



# Englewood

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## Illegal Apartment Owners Beware!

To maximize profits received from a property, landlords often rent out rooms or even entire apartments in attic, basement, and garage space as unauthorized rental space to tenants. The problem is that many of these dwelling units are considered illegal because they violate local and state zoning ordinances. So, while the thought of receiving extra rent from a garage space may be music to a landlord's ears, it is the landlord's wallet that will suffer the most in the end. This is because the renting of an illegally rented room or apartment can result in negative financial consequences for both the landlord and the tenant. Once the illegal rental unit is discovered by a municipality, the landlord must notify the tenant that the unit is illegal and request that the tenant move out. If the tenant refuses to vacate, the landlord must initiate eviction proceedings against the tenant for illegal occupancy and the landlord can be required to provide financial assistance to the tenant for moving expenses.

Illegal apartments, which often take the form of impermissible attic, basement, and garage units as well as illegal rooming houses, pose many significant health, fire, and safety risks. For example, many illegal dwelling units cause fires as a result of the extra burden placed on a building's electrical system. These illegal practices are also likely to result in the overcrowding of buildings leading to many health and safety risks. To reduce these risks, the Legislature amended the Anti-Eviction Act, N.J.S.A. 2A:18-61.1 et seq., in 1993 to stiffen the penalties against owners of illegal apartments and to provide relocation benefits to tenants that are evicted as a result of zoning law enforcement for illegal occupancy. There has been a great disparity in how courts have interpreted and enforced the amendment for a number of years until the New Jersey Supreme Court's recent decision in Miah v. Ahmed, 179 N.J. 511 (2004) where the court clarified the overall purpose and meaning behind the statute.

By analyzing the express language of the statutory provision, the Court ruled that if a landlord violates a zoning ordinance by illegally renting out rooms or apartment, the landlord can be held responsible for reimbursing the tenant for relocation expenses if the tenant is evicted for illegal occupancy. The landlord can also be required to pay the displaced tenant an amount equal to six times the monthly rent, five days before the tenant vacates the premises. This amount would be mandatory and not based upon the actual expenses that a tenant incurs for relocating. For example, a tenant may only spend fifty dollars to vacate an illegal apartment and relocate, but the landlord would still be required to pay the tenant an amount equal to six times the monthly rent charged to the tenant for the illegal apartment. Also, a landlord is not permitted to deduct past-due rent or other damages owed by the tenant from relocation benefits. Instead, the landlord must institute a separate action against the tenant for any damages owed by the tenant.

In interpreting the statute, the Court discussed the legislative purpose behind the provision which is to penalize a landlord that rents an illegal apartment or other illegal dwelling space which later results in the displacement of a tenant. The Court emphasized the large role that a landlord plays in a situation of illegal rental. It is the landlord that advertises the unauthorized dwelling space in anticipation of financial gain and in violation of local zoning laws. On the other hand, it is the tenant that is later forced to pick up his or her things and relocate. The goal of the statute is not only to deter landlords from establishing or maintaining illegal rentals, but to provide assistance to the tenant who wakes up one morning and is told to vacate due to an illegal occupancy. So landlords beware! The potential loss associated with renting illegal rooms and apartments may be far more than the gain. When in doubt, always check the local zoning laws before renting out any space.