant's

habitual nonpayment of rent provides an alternative ground for eviction pursuant to N.J.S.A. § 2A:18-61.1(j).

Finally, the court acknowledges that the question raised here was not susceptible to an easy and obvious answer, and further clarification by way of legislation may be helpful. However, at this juncture the court is left with interpreting the current language of the Stack Amendment to glean legislative intent. It has done so here.

CONCLUSION

For the foregoing reasons, the court rules in favor of defendant and against plaintiff on the statutory interpretation of the Stack Amendment. The court vacates the portion of its prior order staying the judgment of possession and warrant of removal in this matter. To invoke the protections of the Stack Amendment, defendant must make a rent payment in the amount of \$5,482.31, which is the amount set forth in the judgment of possession, within three business days of the date a lockout is executed. The court's ruling does not preclude plaintiff from instituting a subsequent action seeking possession based on alleged nonpayment of rent that became due and owing pursuant to the operative lease agreement between the parties subsequent to entry of the judgment of possession and remains unpaid.