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

DOCKET NO. ESX-LT-10566-24

NC ROSEVILLE SENIOR 2016 UR LLC,

Plaintiff,

v.

DOROTHY HOWARD,

Defendant.

OPINION

Decided: October 24, 2024

Lindsay R. Baretz, Esq. LLC, attorneys for Plaintiff (Lindsay R. Baretz, Esq. on the brief)

Essex-Newark Legal Services, attorneys for Defendant Dorothy Howard (Anthony D. Kershaw, Esq. on the brief)

SANTOMAURO, D., J.S.C

Defendant tenant Dorothy Howard ("tenant") seeks to dismiss plaintiff landlord NC Roseville Senior 2016 U.R. LLC's ("landlord's") complaint seeking to evict tenant from her residence at 1 South 8th Street, Apartment 111 in Newark, New Jersey ("Premises") pursuant to the Anti-Eviction Act ("Act"), N.J.S.A. § 2A:18-

61.1 et seq., for alleged non-payment of rent. Relying on the Appellate Division decision in Montgomery Gateway E. I. v. Herrera, 261 N.J. Super. 235 (App. Div. 1992), tenant contends that landlord automatically waived its claim to evict tenant for non-payment of rent owed under a prior lease term because landlord entered into a new, written lease agreement with tenant and accepted tenant's payments under the new lease. Landlord opposes tenant's motion. While construing the Montgomery Gateway decision to set forth a waiver rule is seemingly anathema to the entire concept of waiver, which typically requires a fact-intensive inquiry into the intent and knowledge of the party alleged to have waived a right, the court nevertheless agrees with tenant's position concerning the import of Montgomery Gateway. The Appellate Division there established a waiver rule that applies to the narrowly prescribed circumstances set forth in that case – and here. While landlord offers a plethora of well-argued reasons to reject or distinguish Montgomery Gateway, the court declines to do so for the reasons set forth below. Further, the court rejects landlord's argument that it cannot have waived its eviction complaint because landlord was compelled to enter into the new lease agreement with tenant.

I. Factual and Procedural Background

While the parties differ as to the legal ramifications of what transpired between them, the relevant facts are largely not disputed. The Premises is a unit in

a Section 8 project-based, subsidized housing complex in Newark, New Jersey.[1] See Tenant Brf. (Transaction Id. No. SCP20242960572) at p. 1; Compl. at ¶ 6. Tenant

[1] "The federal section 8 rental assistance program was established under the United States Housing Act of 1937, 42 U.S.C. § 1437 et seq., and provides rent subsidies for low- and moderate-income participants so that they can afford to lease privately owned housing units." Turner v. Crawford Square Apartments III, L.P., 449 F.3d 542, 544 n.4 (3d Cir. 2006). See also Franklin Tower One v. N.M., 157 N.J. 602, 608 (1999). A Section 8 tenant pays an amount equal to 30 percent of their adjusted monthly income, 10 percent of the monthly income, or, if on welfare, the amount designated by the welfare agency to meet the housing needs of the tenant. 42 U.S.C. § 1437a(a)(1). The project's owner contracts with a public housing agency ("PHA") that authorizes a maximum rent the owner can charge, and receives the difference between that amount and the amount paid by the Section 8 tenant. 42 U.S.C. § 1437f(c). The landlord is responsible for determining eligibility and the amount of the tenant's portion of the rent. 42 U.S.C. 1437f(d)(1)(A). The tenant is recertified on an annual basis to determine continued eligibility as a Section 8 tenant, and to determine any adjustments in the Section 8 tenant's portion of the rent. 42 U.S.C. § 1437a(a)(6). See also United States Department of Housing and Urban Development ("HUD") Handbook 4350.3-CHG 19: Occupancy Requirements of Subsidized Multifamily Housing Programs" ("HUD Handbook") (available at: https://www.hud.gov/program_offices/administration/hudclips/handbooks/hsgh/4350.3) (last visited October 5, 2024) at §§ 3, 5, 7-1.

The Premises here is a unit in a Section 8 project-based housing subsidized by HUD. Section 8 subsidies were not part of the original Housing Act of 1937. As the D.C. Circuit Court of Appeals recently explained in outlining the history of Section 8 rental subsidies:

> In 1974, Congress amended the United States Housing Act of 1937 to establish, among other things, a "lower-income housing assistance" program, Housing and Community Development Act of 1974, Pub. L. No. 93-383, § 201(a), 88 Stat. 633, 662 (1974), designed to "aid[] low-income families in obtaining a decent place to live," 42 U.S.C. § 1437f(a); see also Cisneros v. Alpine Ridge Grp., 508 U.S. 10, 12, 113 S. Ct. 1898, 123 L. Ed. 2d 572 (1993). Through that program, now commonly known as the Section 8 housing program, see Cisneros, 508 U.S. at 12, Congress authorized HUD to provide financial assistance

payments "with respect to existing housing" to further that goal, 42 U.S.C. § 1437f(a). HUD disburses this financial assistance primarily through two forms of programs: "tenant-based" assistance and "project-based" assistance. Id. § 1437f(f)(6)-(7); see also id. § 1437f(d)(2), (o); 24 C.F.R. § 982.1(b)(1). Tenant-based assistance is linked to individual households, while project-based assistance is linked to specific housing units.

[Sandpiper Residents Ass'n v. United States HUD, 106 F.4th 1134, 1137 (D.C. Cir. 2024).]

See also Truesdell v. Phila. Hous. Auth., 290 F.3d 159, 161 n.2 (3d Cir. 2002) ("Project-based assistance differs from tenant-based assistance in that the former is tied to a particular unit, whereas the latter entails a voucher entitling the participant to select a unit anywhere in [the relevant] jurisdiction."). See also Pasquince v. Brighton Arms Apartments, 378 N.J. Super. 588, 591 n.1 (App. Div. 2005). The HUD Handbook, which is applicable to project-based subsidies, see Kuzuri Kijiji, Inc. v. Bryan, 371 N.J. Super. 263, 265 (App. Div. 2004), explains the distinction between the Section 8 project-based subsidies and the Section 8 housing-choice vouchers as follows: A HUD subsidized housing project is one where the subsidy is "paid to owners on behalf of tenants to keep the amount that tenants pay for rent affordable. This is assistance is tied to the property and differs in that respect from tenant-based rental assistance programs (e.g., Housing Choice Vouchers) where the subsidy follows the tenant when a tenant moves to another property." HUD Handbook at § 1-3.C.

Landlord's complaint specifically identifies the Premises as part of a "PBV." Compl. (Transaction Id. No. SCP20242238731) at ¶ 6. A PBV is a project-based voucher. According to the HUD website, a PBV is a component of a public housing agency's "Housing Choice Voucher (HCV) program. PHAs are not allocated additional funding for PBV units; the PHA uses its tenant-based voucher funding to allocate project-based units to a project." See Project-Based Vouchers (available at: https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/project) (last visited October 5, 2024).

currently resides at the Premises pursuant to a Model Lease for Subsidized Programs for the period between March 1, 2024 and February 28, 2025, which was signed by the parties on February 27, 2024 ("Current Lease"). Certification of Lease and Registration Statement (Transaction Id. No. SCP20242238731) at Attachment (Model Lease (¶2 and p. 9).

Tenant's moving brief asserts the following "facts"[2]:

- The Premises is part of a complex subsidized by HUD where a tenant's monthly rental obligation is limited to 30% of the household's adjusted income and a tenant must undergo an annual recertification process toward determining the tenant's continued eligibility and portion of their rent;
- Landlord began residing at the Premises in 2002; [3]

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[2] Tenant's brief includes a "Statement of Facts" that is essentially bereft of any citation to any evidence reflecting such facts (for example, a certification from tenant). Rather, tenant impliedly requests the court to simply accept these facts as true. As landlord did not raise this as an issue, the court will, unless otherwise noted, accept the "facts" in tenant's brief relating to the lease agreements between the parties and the amounts paid for purposes of this motion only. Specifically, the parties appear to agree on: (1) the nature of the subsidized housing; (2) the timing and payment terms of the Current Lease and the immediately preceding lease; (3) that tenant owes some money to landlord for outstanding rent pursuant to the prior lease; and (4) that tenant made, and landlord accepted, all rent payments due under the Current Lease.

[3] Landlord's Complaint alleges that tenant has resided at the Premises since 2021. See Compl. at ¶ 5. Tenant's moving brief asserts that tenant began residing at the Premises on or about March 1, 2002. For purposes of this motion, the date tenant began residing at the Premises is irrelevant as the only relevant period is that covered by the prior lease and the Current Lease – for which the parties agree.

- Landlord provided tenant with a new, written lease in March 2023 for the lease term between March 2023 and February 2024;

- The March 2023 lease included an upward adjustment to $280 in her monthly rent obligation, but tenant erroneously continued to pay her prior lease amount of $258.00 per month;[4]

- After tenant was recertified, tenant signed the Current Lease agreement to cover the period between March 2024 to February 2025; and

- Tenant's monthly rent under the current lease agreement is $288.00, and tenant has made, and landlord accepted, all payments under the terms of the current lease.

Tenant Brf. at pp. 1-2.

Landlord filed a Complaint against tenant on June 19, 2024 for non-payment of rent.[5] Specifically, the Complaint alleges that tenant owes $736.35 consisting of:

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[4] Tenant's position in this regard is not consistent with the rent ledger attached to the Complaint. See Compl. at Attachment (Rent Ledger). The rent ledger identifies only a single $258.00 payment by tenant (on June 8, 2023) during the period between March 2023 and February 2024. The ledger reflects that the remaining payments during this period were made inconsistently and range from $260 to $600. See id.

