

Holdover Cases

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Housing Court Universe

AFFIRMATIVE CASES

HP
Illegal Lockout

DEFENSIVE CASES

Nonpayment of rent
Holdover

Holdover Cases

Definition

Cases where Owner alleges that Tenant is “holding over” after expiration or termination of the lease and Owner wishes to recover the apartment.

In short, these are EVICTION CASES, that is, cases where Owner seeks to evict the Tenant without regard to whether rent is being paid or not.

Holdover Cases

Types

Unregulated
Rent Stabilized
Project-Based Section 8
Regulatory Agreements
Coop
Licensee
Superintendent
Roommate
NYCHA

NOTE: expect a lot of cross-referencing. That is, a holdover case may pertain to an unregulated apartment that is subject to a regulatory agreement which controls rent setting. Or, a holdover may pertain to a rent stabilized apartment but the landlord alleges that the occupant is not a rent stabilized tenant, but rather a licensee.

Regulated vs. Unregulated

IF YOU ARE NOT A RENT REGULATED TENANT

- Your right to occupancy of the apartment is determined by your lease. Once your lease expires, the landlord may choose or not to renew your lease.
- Rent levels are determined by market forces.
- HOLDOVERS:** Upon conclusion of your lease, the landlord may seek to evict you without any specific reason (i.e., no-grounds holdovers).
- The landlord does have to follow certain procedural requirements before taking you to court. RPL § 232-a
- And there is a retaliatory eviction defense. RPL § 223-b
- Once a judgment is entered in court, there is a six months limitation on the *issuance* of the warrant (RPAPL § 753), but the court may grant time to move beyond the six months under CPLR § 2201. *See Errigo v. Diomedea*, 14 Misc3d 988 (Civ. Ct. Kings 2007).

Preservation Defenses

DE FACTO RENT STABILIZATION

- Robrish v. Watson*, 48 Misc. 3d 143(A) (A.T. 2nd Dep't 2015)
 - ✓ “The 10 different tenancies entered into by landlord with 10 different individuals for 10 different rooms in his house rendered the house subject to rent stabilization, as housing accommodations in buildings built before January 1, 1974 containing more than six units are subject thereto.”
 - ✓ The RSC defines a housing accommodation as “[t]hat part of any building or structure, occupied or intended to be occupied by one or more individuals as a residence, home, dwelling unit or apartment”
 - *Gracecor Realty Co. v. Hargrove*, 90 N.Y.2d 350, 683 N.E.2d 326 (1997).

Preservation Defenses

❑ *Robrish v. Watson, cont.:*

- ✓ “Under this definition, an individually rented room in a rooming house is a housing accommodation, and therefore, contrary to the Civil Court’s decision, a building with six or more individually rented rooms is subject to rent stabilization, regardless of whether any structural changes were made to the premises.”
- ✓ “Thus, the petition should have been dismissed on the ground that landlord failed to serve the required rent stabilization notices.”

Preservation Defenses

HORIZONTAL MULTIPLE DWELLING

❑ *Salvati v. Eimicke*, 72 N.Y.2d 784, 533 N.E.2d 1045 (1988)

- ✓ “In determining the existence of a regulated horizontal multiple dwelling the crucial factor... [is] whether there are sufficient indicia of common facilities, common ownership, management and operation to warrant treating the housing as an integrated unit and multiple dwelling subject to regulation.”

❑ Checklist:

- ✓ History of common ownership
- ✓ Common management
- ✓ Same tax lot
- ✓ Common services/utilities
- ✓ Common architectural appearance

Regulated vs. Unregulated

IF YOU ARE A RENT STABILIZED TENANT

- You have a right to a renewal lease. RSC § 2523.5
- Your immediate family members can inherit your tenancy. RSC § 2523.5(b)(1)
- Your rent can only be increased pursuant to the annual orders of the New York City Rent Guidelines Board. RSC § 2522.2
- HOLDOVERS:** Aside from not paying your rent, you can only be evicted under one of the grounds enumerated in the Rent Stabilization Code, e.g.,:
 - ✓ Breach of substantial obligation of tenancy. RSC § 2524.3(a)
 - ✓ Nuisance. RSC § 2524.3(b)
 - ✓ Owner's use. RSC § 2524.4(a)
 - ✓ Non-primary residence. RSC § 2524.4(c)
 - ✓ Chronic Rent Delinquency.

Rent Regulated Holdovers

Part 2524 of the Rent Stabilization Code: EVICTIONS

1. Except for non-payment cases, no tenant can be removed from a rent stabilized apartment "except on one or more of the grounds specified in this Code." RSC § 2524.1
2. "No tenant shall be removed or evicted from a housing accommodation by court process... unless and until the owner shall have given written notice to such tenant as hereinafter provided." RSC § 2524.1(a).
 - Subsection (b) provides that every notice to a tenant to vacate or surrender possession shall state
 - ✓ The eviction ground under the RSC
 - ✓ The facts necessary to establish the existence of such ground
 - ✓ The date when the tenant is required to surrender possession
 - 2524.1(b) generates a lot of litigation around the insufficiency of the holdover notice

Rent Regulated Holdovers

SOME COMMON CASES

1. *Violation of substantial obligation of the tenancy, 2524.3(a)*

- Owner alleges that the landlord is engaging in conduct that constitutes a breach of the lease.
- Requires service of a 10-day notice to cure
- Typically combined with other eviction grounds. E.g.,
 - ✓ Refusing to grant access for necessary repairs may be a breach of the lease but is also a separate ground for eviction.
 - ✓ Performing unauthorized alterations to the apartment may be a breach of lease but also a separate ground for eviction if a violation is placed by a city agency.
- Opened the flood gates for “chronic rent delinquency” cases.

