

Landlord v. Tenant

Apartment Law Insider Total Decision Service for Landlords, Managers, and Attorneys

HIGHLIGHTS / OCTOBER 2004

Issue Date: October 2004, Posted On: 10/1/2004

Landlord Can Claim Tenant Uses Apartment for Commercial Purposes

- Team Assocs. v. Swinney: L&T Index No. 63170/04 (9/1/04) (Civ. Ct. NY; Capella, J) 2-pg. doc.]

(Decision submitted by Manhattan attorney Adam Leitman Bailey, who represented the landlord.)

Landlord sued to evict residential tenant because tenant used his apartment for commercial purposes. Tenant admitted that he lived in the apartment and recorded musicians there. Since at least 1992, he conducted two or three recording sessions per day with two to four musicians. Tenant claimed that landlord waived any right to claim a lease violation by permitting this use for years. He also claimed that the law required landlord to start a breach of lease claim within six years of the claimed breach, and the commercial use had started ten years ago. Tenant asked the court to dismiss the case. The court ruled against tenant. Tenant admitted the lease violation. Whether landlord waived the right to claim a breach of lease because it permitted the use for a long time was a question of fact that required a trial. And landlord wasn't barred by the six-year law. Every time tenant used the apartment for commercial purposes there was a lease violation and a new basis for starting the court case.

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HIGHLIGHTS / SEPTEMBER 2004

SUBLETTING

Issue Date: September 2004, Posted On:
9/1/2004

Notice to Cure Wasn't Ambiguous

Acquisition America VII, LLC v. Alexis: Index No.
58270/04 (7/26/04) (Civ. Ct. NY; Fiorella, J) [6-pg. doc.]

***(Decision submitted by Manhattan attorney
Adam Leitman Bailey, who represented the
landlord.)***

Landlord sued to evict rent-stabilized tenant for illegal subletting, after sending tenant a ten-day notice to cure. Tenant asked the court to dismiss the case. He claimed that landlord's cure notice was ambiguous. The court ruled against tenant. The notice claimed that tenant was violating a specific lease provision, Real Property Law Section 226-b, and Rent Stabilization Code Section 2526.6, by subletting without landlord's written consent to a named subtenant, as well as "John Doe" and "Jane Doe." Tenant pointed out that the notice incorrectly identified the governing Rent Stabilization Code section. It should have cited Section 2525.6. The court found that this was a minor typographical error. Tenant received reasonable and sufficient notice of landlord's illegal sublet claim.

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HIGHLIGHTS / JUNE 2004 BUILDING VIOLATIONS

Issue Date: June 2004, Posted
On: 6/1/2004

Illegal Plumbing Installed

435 E. 65th Corp.: ECB Viol.
No. 34392444H (9/17/03) [4-pg.
doc.]

*(Decision submitted by
Manhattan attorney Adam
Leitman Bailey, who
represented the tenant.)*

DOB issued a violation notice to landlord for installing illegal plumbing in the kitchen of tenant's apartment. Landlord argued that since the pipes weren't connected at the time of inspection, there was no violation. ECB ruled against landlord. The gas pipe riser was in the wall. To be legal, it would have to be center punched or accessible through a door. The condition wasn't corrected by the initial hearing date, so landlord was fined.

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HIGHLIGHTS / AUGUST 2003

Issue Date: August 2003, Posted On:
8/1/2003

Lease Didn't Require 30-Day Notice f or Nonpayment Case

Choi v. Nicholas: L&T Index No. 66437/03
(Civ. Ct. NY 6/23/03; Pinckney, J) [2-pg.
doc.]

***(Decision submitted by Manhattan
attorney Adam Leitman Bailey, who
represented the landlord.)***

Landlord sued to evict tenant for nonpayment of rent. Tenant claimed that his condominium building lease required delivery of a 30-day notice before starting an eviction case. The court ruled against tenant. The lease clause tenant relied on applied to lease defaults that resulted in "termination and forfeiture." Landlord didn't terminate tenant's lease. He simply started a nonpayment case, and there would be no termination of the tenancy if tenant paid the rent. The lease clause didn't apply to this case.

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HIGHLIGHTS / JULY 2003

Issue Date: July 2003, Posted On:
7/1/2003

Tenant Agreed to Move Out

Badiane v. Parkview: Index No. 75708/03
(Civ. Ct. NY 6/3/03; Bedford, J) [5-pg.
doc.]