[5] Although not specified in the Complaint, the court understands landlord seeks eviction pursuant to the Act – specifically, N.J.S.A. § 2A:18-61.1(a) (identifying as a ground for a tenant's eviction if "[t]he person fails to pay rent due and owing under the lease whether the same be oral or written . . ."). The Act applies to residential tenancies "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,

(1) 17.35 for April 2023; (2) $560 for July and August 2023; (3) $22.00 for June 2023; (4) $80.00 for November 2023 through February 2024; and (5) a $57.00 filing fee.[6] Compl. at ¶ 9A. Although the Complaint only alleges non-payment for periods between April 2023 and February 2024, the Complaint does not attach a copy of the lease agreement between the parties for this period (i.e. the lease for the period immediately preceding the Current Lease). Indeed, while the Certification of Lease and Registration Statement filed with the Complaint states that "[t]he lease that is the subject of this action is" attached in full, the actual attachment is the Current Lease. Certification of Lease and Registration Statement at ¶ 2 and Attachment (Model Lease). The Current Lease is the only lease agreement that the parties have provided to the court.

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however, that exception (2) or (3) shall apply only in cases in which the member of the immediate family has a developmental disability." N.J.S.A. § 2A:18-61.1. The documents filed with the Complaint reflect that the Premises is a unit in a complex containing 99 units. Certification of Lease and Registration Statement at Attachment (View Property Details). Thus, the Act applies.

[6] These amounts are less than what is depicted as due and owing in the rent ledger and landlord's April 17, 2024 Notice of Termination for Non-Payment of Rent ("Notice of Termination"). See Complaint (Rent Ledger attachment, Notice of Termination attachment). The rent ledger attached to the Complaint covers the period between December 1, 2021 and May 31, 2024 and reflects that defendant owed $922.63 as of May 22, 2024. The Notice of Termination asserted tenant owed $1,222.63 as of April 17, 2024. See id.

Trial on landlord's Complaint was originally scheduled for July 30, 2024. On that date, tenant's counsel advised that tenant wanted to file a motion to dismiss the Complaint on the ground that landlord waived its claim to evict tenant for non-payment of rent as a matter of law. The court agreed to adjourn the trial to allow the parties to brief the issue. See Clerk's Notice (Transaction Id. No. SCP20242813709).

After receiving the parties' briefs the court scheduled oral argument for August 26, 2024, which was adjourned to August 27, 2024 at the request of the parties. See Clerk's Notice (Transaction Id. No. SCP20243189708). At the August 27, 2024 argument, landlord requested permission to file additional briefing, which the court permitted. See Clerk's Notice (Transaction Id. No. SCP20243221102). Landlord provided its supplemental submission on September 12, 2024, see Landlord Supp. Brf. (Transaction Id. No. SCP20243436529), and tenant submitted a supplemental reply on September 24, 2024, see Tenant Supp. Brf. (Transaction Id. No. SCP20243592515).

II. Analysis

A. Parties Arguments

Tenant's argument in support of its motion to dismiss is relatively straightforward. Specifically, tenant argues that the Montgomery Gateway decision established a bright-line rule mandating that a landlord's acceptance of rent under a

new lease bars an eviction for non-payment for amounts owed under a prior lease. See Tenant Brf. at p 4.

On July 30, 2024 and in its initial opposition brief, landlord asserted it could not waive its right to evict tenant by offering a new lease because it was obligated to do so by federal law as tenant receives subsidized housing. See Landlord Brf. (Transaction Id. No. SCP20243005240) at p. 1-2. Specifically, landlord asserted that: (1) "[i]t is undisputed that subsidized landlords cannot terminate a tenancy or refuse to renew a lease without good cause," Landlord Brf. at p. 3 (citing 24 C.F.R. 966.4(l)(2)(i) and 42 U.S.C. § 1437f); and (2) "[i]t is undisputed, and remarkably clear from settled New Jersey precedent that a landlord may not refuse to renew the lease of a subsidized tenant without good cause," Landlord Brf. at p.3 (citing Templeton Arms v. Feins, 220 N.J. Super. 1 (App. Div. 1987)). Landlord also argued that the Montgomery Gateway decision was "overruled" by N.J.S.A. § 52:27D-287.9(a), a statutory provision enacted in 2021 that addresses aspects of eviction proceedings in connection with the COVID-19 pandemic, see P.L.2021, c.188 (effective August 4, 2021). See Landlord Brf. at p. 4.

At oral argument on August 27, 2024, the parties continued to spar over these issues. Tenant disputed landlord's position that landlord was required by federal law to renew tenant's lease annually. Instead, tenant argued that, by its plain language, the lease between landlord and tenant would convert to a month-to-month lease upon

its expiration. Tenant also contended, pursuant to N.J.S.A. § 46:8-10, that New Jersey law does not mandate a landlord renew a lease, and, instead, provides that an expired lease becomes a month-to-month lease if the landlord continues to accept payment. Id. ("Whenever a tenant whose original term of leasing shall be for a period of one month or longer shall hold over or remain in possession of the demised premises beyond the term of the letting, the tenancy created by or resulting from acceptance of rent by the landlord shall be a tenancy from month to month in the absence of any agreement to the contrary.")

The parties' supplemental submissions continued to debate the import of the Montgomery Gateway decision on tenant's waiver argument, and whether landlord here was required to execute the Current Lease with tenant under federal law.

B. The Montgomery Gateway Waiver Rule

The parties' central disagreement is whether the Montgomery Gateway decision establishes a bright-line waiver rule that mandates dismissal of landlord's Complaint.

"Waiver is the voluntary and intentional relinquishment of a known right." Knorr v. Smeal, 178 N.J. 169, 177 (2003). See also In re Adoption of J.E.V., 226 N.J. 90, 114 (2016). As the Court stated in Knorr:

> An effective waiver requires a party to have full knowledge of his legal rights and intent to surrender those rights. The intent to waive need not be stated expressly, provided the circumstances clearly show that the party knew of the right and then abandoned it, either by design or

> indifference. The party waiving a known right must do so clearly, unequivocally, and decisively.
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> [178 N.J. at 177 (internal citations omitted).]

"Determining whether a party waived a right is a fact-sensitive analysis." Cole v. Jersey City Med. Ctr., 215 N.J. 265, 277 (2013). See also Shebar v. Sanyo Bus. Sys. Corp., 111 N.J. 276, 291 (1988) ("Questions of waiver, therefore, are usually questions of intent, which are factual determinations that should not be made on a motion for summary judgment."). However, "where one conclusion can be reached on the facts adduced [waiver] becomes a matter of law." Jasontown Apartments v. Lynch, 155 N.J. Super. 254, 259 (App. Div. 1978)

In the landlord-tenant context, it is well-settled that a landlord can waive the right to seek eviction. In Carteret Properties. v. Variety Donuts, Inc., the Court considered the defendant tenant's argument that a plaintiff landlord waived the right to terminate a commercial lease based upon a breach of a lease covenant by accepting monthly rent for so long a period. 49 N.J. 116 (1967). Although the Court remanded for a more fulsome factual record on the issue, it seemingly set forth a bright-line rule that a landlord that accepts payment of rent waives any prior breaches of the lease. As the Court stated:

> There is no doubt that acceptance of rent with knowledge of the breach, if any, constitutes a waiver of all past breaches. Plaintiff had received all rent due until the end of the month of November 1965. Acceptance of the November rent waived all breaches prior to the date plaintiff received it. The notice to terminate the tenancy was served on

> November 6, 1965 and the issue of waiver must be determined as of that day.
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> [Id. at129 (internal citations omitted).]

Thereafter, the Appellate Division elaborated on the Carteret decision in Jasontown Apartments. There, the court considered the plaintiff landlord's argument that "in the given circumstances, a conclusion of waiver cannot be reached as a matter of law based solely upon the receipt of rent following service of the notices to terminate or initiation of the dispossess action." 155 N.J. Super. at 258. In agreeing with the landlord, the Appellate Division ruled that Carteret did not establish a per se waiver rule, stating:

> In Carteret the court was dealing with a questionable allegation of breach of lease consisting of conduct which had been known and tolerated not only by the original lessor, but by his successor as well, for well over five years. In these circumstances not only was acceptance of rent, and the failure to object to the conduct later condemned as a breach, evidential on whether a breach occurred but was, in the court's view, conclusive of a waiver of a breach, if indeed there was a breach. It should be emphasized that the court did not state that acceptance of rent following service of a notice to terminate constituted conduct of a type repelling the normal rule that waiver is, except in unusual circumstances, an issue of fact. Rather, we conclude that despite the generality of the language used, the court was simply concluding that under the stipulated facts of that case waiver had been shown as a matter of law. We cannot interpret the case as holding that in every dispossess action, whatever its facts, and no matter how clear the breach and no matter how clear the land's insistence upon compliance with lease provisions, a landlord must, in practical terms, forfeit rent following service of the notice to terminate or after institution of proceedings for possession, if he insists upon its effectiveness.
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> [Id. at 261 (emphasis added).]

The Appellate Division then determined that, rather than constituting a bright-line waiver rule, receipt of payment after initiating statutory dispossess proceedings was only "evidence" of waiver, stating:

> [R]eceipt of the payments after the initiation of statutory dispossess proceedings provides only evidence of a waiver which should be considered together with all other existing circumstances in determining whether the defense of waiver has been sustained. If the trial judge concludes, from these facts, including the acceptance of payments in the amount of rent subsequent to initiation of the dispossess proceedings, that the landlord intended to waive the notice to quit and the breaches of lease upon which the notice to quit and the breaches of lease were based, then he should dismiss the complaint. If, however, he concludes that no such waiver was intended, then he should grant landlord the relief it seeks.
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> [Id. at 262-63 (emphasis added).]

In reaching this decision, the Appellate Division considered opposing views from other jurisdictions and essentially adopted what it termed the "following principle" from the "better reasoned cases":

> "Waiver has been defined as the intentional relinquishment of a known right. . . . Acceptance of rent after a notice changing tenancy or after [a] notice to quit does not necessarily operate to waive the notice. While the unconditional acceptance by a landlord of moneys as rent, which rent as accrued after the time the tenant should have surrendered possession, will constitute strong evidence of the landlord's waiver of the notice to quit, waiver always rests on intent, and is ever a question of fact."
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> [Jasontown Apartments, 155 N.J. Super. at 254 (quoting United Illuminating Co. v. Syntex Rubber Corp., 231 A.2d 89 (Conn. Cir. Ct. 1966) (internal citation marks omitted) (emphasis added).]

