

Landlord-Tenant Monthly

Lease Interpretation

Hon. Michael J. Pinckney, J.C.C

“Termination and Forfeiture” clause was inapplicable to non-payment proceeding.

Civil Court denied Respondent-tenant’s pre-answer motion to dismiss Petitioner’s non-payment proceeding, rejecting Respondent’s contention that Petitioner’s rent demand was “not made in accordance with the lease for the subject premises.”

In *Keng Tong Choi v. Nicholas*, Petitioner-landlord commenced a non-payment proceeding against Respondent on March 25, 2003. Prior to the proceeding’s commencement, Petitioner served a Rent Demand dated March 11, 2003, (the requisite three-day notice pursuant to RPAPL Section 711(2)). The petition alleged that the subject premises was located in an unregulated, four-family multiple dwelling.

Respondent argued that according to the “Default” clause in her lease agreement, she was entitled to be served a thirty-day notice prior to the commencement of the proceeding. Specifically, this clause provided for the “termination and forfeiture” of the lease upon Respondent’s default, and enabled the lessor to re-enter the premises and remove all persons therefrom. Further, the clause required Petitioner to afford Respondent written notice of any default, but it also allowed Respondent to cure the default within 30 days.

The Civil Court concluded that the default clause was inapplicable because “no such termination or forfeiture occurred.” The court stated, “The Petitioner did not terminate the Respondent’s tenancy due to the failure to pay rent – Petitioner simply commenced a summary non-payment proceeding.” Therefore, the court stated, “no termination or forfeiture will occur if the arrears are paid as ultimately determined by the court.”

After denying Respondent’s pre-answer motion, the court then directed Respondent to serve its answer upon the Petitioner within thirteen days.

Case: *Keng Tong Choi v. Nicholas* (Civ.Ct., Kings County, **062303; 2 pages)

Our thanks to **Adam Leitman Bailey, Esq.** of the Law Firm of Adam Leitman Bailey, P.C., for sharing this decision with our readers. Mr. Bailey’s firm represented the landlord.