(Decision submitted by Manhattan attorney Adam Leitman Bailey, who represented the landlord.)

Tenant sued landlord, claiming illegal eviction. Landlord claimed that it paid tenant to vacate his rent-stabilized SRO unit. The court ruled against tenant and dismissed the case. Landlord and tenant had signed an agreement stating that tenant would move out. In exchange, landlord would pay tenant \$15,000 and forgive back rent owed. Although the agreement wasn't signed in court, it was binding. Landlord paid tenant the money, and tenant surrendered the keys to the apartment and moved out.

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HIGHLIGHTS / JUNE 2003 PRIMARY RESIDENCE

Issue Date: June 2003, Posted On:
6/1/2003

Tenant's Husband Maintained Separate Residence

Riverton Assocs. v. Russell: Index No.
250331/02 (Civ. Ct. NY 5/12/03; Acosta, J)
[3-pg. doc.]

(Decision submitted by Manhattan attorney Adam Leitman Bailey, who represented the tenant.)

Landlord sued to evict Manhattan rent-stabilized tenant for nonprimary residence. Tenant's husband maintained a separate apartment in Queens. Landlord argued that this showed that tenant also lived in the Queens apartment. The court ruled against landlord. Tenant proved through believable testimony and documentary proof that she primarily resided at the Manhattan apartment. Tenant produced bank and credit card statements, a driver's license, income tax returns, and gas and utility bills connecting her to the subject apartment.

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HIGHLIGHTS / MAY 2003

Issue Date: May 2003, Posted On:
5/1/2003

Tenant Can't Consolidate Warranty of Habitability Case with Nonpayment Case

Dow v. 48 Tenant's Corp.: Index No.
1868TSN2001 (3/12/03) (Civ. Ct. NY; Scar-
pulla, J) [5-pg. doc.]

*(Decision submitted by Manhattan at-
torney Adam Leitman Bailey, who repre-
sented the landlord.)*

Landlord sued tenant in housing court for nonpayment of rent. Tenant then sued landlord in a separate civil court action for breach of the warranty of habitability. Tenant asked the civil court to consolidate the two cases. The court ruled against tenant. Consolidation of the two cases would mean a delay of the summary nonpayment case. And tenant can raise the habitability claim in the nonpayment case.

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HIGHLIGHTS / MAY 2003

Issue Date: May 2003, Posted On:
5/1/2003

Building Sold Before Violation Notice Issued

Palmer: DOB Violation No. 34371128N
(3/24/03) [1-pg. doc.]

(Decision submitted by Manhattan attorney Adam Leitman Bailey, who represented the landlord.)

DOB issued a violation notice to landlord. Landlord claimed it didn't own the building at the time the notice was issued. Landlord proved this by submitting a deed showing he sold the building shortly before the notice was issued. The ALJ ruled for landlord and dismissed the violation.

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HIGHLIGHTS / JANUARY 2003 WARRANTY OF HABITABILITY

Issue Date: January 2003, Posted On:
1/1/2003

Tenant Waited Too Long to Raise Claims

Dow v. 48 Tenant's Corp.: Index No. 1868
TSN 2001 (Civ. Ct. NY 8/26/02; Smith, J)
[7-pg. doc.]

(Decision submitted by Manhattan attorney Adam Leitman Bailey, who represented the landlord.)

In 2001, tenant sued landlord for breach of the warranty of habitability dating back to 1993. She claimed that a radiator burst in her apartment based on landlord's failure to maintain the heating system, there were various leaks, noises, and vibrations from the commercial shop on the first floor, and there were unreasonable amounts of fumes and dust rising up into her loft unit. Landlord argued that tenant's old claims should be dismissed. The court ruled for landlord. Tenant was time-barred from any claim based on incidents that occurred in 1993 or 1994. Tenant's claim was limited to floods occurring after 1997.

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HIGHLIGHTS / AUGUST 2004

PETS

Issue Date: August 2004, Posted
On: 8/1/2004

Pet Case Delayed for Six Months for Tenant to Pursue Discrimination Claim

Kravetz v. Brown: L&T Index No.
70471/04 (Civ. Ct. NY; Lebovits,
J) [1-pg. doc.]