Both Carteret and Jasontown Apartments addressed waiver in the context of a landlord's eviction claim for issues other than non-payment of rent.[7] In the context of claims to evict a tenant for non-payment of rent, however, as a general rule, a tenant can pay rent up until the time of trial, and the landlord's acceptance of such payment will not constitute a waiver. For example, 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

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[7] In Carteret, the landlord sought to evict the tenant based on the tenant selling bus ticket to the public in violation of a lease covenant stating that the "premises were to be used only 'for the retail sale of donuts, coffee, and the incidental sale of cold sandwiches, together with juices, soft drinks, pre-packaged ice cream [and] machine vended cigarettes.'" 49 N.J. at 121. Similarly, in Jasontown Apartments, the parties stipulated that "tenants are occupying apartments in plaintiff's apartment complex while in violation of a rule forbidding pets which is part of their respective leases and which was a required part thereof by the New Jersey Housing Finance Administration, the agency which provided the financing for construction of the complex." 155 N.J. Super. at 257. While courts continue to follow the fact-intensive inquiry from Jasontown Apartments in deciding whether a landlord's acceptance of rent constitutes waiver in cases involving breach of lease provisions unrelated to payment of rent, the Appellate Division has also questioned the propriety of declining to find waiver in such cases. See The Meadows Found., Inc. v. Williamson, 368 N.J. Super. 416, 424 (App. Div. 2004) ("On the issue of waiver raised by defendants, we agree with the trial judge's recognition of case law making clear that, standing alone, acceptance of rent does not constitute a waiver, although it may be evidence of a waiver. We add, however, that this case does not involve a landowner who seeks possession by reason of the non-payment of rent. It would be a strange doctrine of law that would require a landlord with a legitimate basis for demanding possession, facing a tenant who contumaciously remains in residence, to have to forego the receipt of compensation for occupancy after the final quit-date." (emphasis added)).

> 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 dispossess 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."
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> [Id. (emphasis added)].

See also Musselman v. Carroll, 289 N.J. Super. 549, 555 (App. Div. 1996) ("An action for possession will be dismissed if the tenant pays the amount of rent owed before a judgment is entered."). That an eviction complaint for non-payment of rent must be dismissed if paid in full prior to trial necessarily means that the landlord's acceptance of payments prior to trial cannot constitute a per se waiver of the landlord's eviction claim for non-payment of rent.[8]

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[8] A landlord's acceptance of rent payment after entry of a judgment for possession for non-payment of rent formerly would have voided the judgment because the judgment of possession terminates the tenancy. Musselman, 289 N.J. Super. at 555 ("[I]it is a judgment of possession, and not the filing of a complaint for possession, which will terminate a tenancy."). However, the enactment of the Stack Amendment (referred to as such because Senator Brian P. Stack was the primary sponsor of the legislation), P.L.2019, c.316 (effective March 1, 2020), altered this analysis. Specifically, N.J.S.A. § 2A:42-10.16a(a) provides that in an eviction action for non-payment of rent pursuant to the Act, N.J.S.A. § 2A:18-61.1(a), "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). A landlord is required to accept such payment. N.J.S.A. § 46:8-49.3(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."). There is

In addition, cases after Jasontown addressing waiver in the context of habitual late payment of rent claims pursuant to N.J.S.A. § 2A:18-61.1(j) apply the fact-intensive analysis endorsed by the Appellate Division in Jasontown. See, e.g., A.P. Dev. Corp. v. Band, 113 N.J. 485, 497-98 (1988) ("Similarly, we are unpersuaded by the tenants' contention that the landlord's acceptance of the rent and the late charge constituted a 'waiver,' traditionally defined as an intentional relinquishment of a known right. . . . We conclude, therefore, that the Legislature did not intend that a landlord's acceptance of late payments of rent and a late charge constitutes a waiver of the right to evict a tenant because of the tenant's habitual late payment of rent." (internal quotation marks and citations omitted); Ivy Hill Park, Section III, Inc.

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little case law interpreting the Stack Amendment, and the term "a rent payment" is not defined in the Stack Amendment. Based on the plain language of the statute, it is not clear whether a landlord is required to accept a partial payment of the amount owed set forth in the judgment for possession (which is what the Stack Amendment read literally would seemingly indicate) or only a full payment of the amount owed according to the judgment for possession (which, in this court's view, is more consistent with the practical and statutory reason to require a landlord to accept payment – i.e. to allow the tenant to remain in possession and terminate the eviction proceed, N.J.S.A. § 2A:42-10.16a(b)). It is also unclear whether, if a landlord is required to accept a partial payment, whether any post-judgment for possession payment within the three-day period permitted by the Stack Amendment could ever constitute a waiver. As tenant did not assert waiver based on any landlord post-judgment for possession acceptance of payment, and landlord has not argued that the Stack Amendment undermines the holding of Montgomery Gateway, the Court need not decide these issues. The court notes only that the Stack Amendment implicates several issues impacting landlord-tenant relationships and judicial proceedings that could benefit from further clarification by the Legislature, appellate jurisprudence, or both.

v. Abutidze, 371 N.J. Super. 103, 115 (App. Div. 2004) ("In some circumstances, acceptance of rent may operate as a waiver of a breach of the lease and thereby prevent eviction. Here, the tenants urge us to find that the landlord's acceptance of late rent paid by them after the Notice to Cease operated as a waiver of that notice in its entirety. We do not agree, in part because the statutory basis for eviction here, namely, habitual late payment of the rent, itself requires that the landlord demonstrate that the late payment of rent continued after the Notice to Cease." (internal citations omitted); Tower Mgmt. Corp. v. Podesta, 226 N.J. Super. 300, 306 n.4 (App. Div. 1988) ("Plaintiff's acceptance of defendant's September rent may also have effected a waiver of all past breaches." (emphasis added)). In short, in accord with Jasontown, New Jersey court have routinely eschewed any bright-line rules in the context of a landlord's eviction claims. The question before this court is whether the Montgomery Gateway decision adopted a different approach where a landlord executes a new lease with a tenant in default for non-payment under the prior lease and then accepts payment under that new lease.

In Montgomery Gateway, the plaintiff landlord sought to evict the defendant Section 8 tenant for nonpayment of rent pursuant to the Act, N.J.S.A. § 2A:18-61.1(a)), via a complaint fled on April 1, 1991. 261 N.J. Super. at 238. The landlord alleged a "written lease for a one-year period commencing June 1, 1989, a monthly rental of $204, and unpaid rent totaling $2,818." Id. The tenant not only disputed

the amount due, but also contended that the landlord waived its claim for non-payment of rent. Specifically, the tenant asserted that the landlord entered into a new, one-year lease with the tenant starting June 1, 1991, the landlord accepted the tenant's payments under that new lease, and the tenant was current on rental payment under that new lease. Id.

The trial court ruled in favor of the landlord. On appeal, the tenant raised three issues: "the default under the expired lease cannot be 'good cause' under the Act; that by entering into a new lease, plaintiff waived its right to treat the old nonpayments of rental as a default; and that the evidence [did] support the trial judge's finding as to the amount of rent due from defendant." Id. at 239. The Appellate Division reversed on three "separate" grounds, including waiver. Id.

With respect to waiver, the court noted as follows:

> [W]e are satisfied that the new lease given to defendant and the acceptance of rent thereunder compels a finding of waiver. See Jasontown Apartments v. Lynch, 155 N.J. Super. 254, 262-263, 382 A.2d 688 (App. Div.1 978); also A.P. Development Corp. v. Band, 113 N.J. 485, 498, 550 A.2d 1220 (1988). Standing alone, the acceptance of rent would not necessarily operate as a waiver. See Jasontown Apartments v. Lynch, supra. It would be no more than evidence. Ibid. However, the granting of a new lease and acceptance of rent in that new term is so inconsistent with an intention to require a surrender of possession of the premises as to amount to an election to waive the right to terminate the tenancy because of the past rent defaults.
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> [Id. at 240-241 (emphasis added).]

On its face, the case here appears to fit squarely into the Montgomery Gateway rubric. Both cases involve a Section 8 tenant, the tenant's failure to pay all rent pursuant an expired lease, the parties' agreement to a new lease, and the tenant's payment, and the landlord's acceptance, of rent under the new lease. Nevertheless, landlord here offers several reasons why this court should not follow the Montgomery Gateway decision here.

First, landlord characterizes the Appellate Division's discussion of waiver in Montgomery Gateway as "dicta." Landlord Brf. at p. 3 ("Having already determined that the Plaintiff's case in Montgomery Gateway should have been dismissed due to the lack of evidence to support that Ms. Herrera owed any rent at all, every word that follows thereafter in the opinion is necessarily dicta."). The court disagrees. "Dicta" has been defined as a statement in a judicial opinion that is "not necessary to the decision then being made." Jamouneau v. Div. of Tax Appeals, 2 N.J. 325, 332 (1949). However, the New Jersey Supreme Court has rejected efforts to broadly construe appellate court statements as "dicta." See, e.g., State v. Rose, 206 N.J. 141, 182-83 (2011). In Rose, the Court rejected the dissenting opinion's assertion that "any part of a judicial decision by this Court that goes beyond the minimum needed to accord relief to the parties to an action constitutes non-precedential dicta." Id. As the Court stated:

> That proposition is contrary to the established principle articulated in various respected authorities that an expression of opinion on a point

> involved in a case, argued by counsel and deliberately mentioned by the court, although not essential to the disposition of the case . . . becomes authoritative[] when it is expressly declared by the court as a guide for future conduct.
>
> Phrased differently, matters in the opinion of a higher court which are not decisive of the primary issue presented but which are germane to that issue . . . are not dicta, but binding decisions of the court.
>
> [Id. at 183 (alteration in original) (internal quotation marks and citations omitted).]