Rent Regulated Holdovers

2. *Chronic rent delinquency*

- Owner alleges that the tenant must be evicted in a holdover on the basis of a history of multiple prior non-payment cases.
- Requires no prior 10-day notice to cure. However, tenant may be entitled to post-judgment opportunity to cure. *326-330 E. 35th St. Assoc. v. Sofizade*, 191 Misc. 2d 329, 741 N.Y.S.2d 380 (AT 1st 2002).
- DEFENSES:
 - ✓ Statute of limitations – only nonpayment cases occurring in the past 6 years count.
 - ✓ Rent was in dispute in prior cases.
 - ✓ Tenant withheld rent due to Owner’s failure to make necessary repairs.

Rent Regulated Holdovers

3. Nuisance, 2524.3(b)

- ❑ Elements of the definition:
 - ✓ Tenant is committing or permitting a nuisance in the apartment or building.
 - ✓ By reason of gross negligence, tenant substantially damaged the apartment.
 - ✓ Tenant engages in a persistent, continuing, and unwarranted course of conduct which annoys, inconveniences, or damages the owner or other tenants. Tenant *intends* to harass the owner or other tenants.
- ❑ For purposes of the Rent Stabilization Code, “key to the definition [of a nuisance] is a pattern of continuity or recurrence of objectionable conduct.” *CHI-AM Realty, Inc. v. Guddahl*, 7 Misc. 3d 54 (AT 2nd 2006).

Rent Regulated Holdovers

- ❑ DEFENSES:
 - ✓ “...not every annoyance will constitute a nuisance.” *Domen Holding Co. v. Aranovich*, 1 N.Y.3d 117 (2003)
 - ✓ Insufficiency of the termination notice.
 - ✓ Notice needs to provide fact-specific examples such as to allow the tenant to form a defense.
 - ✓ Dates and times of incidents often required.
 - ✓ Termination notice cannot be amended after the case begins. *Chinatown Apartments, Inc. v. Chu Cho Lam*, 51 N.Y.2d 786 (1980). Thus, if the notice is found by the court to be factually insufficient, the case must be dismissed.

Rent Regulated Holdovers

4. *Illegal use, 2524.3(d)*

- ❑ Owner alleges that the tenant is using the apartment for illegal or immoral activity.
- ❑ Typically involve the use of the apartment for drug-related activity
- ❑ DISTINCTION: so called “drug-holdovers”
 - ✓ Brought under RPAPL § 711(5) and RPL § 231(1)
 - ✓ Owner must show that the apartment is being used as the site of a drug trade business to the knowledge and acquiescence of the tenant.
 - ✓ Termination notice should attach documents from criminal proceeding, just as search warrants and inventories of property seized.

Rent Regulated Holdovers

5. *Owner’s use, 2524.4(a)*

- ❑ Owner wishes to recover the apartment for her own use or the use of a family member.
- ❑ If the tenant is elderly or disabled, owner must afford the tenant comparable housing within the same neighborhood.
- ❑ DEFENSES:
 - ✓ The owner does not have a good-faith intent to live in the apartment, i.e., the case is a pretext for the owner to oust the tenant and rent the apartment at a higher price.
 - ✓ On the issue of “good-faith intent,” owner has to document what its intentions are for the apartment.
 - ✓ Discovery-intensive cases.

Rent Regulated Holdovers

6. *Non-primary residence, 2524.4(c)*

- ❑ Owner alleges that the tenant is not residing in the apartment as a primary residence.
- ❑ Owner must serve a “Golub notice” – a notice served between 150 and 90 days prior to the expiration of the lease in which the owner apprises the tenant that it will not renew said lease based on the tenant’s failure to reside in the apartment. Notice must meet fact-specificity requirement.
- ❑ Exceptions to periods of non-residency:
 - ✓ Military duty
 - ✓ Full-time student
 - ✓ Employment requiring a temporary relocation
 - ✓ Hospitalization (of tenant or immediate family member)

NYCHA Holdovers

- “New York City Housing Authority” is the petitioner
- General holdover based on termination of tenancy
 - ❑ *Brought after administrative hearing at 250 Broadway in Manhattan*
 - ❑ *No defense to the merits of the case in housing court*
 - ❑ *Article 78 in Supreme Court within four months of the hearing decision*
- Licensee holdover
 - ❑ *Tenant of record no longer lives in the apartment*
 - ❑ *NYCHA is disputing Remaining Family Member claim of current occupants*
- Illegal use holdovers under RPAPL §§ 711(5) and 715(1)

General Considerations

A COUPLE OF THINGS TO CONSIDER IN EVERY HOLDOVER

- Owner must have standing. RPAPL § 741(a)
- Owner must acquire personal jurisdiction over the tenant by proper service of process. RPAPL § 735
 - ✓ Challenged by a “traverse” defense
- Tenant may be required to pay “use and occupancy” during pendency of case. RPAPL § 745

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