*(Decision submitted by
Manhattan attorney Adam
Leitman Bailey, who
represented the landlord.)*

Landlord sued to evict tenant for keeping a dog, in violation of her lease. Tenant then filed a discrimination complaint with HUD. Tenant asked the court to delay the eviction case while she pursued her discrimination claim. The court ruled for tenant but limited the delay to six months. The court ordered tenant to request a speedy resolution from HUD in light of the pending court case.

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HIGHLIGHTS / NOVEMBER 2002 DOB VIOLATIONS

IssueDate: November 2002,
Posted On: 11/1/2002

Violation Notices Weren't Posted

Tanenbaum: Viol. No.
107659283 (5/3/00) [1-pg.
doc.]

*(Decision submitted by
Adam Leitman Bailey of
the Manhattan law firm
of Adam Leitman Bailey,
PC, attorneys for the
landlord.)*

DOS issued 14 violation notices to landlord. Landlord claimed that they weren't properly delivered. The ALJ ruled for landlord and dismissed the violations. None of the 14 violation notices were posted at the building. DOS only mailed copies of the notices to landlord. This wasn't sufficient.

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HIGHLIGHTS / MAY 2005 PROCEDURE - COURT

Issue Date: May 2005, Posted On:
5/1/2005

Tenant Can't Vacate Default

666 Properties LLC v. Elsevis: Index No. 51984/05 (Civ. Ct. NY 4/5/05; Wendt, J) [3-pg. doc.]

(Decision submitted by Manhattan attorney Adam Leitman Bailey, attorney for the landlord.)

Landlord sued to evict tenant for nonpayment of rent. The court ruled for landlord based on tenant's failure to appear in court. Tenant later asked the court to vacate the default. The court ruled against tenant. Tenant claimed that she was in the Dominican Republic when the case was in court, but offered no credible proof of this claim. Tenant's back rent also remained unpaid. So tenant had neither a valid excuse for her default nor a meritorious defense.

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HIGHLIGHTS / FEBRUARY 2006 PRIMARY RESIDENCE

Issue Date: February 2006, Posted On: 2/1/2006

Tenant Temporarily Moved to California to Care for Sick Parent

542 E. 14th St. LLC v. Lee: Index No. 104485/02
(Civ. Ct. NY 12/22/05; McClanahan, J) [8-pg. doc.]

*(Decision submitted by Manhattan attorney
Adam Leitman Bailey, who represented the
tenant.)*

Landlord sued to evict rent-stabilized tenant for nonprimary residence. After a trial, the court ruled against landlord. Tenant admitted that she had moved to California for about a year and a half, to take care of her sick and aging parents. While in California, she stayed first with her sister and then with a friend. She also got a California driver's license. She worked at some temporary or part-time jobs while there. Tenant was a nurse. For 2001, she filed an income tax return from California. She said that her accountant told her to do so because she earned income there. However, tenant's teenaged daughter remained in the apartment and attended high school in New York the entire time tenant was away. This was stated on tenant's 2001 income tax return. Tenant also continued to pay rent and utilities for the apartment.

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HIGHLIGHTS / JANUARY 2006 PROCEDURE - COURT

Issue Date: January 2006, Posted On:
1/1/2006

No Delay of Subletting Case Pending DHCR Ruling

341 E. 85, LLC v. Wachter: L&T Index No.
67426/05 (Civ. Ct. NY 12/7/05; Lebovits, J)
[2-pg. doc.]

(Decision submitted by Manhattan attorney Adam Leitman Bailey, who represented the landlord.)

Landlord sued to evict rent-stabilized tenant for illegal subletting. Tenant asked the court to delay the case until the DHCR ruled on his pending complaint. The DHCR had granted tenant's PAR and sent the case back to the DRA for further consideration. The court ruled against tenant. The DHCR case could remain pending for months or even years. Landlord could go forward with the court case, and tenant must respond to landlord's request for pretrial questioning.

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HIGHLIGHTS / APRIL 2006

Issue Date: April 2006, Posted On:
4/1/2006

Ex-Super Can't Delay Eviction

Gilanco Holdings, LLC v. Henriquez: Index
No. 52089/06 (Civ. Ct. NY 3/6/06; Wendt, J)
[2-pg. doc.]

(Decision submitted by Manhattan attorney Adam Leitman Bailey, who represented the landlord.)