See also State v. Anicama, 455 N.J. Super. 365, 379 (App. Div. 2018) (noting that a rejection of a claim was not dicta even where that rejection was not the focus of the Appellate Division's decision). In Montgomery Gateway, the Appellate Division identified three, independent grounds for reversing the trial, which it made clear by stating: "An examination of the record persuades us of a number of separate reasons why the decision below must be reversed." 261 N.J. Super. at 239 (emphasis added). The careful and detailed discussion of waiver – an independent, decisive basis for the court's ruling – is not dicta.[9]

[9] Moreover, even if the Appellate Division's ruling concerning waiver was dicta, which this court rejects, dicta is "entitled to due consideration." Jamouneau, 2 N.J. at 332. See also Bandler v. Melillo, 443 N.J. Super. 203, 210 (App. Div. 2015) "Much depends upon the character of the dictum. Mere obiter may be entitled to little weight, while a carefully considered statement . . . though technically dictum, must carry great weight . . .." In re A.D., 441 N.J. Super. 403, 422-23 (App. Div. 2015) (quoting Barreiro v. Morais, 318 N.J. Super. 461, 468 (App. Div. 1999) (alternations in original)). Certainly, the Appellate Division's statements in Montgomery Gateway are carefully considered, and, as such, would carry great weight even if deemed dicta.

Second, landlord contends the Montgomery Gateway decision is an outlier that the court should disregard. Landlord Brf. at p. 3 ("Defendant cites no case where any court has found that a tenant who owed rent was immune from eviction solely because the Landlord renewed the lease. Nor can Defendant cite to any such case because no such case exists. (But see e.g., Matthew G. Carter Apartments v. Richardson 417 N.J. Super. 60, 67 (App. Div. 2010) rejecting Defendant's Montgomery Gateway waiver argument.)"). The court does not agree that the Montgomery Gateway decision can be disregarded. It has not been reversed, and there is no published Appellate Division decision questioning its efficacy.

Moreover, the Appellate Division's decision in Matthew G. Carter Apartments did not "reject" tenant's waiver argument here. On the contrary, the Matthew G. Carter Apartments decision confirmed the Montgomery Gateway rule when distinguishing it because the landlord there did not seek to evict tenant for non-payment of rent, but, instead, asserted a habitual non-payment of rent claim pursuant to N.J.S.A. § 2A:18-61.1(j).[10] As the court stated:

> This case is therefore entirely distinguishable from the facts presented in Montgomery Gateway v. Herrera, 261 N.J. Super. 235, 618 A.2d 865 (App.Div.1992), upon which defendant relies.
>
> * * *

[10] This provision of the Act provides that a landlord may seek to evict a tenant when "[t]he person, after written notice to cease, has habitually and without legal justification failed to pay rent which is due and owing." N.J.S.A. § 2A:18-61.1(j).

> Here, when plaintiff executed the new lease with defendant, it had served the notice to cease and defendant had made one subsequent late payment. Plaintiff's cause of action for habitual late payment of rent had not accrued. See A.P. Dev. Corp. v. Band, 113 N.J. 485, 498, 550 A.2d 1220 (1988) (noting that the statutory cause of action "is not based upon a single late payment" after the notice to cease). Simply put, the execution of the new lease was not inconsistent with plaintiff's intention to evict defendant if she habitually paid her rent late, and, when the new lease was executed, plaintiff possessed no cause of action to waive.
>
> [417 N.J. Super. at 68 (emphasis added).]

See also Ivy Hill Park, at 115.

Third, landlord attempts to distinguish the facts here from those in Montgomery Gateway. In particular, landlord focuses on the fact that the Current Lease here was entered into prior to landlord filing the Complaint. Landlord's Brf. at pp. 2-3 ("Thus, [in Montgomery Gateway] the lease was entered into after the first court appearance on the eviction complaint, but before the final judgment entered. Here, however, the new lease was entered into several months before the complaint was filed and several months before Plaintiff's cause of action could have accrued.").

While it is certainly true that the Current Lease here was entered into by the parties prior to landlord filing the Complaint, it is not clear that the new lease in Montgomery Gateway was entered into after the filing of the complaint as alleged by landlord. The Appellate Division notes only that there was a "renewal lease for a one-year period commencing June 1, 1991," but does not specify whether the

parties signed the renewal lease prior or after the landlord there filed the April 1, 1991 complaint. 261 N.J. Super. at 238.

More importantly, for purposes of construing the scope of the Montgomery Gateway decision, landlord's argument raises a distinction without a difference. Indeed, the court's straightforward and unambiguous holding regarding waiver does not reference the timing of the new lease vis-à-vis the filing of the complaint or condition its import on such timing. Id. at 240 ("the granting of a new lease and acceptance of rent in that new term is so inconsistent with an intention to require a surrender of possession of the premises as to amount to an election to waive the right to terminate the tenancy because of the past rent defaults").

The court's discussion of the potential consequences of its decision further demonstrates that the timing of the new lease in relation to the filing of the complaint is irrelevant to the waiver issue. As the court stated:

> At oral argument some concern was expressed that the recognition of a new or renewal lease as a waiver of past defaults would force landlords to accelerate the institution of dispossess actions. While the immediate institution of such an action is an option the landlord may choose, there is equally available the option of refusing to enter into a renewal lease and treating the tenant as a holdover while attempting to work out the problem of the past due rent. If the recognition of a new or renewal lease as a waiver of a right to dispossess for past rental defaults does act to accelerate the institution of dispossess actions, it by the same token will act to eliminate the assertion of late dispossess actions tried with stale and sometimes unavailable evidence.
>
> [Id. at 240-41.]

By acknowledging, but rejecting as a basis to decide the waiver issue differently, concerns that its decision could result in landlords filing eviction actions more quickly after a non-payment, the court made clear that it is the act of entering into a new lease at any point time after tenant's non-payment under the old lease that triggers the waiver regardless of whether landlord has filed a complaint against tenant for that non-payment. This is further evidenced by the court identifying the landlord's remedy for the concerns raised – i.e. treat the tenant as a holdover tenant rather than offer a new or renewal lease.

Fourth, landlord asserts that the Montgomery Gateway decision was "overruled" by 2021 legislation addressing the impact of the COVID-19 pandemic on landlord-tenant disputes, see P.L.2021, c.188. See Landlord Brf. at p. 4. Landlord specifically relies upon N.J.S.A. § 52:27D-287.9(a), which provides:

> Notwithstanding any other law to the contrary, no residential tenant of a very low-income household, low-income household, moderate-income household, or middle-income household shall be evicted based upon nonpayment or habitual late payment of rent, or failure to pay a rent increase, that accrued during the covered period.[11] Payments made by a tenant after the covered period ends shall be credited first to the current month's rental obligation, and any balance shall be credited to any arrearage owed by the tenant incurred following the conclusion of the covered period, and then to any arrearages incurred during the covered period.
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> [Id. (footnote added).]

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[11] For purposes of this statute, "'[c]overed period means the period beginning on March 1, 2020, and ending on August 31, 2021." N.J.S.A. § 52:27D-287.8.

Landlord maintains (without citation) that prior to enactment of N.J.S.A. § 52:27D-287.9(a), "payments made by the tenant would have been applied to the oldest outstanding balance" and, as such, landlord's "complaint would have asserted the rent due and owing would be due from March 2024, April 2024, and May 2024 as all payments received to date would have been applied to older balances." Landlord Brf. at p. 4. Therefore, landlord argues, tenant's position would be "moot, as the amounts due would clearly have been due from after the lease had been renewed." Id. Landlord further argues that while N.J.S.A. § 52:27D-287.9(a) limits "Landlords' ability to evict tenants for past due rent that accrued between March 1, 2020 and August 31, 2021 [i.e. the "covered period"], it did not place any limitation on Landlords' right to evict tenant for rents that had accrued prior to March 1, 2020. Therefore, to the extent that Defendant's Montgomery Gateway argument was ever valid, it was overruled by statutory amendments." Landlord Brf. at 4 (emphasis in original).

Landlord's assertion that tenant's position concerning waiver would be moot but for N.J.S.A. § 52:27D-287.9(a), while creative, is not persuasive. Even if landlord is correct that a different result would be required in an alternative world

where the Legislature did not enact N.J.S.A. § 52:27D-287.9(a) and landlord applied tenant's payments to back rent,[12] that is not the world in which this case resides.

Landlord's argument that the absence of any limitation in N.J.S.A. § 52:27D-287.9(a) on a landlord's right to "evict [a] tenant for rents that had accrued prior to March 1, 2020" compels the conclusion that the statute "overruled" Montgomery Gateway, Landlord Brf. at p. 4 (alteration added), suffers from similar infirmities. Landlord here is not seeking to "evict tenant for rents that had accrued prior to March 1, 2020." See Compl. at ¶ 9A (identifying amounts owed for the period between April 2023 and February 2024 under the lease prior to the Current Lease). Moreover, Montgomery Gateway did not create a generally applicable rule of waiver resulting from a landlord's acceptance of rent. Rather, it sets forth a narrowly prescribed

[12] Landlord's position also appears speculative as there is nothing in the record to reflect this to be the case. Moreover, landlord did not identify any pre-N.J.S.A. § 52:27D-287.9(a) law requiring a landlord to apply a tenant's rent payment to arrears under a prior lease rather than to the current leases monthly rent obligation. Certainly, the Montgomery Gateway decision – which, as landlord acknowledges, was issued prior to N.J.S.A. § 52:27D-287.9(a), see Landlord Brf. at p. 4 – involved a landlord that applied rent payments to amounts owed under the new lease rather than the prior lease. Further, while landlord concedes that N.J.S.A. § 52:27D-287.9(a) "provides for a specific order of applying payments received by tenants," there is nothing in the statute to reflect that this specific order was previously prohibited. Indeed, the purpose of the statute is to "ensure that rent arrearages accrued during the covered period are not used as a mechanism for eviction" while also assisting "landlords who have suffered deep economic losses through no fault of their tenants or themselves" by providing "landlords with the restored rental income stream required to safely and efficiently operate their buildings . . .." N.J.S.A. §§ 52:27D-287.7(i) and (j).

circumstance in which a landlord will be deemed to have waived a claim for non-payment – i.e. when the landlord seeks to evict a tenant for rent owed under a prior lease, the landlord executed a new lease with that tenant despite the arrearages under the prior lease, and the tenant is current on payments under the new lease (and landlord accepted such payments). 261 N.J. Super. at 241. That the Legislature did not identify these specific circumstances as a limitation on a landlord's right to evict a tenant when it enacted N.J.S.A. § 52:27D-287.9(a) – a statute addressing the impact of a pandemic on evictions and rent payments – does not mean that the Legislature "overruled" Montgomery Gateway.

