

SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION

NC Roseville Senior 2016 UR LLC v. Dorothy Howard

Docket No. A-0891-24 (N.J. Super. Ct. App. Div. Jan. 12, 2026) · No. A-0891-24 · Decided January 12, 2026

SUMMARY

The New Jersey Superior Court, Appellate Division, affirmed dismissal with prejudice of a landlord's eviction complaint against a Section 8 tenant for prior nonpayment of rent. The court held that, under *Montgomery Gateway E. I. v. Herrera*, the landlord waived its right to evict based on the prior arrears by executing a renewal lease and accepting rent payments during the new lease term. The court also rejected the landlord's procedural, unclean-hands, statutory, federal-housing, and tax-credit arguments.

CASE DETAILS

COURT	Superior Court of New Jersey, Appellate Division
WRITING FOR THE COURT	Susswein, J.A.D.; Sumners, J.A.D.; Chase, J.A.D.
JURISDICTION	Superior Court of New Jersey, Appellate Division
DECIDED	January 12, 2026
DOCKET	A-0891-24
DISPOSITION	affirmed
PROCEDURAL POSTURE	Landlord appealed the Special Civil Part's dismissal with prejudice of its eviction complaint for nonpayment of rent. The Appellate Division affirmed.
STANDARD OF REVIEW	Abuse of discretion for allowing the oral motion; plain error for the unpreserved procedural challenge; de novo for dismissal for failure to state a claim.
PRECEDENTIAL VALUE	Published New Jersey Superior Court Appellate Division opinion; precedential under New Jersey law.
PARTIES	NC Roseville Senior 2016 UR LLC v. Dorothy Howard

TOPICS

- eviction
- landlord tenant
- waiver
- motions to dismiss
- appellate procedure

PRACTICE AREAS

- landlord-tenant law
- residential eviction
- civil procedure
- appellate procedure
- subsidized housing

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by allowing Howard to make an oral motion to dismiss on the scheduled trial date.
2. Whether the trial court improperly converted the motion to dismiss into a motion for summary judgment without notice and an opportunity to submit additional evidence.
3. Whether Howard's conduct implicated the unclean-hands doctrine.
4. Whether execution of a renewal lease and acceptance of rent under the new lease waived Roseville's right to evict Howard for nonpayment under the prior lease term.
5. Whether federal Section 8 law, the lease, New Jersey payment-allocation law, or low-income housing tax-credit requirements prevented application of the waiver rule.

HOLDINGS

1. The trial court did not abuse its discretion by allowing Howard to make the motion orally during the scheduled trial proceeding, and the unpreserved challenge did not establish plain error because Roseville had a full opportunity to brief and argue the issue.
2. The trial court did not convert Howard's motion to dismiss into a motion for summary judgment because the materials considered were attached to the complaint, specifically referenced in it, or matters of public record.
3. Howard's efforts to avoid eviction while making payments toward rent arrears did not constitute the type of wrongdoing required to invoke the unclean-hands doctrine.
4. When a landlord renews a tenant's lease and accepts rent under the new lease, the landlord waives its right to terminate the tenancy based on the tenant's prior nonpayment of rent.
5. Neither the HUD model lease nor federal Section 8 statutes and regulations compelled Roseville to renew Howard's lease, so they did not prevent application of the Montgomery Gateway waiver rule.
6. Neither New Jersey's payment-allocation statute nor the landlord's asserted need to preserve low-income housing tax credits altered the Montgomery Gateway waiver analysis.

KEY QUOTATIONS

“when a landlord renews a tenant's lease and accepts rent under that new lease, it waives its right to terminate the tenancy based on the tenant's prior nonpayment of rent.” (A-0891-24 at 11)

“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.” (A-0891-24 at 11)

FACTUAL BACKGROUND

Howard lived in Roseville's Section 8 project-based subsidized housing and was several months behind on rent at the end of the March 2023-February 2024 lease term. On February 27, 2024, the parties executed a new lease

for the March 2024-February 2025 term. Roseville accepted payments of \$355, \$288, and \$300 during the new term, then filed an eviction complaint based on unpaid rent from the prior term.

PROCEDURAL HISTORY

Roseville filed an eviction complaint alleging that Howard owed rent from the prior lease term. At trial, Howard orally moved to dismiss, arguing that Roseville waived its right to evict by executing a renewal lease and accepting rent under the new term. The Special Civil Part permitted briefing and argument, dismissed the complaint with prejudice, and the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Montgomery Gateway E. I v. Herrera, 261 N.J. Super. 235, 240-41 (App. Div. 1992)
- Jasontown Apartments v. Lynch, 155 N.J. Super. 254, 261-63 (App. Div. 1978)
- Knorr v. Smeal, 178 N.J. 169, 177 (2003)
- Matthew G. Carter Apartments v. Richardson, 417 N.J. Super. 60, 65-68 (App. Div. 2010)
- Ivy Hill Park, Section III, Inc. v. Abutidze, 371 N.J. Super. 103, 115 (App. Div. 2004)
- Plaza 12 Assocs. v. Carteret Borough, 280 N.J. Super. 471, 477 (App. Div. 1995)
- Enourato v. N.J. Building Auth., 182 N.J. Super. 58, 65 (App. Div. 1981), aff'd, 90 N.J. 396 (1982)
- Myska v. New Jersey Mfrs. Ins. Co., 440 N.J. Super. 458, 482 (App. Div. 2015)
- Banco Popular N. Am. v. Gandi, 184 N.J. 161, 183 (2005)
- Lum v. Bank of Am., 361 F.3d 217, 222 n.3 (3d Cir.), cert. denied, 543 U.S. 918 (2004)
- Faustin v. Lewis, 85 N.J. 507, 511 (1981)
- Heuer v. Heuer, 152 N.J. 226, 238 (1998)
- Baskin v. P.C. Richard & Son, LLC, 246 N.J. 157, 171 (2021)
- Sklodowsky v. Lushis, 417 N.J. Super. 648, 657 (App. Div. 2011)