Landlord sued to evict former building superintendent after the super's employment was terminated. The court ruled for landlord and issued an eviction warrant. The super then asked the court to delay the eviction. The court ruled against the super. The eviction judgment was issued on Feb. 1, but had already been delayed by the court's order to Feb. 28. The super was never a tenant and had paid no use and occupancy for the apartment. And landlord needed the apartment for the building's new super.

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HIGHLIGHTS / SEPTEMBER 2004

WARRANTY OF HABITABILITY

Issue Date: September 2004, Posted
On: 9/1/2004

Tenant Can't Raise Claim in Illegal Sublet Case

315 West 94th St. Realty Corp. v. Rojas-Campos: L&T Index No. 050677/04 (8/9/04)
[7-pg. doc.]

(Decision submitted by Manhattan attorney Adam Leitman Bailey, who represented the landlord.)

Landlord sued to evict tenant for illegally subletting his apartment. In response, tenant claimed breach of the warranty of habitability. Landlord asked the court to dismiss tenant's claim. The court ruled for landlord. Tenant's habitability claim was unrelated to landlord's claim of illegal subletting. So tenant couldn't raise the issue as a defense or claim in this case.

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HIGHLIGHTS / JUNE 2004 BUILDING VIOLATIONS

Issue Date: June 2004, Posted
On: 6/1/2004

Wrong Landlord Cited

Frant Hotel LLC: ECB Viol.
Nos. 34388519L, 34388484K &
34384806X (5/5/04) [2-pg. doc.]

*(Decision submitted by
Manhattan attorney Adam
Leitman Bailey, who
represented the landlord.)*

DOB issued three violation notices on landlord's building. The notices were addressed to prior landlord of the building. Current landlord asked ECB to dismiss the violations. The building had been transferred to current landlord in 1999. ECB ruled for landlord and dismissed the violations.

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HIGHLIGHTS / AUGUST 2004 WARRANTY OF HABITABILITY

Issue Date: August 2004, Posted On: 8/1/2004

Tenant Didn't Prove Lack of Extermination Services

315 W. 94th St. Realty Corp. v. Chavez: Index No. 99393/03 (Civ. Ct. NY; Moulton, J) [27-pg. doc.]
(Decision submitted by Manhattan attorney Adam Leitman Bailey, who represented the landlord.)

Landlord sued to evict tenant for nonpayment of rent. By the time of the trial, tenant hadn't paid rent in a year. Tenant claimed breach of the warranty of habitability. He testified that there were mice, bedbugs, and roaches in his apartment. He said he had complained to the building super at various times since 1999. Landlord and its exterminator testified that the exterminator visited the on-site management regularly for a list of units to visit. Landlord testified that it received no complaints from tenant. Tenant also presented no documentary proof, such as photographs. After a jury trial, the court ruled for landlord. Tenant didn't prove any lack of extermination services. Landlord was awarded a judgment of \$3,770 in back rent. The eviction warrant was delayed to give tenant the chance to pay.

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HIGHLIGHTS / NOVEMBER 2002 DOB VIOLATIONS

IssueDate: November 2002,
Posted On: 11/1/2002

Permit Not Required for Container

Erica Lee Corp.: Viol. No.
109819454 (7/6/00) [1-pg.
doc.]

***(Decision submitted by
Adam Leitman Bailey of
the Manhattan law firm
of Adam Leitman Bailey,
PC, attorneys for the
landlord.)***

DOS issued a violation notice to landlord for not posting a permit for a 30-yard container. Landlord claimed that none was required. The ALJ ruled for landlord and dismissed the violation. Applicable regulations cover only commercial establishments. Since the building was residential, there was no violation.

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HIGHLIGHTS / NOVEMBER 2002 DOB VIOLATIONS

IssueDate:November2002,
Posted On: 11/1/2002

Work Doesn't Require Permit

224 W. 50th St.: Viol. No.
34285085L (10/25/01) [1-
pg. doc.]

*(Decision submitted by
Adam Leitman Bailey of
the Manhattan law firm
of Adam Leitman Bailey,
PC, attorneys for the
landlord.)*

DOB issued a violation notice to landlord for doing work without a permit. Landlord objected. The ALJ ruled for landlord and dismissed the violation. Replacing doors and doorjambes doesn't require a permit.

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