In sum, landlord's various attempts to undermine the Montgomery Gateway decision are unavailing. Notwithstanding the general principle that finding waiver requires a "fact-sensitive analysis," Cole, 215 N.J. at 277, the Appellate Division's decision in Montgomery Gateway sets forth a waiver rule applicable in very specific circumstances – i.e. "the granting of a new lease and acceptance of rent in that new term is so inconsistent with an intention to require a surrender of possession of the premises as to amount to an election to waive the right to terminate the tenancy because of the past rent defaults," 261 N.J. Super. at 241. The court carefully reviewed the Montgomery Gateway decision, which has not been overruled or disputed by subsequent, published appellate authority, for any potential limitations the Appellate Division implicitly or explicitly suggested for application of the

waiver rule in the specific circumstances identified by the Appellate Division. The court identified none. As such, the court finds that where the facts of a case fit the narrow circumstances of the rule outlined by the Appellate Division in Montgomery Gateway, a finding of waiver is mandated.

The court's determination that Montgomery Gateway establishes a waiver rule, albeit limited to specific circumstances, in the context of landlord-tenant eviction actions does not end the analysis, however. With this issue resolved, the court must determine whether the facts here constitute such specific circumstances requiring application of that waiver rule.

C. The Montgomery Gateway Waiver Rule Applies as Neither State Law, Nor Federal Law Compelled Landlord to Enter into the Current Lease with Tenant

As noted above, the circumstances here appear facially the same as those present in Montgomery Gateway. Both cases involve: (1) a Section 8 tenant; (2) the tenant's default under a lease agreement by failing to pay all rent due and owing; (3) the landlord and tenant executing a new lease agreement notwithstanding the tenant's default for non-payment under the prior lease agreement; (4) the tenant making, and the landlord accepting, all rent payments under the new lease agreement; and (5) the landlord seeking to evict the tenant pursuant to the Act, N.J.S.A. § 2A:18-61.1(a), for non-payment of rent under the prior lease agreement. As such, the facts of this case seemingly require the Montgomery Gateway waiver

rule's application to dismiss landlord's Complaint to evict tenant for non-payment of rent.

Landlord, however, raises a novel argument based on alleged facts not identified or addressed in the Montgomery Gateway decision. Specifically, landlord asserts that federal law required landlord to enter into the Current Lease with defendant, and, as such, landlord cannot have waived its right to seek eviction. Landlord Brf. at p. 3. The court agrees with the premise underlying landlord's position – if a law compelled landlord to execute the Current Lease with tenant, such circumstances would remove this case from the rubric underlying the Montgomery Gateway waiver rule. Indeed, a legal compulsion to execute the Current Lease, and landlord's acceptance of rent pursuant to the Current Lease, would not be "so inconsistent with an intention to require a surrender of possession of the premises as to amount to an election to waive the right to terminate the tenancy because of the past rent defaults."[13] Montgomery Gateway, 261 N.J. Super. at 241. The question,

[13] When a tenant's original lease expires, the lease is converted to a month-to-month lease by operation of law absent a new agreement to the contrary. N.J.S.A. § 46:8-10 ("Whenever a tenant whose original term of leasing shall be for a period of one month or longer shall hold over or remain in possession of the demised premises beyond the term of the letting, the tenancy created by or resulting from acceptance of rent by the landlord shall be a tenancy from month to month in the absence of any agreement to the contrary."). See also Tower Mgmt. Corp. v. Podesta, 226 N.J. Super. 300, 302 (App. Div. 1988) ("Upon expiration of the lease, defendant became a month-to-month tenant." (citing N.J.S.A. § 46:8-10)); S.D.G. v. Inventory Control Co., 178 N.J. Super. 411, 414 (App. Div. 1981) ("It is clear that after the

then, is whether landlord identified any such legal requirements. As set forth below, the court finds landlord has not.

1. Landlord was Not Compelled to Enter into the Current Lease with Tenant by State Law

Landlord's arguments focus almost exclusively on federal law that purportedly compelled landlord to renew its written lease agreement with tenant. See Landlord Brf. at p. 3 (citing 42 U.S.C. § 1437f, 24 C.F.R. 966.4(l)(2)(i), and Templeton Arms, 220 N.J. Super. 1[14]); Landlord Supp. Brf. at p.1, 2 (citing the

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termination of the lease on October 31, 1976 the tenant's status became that of a month-to-month tenant on the same terms as set forth in the lease. N.J.S.A. § 46:8-10."). "The rights and duties of such a holdover tenant are governed by the terms of the expired lease, absent a contrary agreement." Newark Park Plaza Assocs. v. Newark, 227 N.J. Super. 496, 499 (Law Div. 1987). The court will address the interplay between N.J.S.A. § 46:8-10 and the Act below. However, for purposes of landlord's position regarding the impact of any legal requirement compelling a new lease, the court notes that where a landlord's lease is automatically converted to a month-to-month lease pursuant to N.J.S.A. § 46:8-10 upon expiration of the prior lease's term, the court is unaware of anything that would preclude the landlord's ability to evict the tenant for non-payment of rent pursuant to the prior lease simply by virtue of the landlord-tenant relationship continuing on a month-to-month basis by operation of law. It would seem unfair to find that a landlord subject to a legal compulsion to execute a new, written lease agreement with a defaulting tenant should be treated differently.

[14] Although a New Jersey state court case, the Templeton Arms decision addressed then-existing federal law regarding Section 8 tenancies. 220 N.J. Super. at 4 ("The present appeal raises numerous questions respecting the interpretation of the "good cause" requirement for termination of Section 8 tenancies, 42 U.S.C.A. § 1437f(d)(1)(B)(ii); 24 C.F.R. 882.215(c)(1)(iii), and the application of that standard in the particular factual circumstances of this case. We hold that a landlord must establish good cause for nonrenewal of a Section 8 lease, even where he seeks to

Housing Opportunity through Modernization Act of 2016, 42 U.S.C. § 1437f, the HUD Handbook, and 24 C.F.R. 966.4(a)(2)(ii)). The court addresses these federal requirements below. However, the court first examines whether any requirements under New Jersey law compelled landlord to execute the Current Lease with tenant on February 27, 2024 – particularly where landlord's interpretation of two of these federal provisions (42 U.S.C. § 1437f, 24 C.F.R. 966.4(l)(2)(i)) while incorrect as to the meaning of the federal law, is nevertheless consistent with New Jersey statutory landlord-tenant law.[15] Specifically, because the relationship between landlord and tenant here is governed by the Act, the court examined the Act to determine whether it imposes any requirements on landlord to enter into the Current Lease with tenant.

The Act "substantially altered landlord-tenant common law and prior statutory law in respect of residential tenants." Maglies v. Estate of Guy, 193 N.J. 108, 120-

terminate his participation in the Section 8 program, and irrespective of the number of subsidized tenancies involved.").

[15] Landlord asserts that 42 U.S.C. § 1437f and 24 C.F.R. 966.4(l)(2)(i) mandate that a landlord cannot fail to renew a Section 8 tenant's lease absent good cause. Landlord Brf. at p. 3. As set forth below, this position is incorrect. Courts interpreting these provisions have found a landlord is not required to renew a Section 8 tenant's lease. See, e.g., Carol Rickert & Assocs. v. Law, 54 P.3d 91, 95 (N.M. Ct. App. 2002) ("We agree that the latest statutory amendments to Section 1437f(d)(1)(B)(ii) support Landlord's position that the change in language was intended to relieve landlords from the burden of showing good cause before they may refuse to renew a Section 8 lease."). New Jersey, however, statutorily provides that "no landlord may . . . fail to renew any lease of any premises . . . except for good cause . . . ." N.J.S.A. § 2A:18-61.3(a).

21 (2007). Among other things, the Act "dramatically changed the rights of landlords and owners by prohibiting the ejectment of residential tenants or lessees simply because their tenancies or leases had expired." Chase Manhattan Bank v. Josephson, 135 N.J. 209, 219 (1994). The Act states that, in connection with tenancies subject to the Act, "[n]o lessee or tenant or the assigns, under-tenants or legal representatives of such lessee or tenant may be removed by the Superior Court . . . except upon establishment of one of the" statutorily enumerated grounds identified as "good cause." N.J.S.A. § 2A:18-61.1. As the Appellate Division stated in Ctr. Ave. Realty, Inc. v. Smith:

> The effect of that Act is to create a perpetual tenancy, virtually a life interest, in favor of a tenant of residential premises covered by the Act as to whom there is no statutory cause for eviction under N.J.S.A. 2A:18-61.1. Thus, the effective term of the lease is for as long as the tenant wishes to remain, provided he pays the rent, whose increases may, moreover, be limited by rent levelling ordinances, and provided there is no other statutory cause for eviction under N.J.S.A. 2A:18-61.1, and provided the premises have not been retired from residential use or converted to other form of ownership pursuant to N.J.S.A. 2A:18-61.1b to -61.1d, and provided the other circumstances permitting eviction enumerated by N.J.S.A. 2A:18-61.3b(2) and (3), do not occur.
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> [264 N.J. Super. 344, 350 (App. Div. 1993).]

The concept of a "perpetual tenancy" is perhaps best embodied by the following statutory provision set forth in the Act: "No landlord may evict or fail to renew any lease of any premises covered [N.J.S.A. § 2A:18-61.1] of this act except for good cause as defined in [N.J.S.A. § 2A:18-61.1]." N.J.S.A. § 2A:18-61.3(a).

There is a paucity of caselaw addressing the language in N.J.S.A. § 2A:18-61.3(a) relating to the prohibition on a landlord failing to "renew any lease." However, by both the plain language of the Act and the limited cases addressing this language, it is clear that "[r]esidential tenants are guaranteed the right to renew their leases" unless any of the statutorily enumerated good cause grounds set forth in N.J.S.A. § 2A:18-61.1(a) exist. See 316 49 St. Assocs. Ltd. P'ship v. Galvez, 269 N.J. Super. 481, 486 (App. Div. 1994).

However, the court does not find that N.J.S.A. § 2A:18-61.3(a) compelled landlord to execute the Current Lease – a written lease agreement with a new annual term – with tenant. Notwithstanding that "[n]o landlord may evict or fail to renew any lease of any premises . . .," N.J.S.A. § 2A:18-61.3(a), New Jersey law does not require a landlord to renew a written lease with another written lease – and the failure to do so does not terminate the landlord-tenant relationship. Instead, if the tenant continues to pay, and the landlord continues to accept rent, the lease is "renewed" – even in tenancies subject to the Act – as a month-to-month tenancy by operation of N.J.S.A. § 46:8-10 ("Whenever a tenant whose original term of leasing shall be for a period of one month or longer shall hold over or remain in possession of the demised premises beyond the term of the letting, the tenancy created by or resulting from acceptance of rent by the landlord shall be a tenancy from month to month in the absence of any agreement to the contrary."). See Ctr. Ave. Realty, 264 N.J.

Super. at 346 (noting in a case subject to the Act that "written annual lease renewals" were executed by the parties through March 1981, but "the continued tenancy after 1981 was a month-to-month holdover tenancy pursuant to law, N.J.S.A. 46:8-10, and was memorialized by way of an annual notice of extension sent by the landlord and signed by the tenant, Leon Smith, stating the new annual rent").[16]

The court acknowledges that this interpretation of New Jersey law creates, with respect to waiver, a significant, consequential distinction between, on the one hand, a landlord who enters into a written, renewal lease agreement with a tenant, accepts payment under the new lease, and seeks to evict the tenant for non-payment of rent under the prior lease, and, on the other hand, a landlord who does not offer a tenant a written, renewal lease, but the landlord-tenant relationship is "renewed" by operation of law as a month-to-month tenancy and the landlord seeks eviction for the tenant's non-payment under the prior lease. In the former the Montgomery

[16] In a footnote, the Appellate Division appeared to suggest in Ctr. Ave. Realty that an argument could be made that the language in N.J.S.A. § 2A:18-61.3a requiring a landlord to renew a lease of a covered premises "obviates the need for actual renewal of yearly leases once the terms and conditions of the tenancy have been established by an initial written lease, nevertheless the tenancy should be treated after the expiration of the last written lease as if renewal leases had in fact been executed." Ctr. Ave. Realty, 264 N.J. Super. at 350 n.2. It is unclear whether the Appellate Division was suggesting that de facto "renewal leases" would be on a yearly basis like the initial written lease or on a month-to-month term as set forth in N.J.S.A. § 46:8-10. The Appellate Division did not so specify, and the court need not decide this issue. Either way, the Ctr. Ave. Realty case makes clear that a landlord is not required to execute a new written lease with a tenant when the prior written lease expires as the tenancy will continue by operation of law.

Gateway waiver rule would bar landlord's eviction claim, while in the latter the landlord's eviction claim would not be waived by accepting money under the month-to-month tenancy.

On its face, such a distinction appears somewhat arbitrary. However, the court finds there is a meaningful distinction in that a landlord's affirmative act of offering and executing a renewal lease with a tenant when the tenant is in default is the kind of clear, intentional act that is required to find waiver. See W. Jersey Title & Guar. Co. v. Indus. Tr. Co., 27 N.J. 144, 152 (1958) ("It is requisite to waiver of a legal right that there be a clear, unequivocal, and decisive act of the party showing such a purpose or acts amounting to an estoppel on his part." (internal quotation marks and citation omitted)). Such affirmative action to renew a written lease with another written lease demonstrates an intent to continue the relationship that distinguishes the former circumstance from the latter's passive extension of the lease relationship by operation of law. Regardless, even if the distinction is somewhat arbitrary,[17] it is up to the Legislature or an appellate court – and not this court – to address that issue.

[17] Certainly, a landlord's continued acceptance of payment, which is required to renew a lease by operation of law, see N.J.S.A. § 46:8-10, constitutes an affirmative act (as opposed to the passive act of receiving rent sent by the tenant). However, that continued acceptance of payment does not, in and of itself, mandate a finding of waiver – even after the initiation of eviction proceedings. See Jasontown Apartments, 155 N.J. Super. at 262; R. 6:3-4(c).

Finally, N.J.S.A. § 2A:18-61.3(a) explicitly states that a landlord may decline to renew a tenant for "good cause" as defined in N.J.S.A. § 2A:18-61.1. N.J.S.A. § 2A:18-61.3(a). Pursuant to N.J.S.A. § 2A:18-61.1(a), "good cause" includes where:

> The person fails to pay rent due and owing under the lease whether the same be oral or written; provided that, for the purposes of this section, any portion of rent unpaid by a tenant to a landlord but utilized by the tenant to continue utility service to the rental premises after receiving notice from an electric, gas, water or sewer public utility that such service was in danger of discontinuance based on nonpayment by the landlord, shall not be deemed to be unpaid rent.
>
> [Id.]

See also Hous. Auth. & Urban Redevelopment Agency v. Taylor, 171 N.J. 580, 586 (2002). "Under this provision, 'rent must be due, unpaid and owing' in order to be collectable in a non-payment case." Sudersan v. Royal, 386 N.J. Super. 246, 251-52 (App. Div. 2005) (quoting Hous. Auth. of Passaic v. Torres, 143 N.J. Super. 231, 236 (App. Div. 1976)). Here, landlord certainly had "good cause" to not execute the Current Lease with tenant on February 27, 2024. By landlord's own admission in the Complaint, as of February 27, 2024 tenant owed rent for periods as far back as April 2023 – with the bulk of the alleged rent due and owing from the period between June 2023 to August 2023. Complaint at ¶ 9A. Accordingly, even if the court were to construe N.J.S.A. § 2A:18-61.3(a) as mandating a landlord renew a lease with a new, written lease (which the court does not), such a requirement would not be

triggered here because tenant's non-payment of rent provided landlord statutory good cause to decline to renew the relationship with a new, written lease.

Perhaps anticipating this point, landlord suggests that "good cause" did not exist because landlord "had not met the required prerequisites to make an eviction filing until after the lease had been renewed." See Landlord Brf. at pp. 3-4 (citing a 30-day notice requirement prior to instituting an eviction proceeding for non-payment of rent set forth in 15 U.S.C. § 9058(c), which is part of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), 15 U.S.C. §§ 9001 to 9141). The court rejects landlord's position.

First, landlord states that "[t]he validity of the Notice requirements under the CARES Act, while not conceded to be valid by counsel, are not disputed for purposes of this case as the Landlord complied with those provisions." Landlord Brf. at p. 4. Whether landlord provided a 30-day notice pursuant to the CARES Act is not the issue however – either the CARES Act created, and compelled compliance with, such a legal requirement at the relevant time or it did not. Landlord's equivocation on this point cannot provide a basis to find the former.

Second, the court need not reach the issue of whether the CARES Act required landlord to provide 30-days' notice prior to filing the Complaint because that is not the issue raised by landlord. Rather, landlord contends it was compelled to execute the Current Lease with tenant on February 27, 2024. The CARES Act is irrelevant

to the question of whether landlord was compelled to execute the Current Lease with tenant on February 27, 2024 because the CARES Act provision relied upon by landlord does not address lease renewals – it only addresses notices required for a tenant to vacate a premises.[18]

2. Landlord was Not Compelled to Enter into the Current Lease with Tenant by Federal Law

The court must also consider landlord's argument that federal law required landlord to execute the Current Lease with tenant as "[c]ourts consistently have recognized that federal law and regulations, rather than state law, may govern in the public housing context." Taylor, 171 N.J. at 588 (holding that state law authorizing a public housing authority to include attorneys' fees and late charges, as "additional rent" recoverable in an eviction proceeding "conflicted with and was preempted by" federal law). See also Cmty. Realty Mgmt. v. Harris, 155 N.J. 212, 242 (1998) (requiring tenants receive instructions that "the amount due as rent may be limited

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[18] The relevant statutory provision is entitled "Notice" and provides:

> The lessor of a covered dwelling unit—
>
> (1) may not require the tenant to vacate the covered dwelling unit before the date that is 30 days after the date on which the lessor provides the tenant with a notice to vacate; and
> (2) may not issue a notice to vacate under paragraph (1) until after the expiration of the period described in subsection (b).
>
> [15 U.S.C. § 9058(c).]

by a rent control ordinance, or in the case of public or federally assisted housing, by federal law); Sudersan, 386 N.J. Super. at 253-54 ("As noted, defendant in this case was given a full rent subsidy, and there was no claim by plaintiff landlord in the eviction action that any monies were due and owing from the Section 8 program. Instead, in her non-payment of rent action, plaintiff sought recovery of utility charges, which in effect would have increased defendant's portion of the rent from the zero sum fixed by the Section 8 subsidy program to $490. This, plaintiff was prohibited from doing under federal law."); Hous. Auth. & Urban Redevelopment Agency of City of Atl. City v. Spratley, 327 N.J. Super. 246, 256 (App. Div. 1999) (reversing, on preemption grounds, trial court's determination that a federally mandated clause accountability clause in lease was unreasonable under the Act).

The issue is one of federal preemption, which the New Jersey Supreme Court recently summarized as follows:

> Under the Supremacy Clause, federal law preempts state law in three circumstances. First, preemption is found when Congress explicitly preempts state law. If the text of a preemption clause has more than one plausible reading, however, courts ordinarily accept the reading that disfavors pre-emption. Second, a law is preempted when Congress regulates conduct in a field it intended to occupy exclusively. Field preemption applies where the scheme of federal regulation is so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it. Third, federal law preempts state law when state law actually conflicts with federal law. Conflict preemption applies where compliance with both federal and state regulations is a physical impossibility or where state law stands as an obstacle to the accomplishment and execution of the full purposes and

> objectives of Congress. Preemptive purpose, express or implied, is found in the text and structure of the statute at issue.
>
> [In re Alleged Failure of Altice USA, Inc., 253 N.J. 406, 417 (2023) (internal quotation marks and citations omitted).]

Here, landlord does not specify on which of the three potential grounds federal law preempts the waiver rule enunciated in Montgomery Gateway. However, landlord did not identify – and the court is unaware of – any federal law that explicitly preempts New Jersey law on a landlord's ability to waive an eviction claim for non-payment of rent. See Franklin Tower One v. N.M., 157 N.J. 602, 619 (1999) ("Concerning the question of federal preemption, we find nothing in the federal statute explicitly preempting state legislation requiring landlords to honor Section 8 vouchers. HUD has explicitly preempted state law elsewhere, and could have done so here."). Moreover, there is no indication that that the federal law in this area is so pervasive as to preclude state law regarding waiver. See Franklin Tower One, 157 N.J. at 619 ("Nor is the federal statute so comprehensive as to create an inference that Congress intended that there be no state regulation. To the contrary, the Section 8 program contemplates substantial state participation, and we are unpersuaded that the provisions of Section 8 and those of our state statute cannot be harmonized."). Indeed, the Montgomery Gateway decision involved – as is the case here – a Section 8 tenant.

As such, the only potential ground for preemption is an actual conflict. "Examples of 'actual conflict' include instances in which compliance with both state and federal regulations is a physical impossibility, or in which state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." Spratley, 327 N.J. Super. at 255 (internal quotation marks and citations omitted). As the court stated in Spradley, "New Jersey is free to disagree with federal policy. It may not, however, create an insurmountable obstacle to the accomplishment and execution of the full purposes and objectives of Congress." Id. (internal quotation marks and citation omitted).

Based on the foregoing, an argument could exist that a federal law or regulation mandating that a landlord renew a written lease with a Section 8 tenant annually with another written lease creates a "physical impossibility" with the waiver rule set forth in Montgomery Gateway. Landlord, however, has not identified any such federal law or regulation.

First, landlord asserts that 42 U.S.C. § 1437f and 24 C.F.R. 966.4(l)(2)(i) prohibit a landlord from refusing to renew a lease without good cause. Landlord Brf. at p. 3. Landlord did not initially identify the specific provision in 42 U.S.C. § 1437f, the law pursuant to which the Section 8 project-based rental assistance program is established, see Truesdell, 290 F.3d at 161, landlord contends applies. Landlord Brf. at p. 3. However, Landlord's supplemental submission identifies 42

U.S.C. § 1437f(d)(1)(B)(i). Landlord Supp. Brf. at pp. 1-2. The court notes that 42 U.S.C. § 1437f(d)(1)(B)(i) and (ii) state that contracts between a public housing agency and the owner of existing Section 8 housing units shall require that:

> i. the lease between the tenant and the owner shall be for at least one year or the term of such contract, whichever is shorter, and shall contain other terms and conditions specified by the Secretary;
>
> ii. during the term of the lease, the owner shall not terminate the tenancy except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause; . . . .
>
> [Id.]

Contrary to landlord's position, nowhere does this statute expressly prohibit a landlord from refusing to renew a lease without good cause.

Moreover, landlord's interpretation of this federal law is contrary to other courts that have considered these statutory provisions. In 1996, Congress enacted a temporary amendment to this statute adding the phrase "during the term of the lease" to 42 U.S.C. § 1437f(d)(1)(B)(ii). Pub. L. 104-134, § 203(c)(2), 110 Stat. 1321-281 (April 26, 1996). In 1998, Congress made this statutory amendment permanent. Pub. L. 105-276, § 549(a)(2)(A), 112 Stat. 2461-2607 (Oct. 21, 1998). Prior to this statutory amendment, courts had held that "good cause" was required for the non-renewal of a Section 8 tenant. See Templeton Arms v. Feins, 220 N.J. Super. 1, 15 (App. Div. 1987). See also Mitchell v. United States Dep't of Hous. & Urban Dev., 569 F. Supp. 701, 710 (N.D. Cal. 1983); Swann v. Gastonia Hous. Auth., 502 F.

Supp. 362, 367 (W.D.N.C. 1980). After the amendment, however, courts have consistently held that "good cause" is no longer required for non-renewal. See, e.g., Carol Rickert, 54 P.3d at 95; In re Rosario v. Diagonal Realty, LLC, 9 Misc. 3d 681, 803 N.Y.S.2d 343 (N.Y. Sup.Ct. 2005) ("[T]he change in statutory language adding the phrase "during the term of the lease," was intended to eliminate the so-called "endless lease rule" which required landlords to renew leases for Section 8 tenants, and prevented them from terminating a Section 8 tenancy unless they instituted court proceedings and established 'good cause" within the meaning of 42 U.S.C. § 1437f(d)(1)(B)(ii)."), aff'd 32 A.D.3d 739, 821 N.Y.S.2d 71 (N.Y. App. Div. 1st Dep't, 2006).[19]

Similarly, landlord's reliance on 24 C.F.R. 966.4(l)(2)(i) is misplaced. As an initial matter, although landlord claims it is subject to this regulation, the court notes that landlord also claims to be a PBV. Complaint at ¶ 6. The regulations governing

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[19] Thus, under federal statutory law, a landlord is not required to accept or renew a Section 8 tenant regardless of whether "good cause" exists. See Carol Rickert, 54 P.3d at 95-96 ("Based on these statutory amendments, and in light of the legislative history underlying these amendments, the district court correctly concluded that Landlord did not need to show good cause to refuse to renew Tenant's lease under the Section 8 housing program."). New Jersey, of course, rejects this view. First, New Jersey law requires landlords to accept Section 8 tenants. See Franklin Tower One, 157 N.J. at 618-19 (finding that a landlord is required to accept Section 8 tenants under New Jersey law, and that New Jersey law is not preempted by federal law in this regard). Second, as noted above, New Jersey only permits the failure to renew any tenant subject to the act if there is statutory good cause. See N.J.S.A. § 2A:18-61.3(a).

PBV's are set forth in 24 C.F.R. 983. See 24 C.F.R. 983.1 ("Part 983 applies to the project-based voucher (PBV) program. The PBV program is authorized by section 8(o)(13) of the U.S. Housing Act of 1937 (42 U.S.C. 1437f(o)(13))"). Regardless, even if landlord is correct in asserting that 24 C.F.R. 966.4(l)(2)(i) – and not the regulations set forth in 24 C.F.R. 983 – applies, this regulation only addresses "[g]rounds for termination of tenancy."[20] Id. Accordingly, it does not provide a

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[20] This regulation is entitled "Grounds for termination of tenancy" and provides:

> The [Public Housing Agency] may terminate the tenancy only for:
>
> (i) Serious or repeated violation of material terms of the lease, such as the following:
>
> (A) Failure to make payments due under the lease;
>
> (B) Failure to fulfill household obligations, as described in paragraph (f) of this section . . . ."
>
> [24 C.F.R. 966.4(l)(2)(i).]

The court notes that the regulations governing termination of a tenancy in 24 C.F.R. 983, which apply to PBV's, are not identical. Specifically, 24 C.F.R. 983.257, which is entitled "Owner termination of tenancy and eviction" and was recently amended effective June 6, 2024 to add that the owner may terminate the tenancy in accordance with §§ 983.157(g)(6)(iii) and 983.212(a)(3)(iii), see 89 Fed. Reg. 38224 (May 7, 2024), provides:

> 24 C.F.R. 982.310 of this title applies with the exception that 24 C.F.R. 982.310(d)(1)(iii) and (iv) does not apply to the PBV program. (In the PBV program, "good cause" does not include a business or economic reason or desire to use the unit for an individual, family, or non-residential rental purpose.) In addition, the owner may terminate the tenancy in accordance with the requirements related to lease terminations for development activity on units under a HAP contract as

basis to conclude landlord was compelled to renew the lease with tenant by executing the Current Lease on February 27, 2024.

Second, the court does not find landlord's argument regarding the requirements of the Housing Opportunity through Modernization Act of 2016 ("HOTMA"), Pub. L. No. 114-201, 130 Stat. 782 (July 29, 2016), persuasive. Landlord maintains that, pursuant to HOTMA, beginning January 2024 "every

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> provided in § 983.157(g)(6)(iii) and for substantial improvement to units under a HAP contract as provided in § 983.212(a)(3)(iii). 24 C.F.R. 5.858 through 5.861 on eviction for drug and alcohol abuse and 24 C.F.R. part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) apply to the PBV program.
>
> [24 C.F.R. 983.257.]

24 C.F.R. 982.310(a), which is part of the regulations addressing the tenant-based housing choice voucher program, see 24 C.F.R. 982.2 ("Part 982 contains the program requirements for the tenant-based housing assistance program under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f). The tenant-based program is the HCV program."), provides as follows:

> (a) Grounds. During the term of the lease, the owner may not terminate the tenancy except on the following grounds:
>
> (1) Serious violation (including but not limited to failure to pay rent or other amounts due under the lease) or repeated violation of the terms and conditions of the lease;
>
> (2) Violation of federal, State, or local law that imposes obligations on the tenant in connection with the occupancy or use of the premises; or
>
> (3) Other good cause.
>
> [24 C.F.R. 982.310(a).]

tenant in a Multi-Family Subsidized Housing is required to sign new leases this year and will likely need to sign new HOTMA compliant leases in the next few years." Landlord Supp. Brf. at p. 1. As support for this position, landlord attaches some alleged HOTMA training slides to its brief. The court declines to consider the unauthenticated training slides on this motion – but, even if the court did, there is nothing in them (or any of the other alleged authority provided by landlord) to indicate that landlord was required to execute the Current Lease with tenant on February 27, 2024 while the tenant was in default for non-payment of rent.

Fourth, the court rejects landlord's reliance on 24 C.F.R. 966(a)(2)(i) and (ii), which provides:

> A lease shall be entered into between the PHA and each tenant of a dwelling unit which shall contain the provisions described hereinafter.
>
> (a) Parties, dwelling unit and term.
>
> * * *
>
> (2) Lease term and renewal.
>
> (i) The lease shall have a twelve month term. Except as provided in paragraph (a)(2)(ii) of this section, the lease term must be automatically renewed for the same period.
>
> (ii) The PHA may not renew the lease if the family has violated the requirement for resident performance of community service or participation in an economic self-sufficiency program in accordance with part 960, subpart F of this chapter.
>
> [Id. (emphasis added).]

On its face, this regulatory requirement appears to support landlord's position.

However, it is not clear that 24 C.F.R. 966 applies to landlord. As noted above, as a PBV, landlord is seemingly subject to 24 C.F.R. 983. The regulations set forth in 24 C.F.R. 983 regarding lease term and renewal for leases between the owner and the tenant do not appear to mandate renewals on the same one-year term as the prior lease, and, instead, contemplate automatic renewal after the initial term. Specifically, 24 C.F.R. 983.256(f)(1) and (2) provide:

> (f) Term of lease.
>
> (1) The initial lease term must be for at least one year.
>
> (2) The lease must provide for automatic renewal after the initial term of the lease. The lease may provide either:
>
> (i) For automatic renewal for successive definite terms (e.g., month-to-month or year-to-year); or
>
> (ii) For automatic indefinite extension of the lease term.
>
> [Id. (emphasis added).]

This regulation does not support the position that a PBV – such as landlord purports to be – is required to take the affirmative action of annually executing a written, renewal lease under the same one-year term as the prior lease. Rather, it indicates to the contrary.

Landlord's position is further undermined by the terms of the Current Lease. Specifically, the Current Lease provides:

> The initial term of this Agreement shall begin on March 01, 2024 and end on February 28, 2025. After the initial term ends, the Agreement will continue for successive terms of one month each unless

automatically terminated as permitted by paragraph 23[21] of this Agreement.

[21] Paragraph 23 of the Current Lease is entitled "Termination of Tenancy" and provides as follows:

a. To terminate this Agreement, the Tenant must give the Landlord 30-days written notice before moving from the unit.
b. Any termination of this Agreement by the Landlord must be carried out in accordance with HUD regulations, State and local law, and the terms of this Agreement.
c. The Landlord may terminate this Agreement for the following reasons:
   (1) the Tenant's material noncompliance with the terms of this Agreement;
   (2) the Tenant's material failure to carry our obligations under any State Landlord and Tenant Act;
   (3) drug related criminal activity engaged in on or near the premises, by any tenant, household member, or guest, and any such activity engaged in on the premises by any other person under the tenant's control;
   (4) determination made by the Landlord that a house member is illegally using a drug;
   (5) determination made by the Landlord that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents;
   (6) criminal activity by a tenant, any member of the tenant's household, a guest or another person under the tenant's control:
      (a) that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including property management staff residing on the premises);
      (b) or that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises;
   (7) if the tenant is fleeting to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which

the individual flees, or that in the case of the State of New Jersey, is a high misdemeanor;

(8) if the tenant is violating a condition of probation or parole under Federal or State law;

(9) determination made by the Landlord that a household member's abuse or pattern of abuse of alcohol threatens the health, safety, or right to peaceful enjoyment of the premises by other residents;

(10) if the Landlord determines that the tenant, any member of the tenant's household, a guest or another person under the tenant's control has engaged in the criminal activity, regardless of whether the tenant, any member of the tenant's household, a guest or another person under the tenant's control has been arrested or convicted for such activity.

d. The Landlord may terminate this Agreement for other good cause, which includes, but is not limited to, the tenant's refusal to accept change to this agreement. Terminations for "other good cause" may only be effective as of the end of any initial or successive term.

The term material noncompliance with the lease includes: (1) one or more substantial violations of the lease; (2) repeated minor violations of the lease that (a) disrupt the livability of the project; (b) adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment to the leased premises and related project facilities, (c) interfere with the management of the project, or (d) have an adverse financial effect on the project (3) failure of the tenant to timely supply all required information on the income and composition, or eligibility factors, of the tenant household (including, but not limited to, failure to meet the disclosure and verification requirements for Social Security Numbers, or failure to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies), and (4) on-payment of rent or any other financial obligation due under the lease beyond any grace period permitted under State law. The payment of rent or any other financial obligation due under the lease after the due date but within the grace period permitted under State law constitutes a minor violation.

e. If the Landlord proposes to terminate this Agreement, the Landlord agrees to give the Tenant written notice and the grounds for the proposed termination. If the Landlord is terminating this agreement

[Certification of Lease and Registration Statement at Attachment (Model Lease (¶ 2)) (emphasis added) (footnote added).]

Significantly, this provision in the Current Lease – with its automatic renewal on a month-to-month basis absent a new, written renewal lease – appears consistent with 24 C.F.R. 983.256(f)(1) (and inconsistent with 24 C.F.R. § 966(a)(2)(i), which landlord asserts applies).

Moreover, even assuming landlord's current position is correct and 24 C.F.R. 966(a)(2)(i) applies, landlord seemingly did not believe at the time it executed the

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for "other good cause," the termination notice must be mailed to the Tenant and hand-delivered to the dwelling unit in the manner required by HUD at least 30 days before the date the Tenant will be required to move from the unit and in accordance with State law requirements. Notices of proposed termination for other reasons must be given in accordance with any time frames set forth in State and local law. Any HUD-required notice period may run concurrently with any notice period required by State or local law. All termination notices must:

- specify the date this Agreement will be terminated;
- state the grounds for termination with enough detail for the Tenant to prepare a defense;
- advise the Tenant that he/she has 10 days within which to discuss the proposed termination of tenancy with the Landlord. The 10-day period will begin on the earlier of the date the notice was hand-delivered to the unit or the day after the date the notice is mailed. If the Tenant requests the meeting, the Landlord agrees to discuss the proposed termination with the Tenant;
- and advise the Tenant of his/her right to defend the action in court.

f. If an eviction is initiated, the Landlord agrees to rely only upon those grounds cited in the termination notice required by paragraph e.

[Certification of Lease and Registration Statement at Attachment (Model Lease (¶ 23)).]

Current Lease that it was required to include a provision requiring an annual renewal on the same one-year term as the prior lease as it failed to do so.[22] This further undercuts landlord's position that it was compelled on February 27, 2024 to execute the Current Lease with tenant.

Fifth, the court is not persuaded by landlord's reliance on the statement in the HUD Handbook that "[a]n owner must not refuse to renew a lease solely because a lease term has expired." Landlord Supp. Brf. at p. 2 (citing HUD Handbook § 8-12(C))). There is nothing in this statement that suggests that landlord was compelled to execute a written, renewal lease with tenant on February 27, 2024 instead of simply letting the lease automatically "renew" as a month-to-month pursuant to its terms (assuming the prior lease had the same provision as the Current Lease) or by operation of law pursuant to N.J.S.A. § 46:8-10.

In sum, each federal law, regulation, or other alleged requirement landlord identified does not support landlord's position that landlord was compelled to

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[22] The court acknowledges that it does not have a copy of the lease agreement covering the period between March 2023 and February 2024 (i.e. the period immediately prior to the Current Lease). Neither party provided the court with a copy of this lease – notwithstanding the fact that landlord alleges in the Complaint that rent is due and owing pursuant to the terms of that prior lease. As such, the court cannot confirm that the prior lease contained a provision concerning the prior lease's term different from that in the Current Lease. However, landlord did not dispute this in its supplemental papers notwithstanding that tenant and the court raised this lease provision at the August 27, 2024 oral argument.

execute the Current Lease with tenant on February 27, 2024. The court also notes that landlord submitted no evidence – for example, a certification from landlord, HUD, or some other authority – evidencing that landlord was compelled to execute the Current Lease with tenant on February 27, 2024 notwithstanding tenant's outstanding rent balance under the then-existing lease. The failure to do so, while not dispositive, further undermines landlord's position that landlord was compelled to execute the Current Lease at that time.

III. Conclusion

Landlord's counsel gets full marks for the thoroughness of counsel's advocacy to counter the Appellate Division's decision in Montgomery Gateway. As evidenced by the length and scope of this opinion, landlord's submissions here raised a significant number of reasons why the court should find that landlord did not waive its eviction claim against tenant for non-payment of rent pursuant to the Act. However, despite landlord's counsel's best efforts, the court's decision here is ultimately a simple one. Confronted with a tenant that was in arrears on its rent for a period going back almost a year and a lease that would convert automatically to a month-to-month tenancy upon its expiration, landlord did not seek to evict the tenant for non-payment of rent. Instead, landlord elected to renew its relationship with tenant, and committed affirmative and intentional actions cementing that election by executing a new, written lease with tenant and accepting rent payments made by

tenant pursuant to that new lease. In a decision that has not been overturned or contradicted in the more than 30 years since it was issued, the Appellate Division held that such circumstances compel the conclusion that landlord waived its claim for eviction for non-payment of rent owed under the prior lease. Accordingly, the court finds that the Montgomery Gateway waiver rule applies, and, as such, dismisses landlord's complaint.