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Roommates in New York Law

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I. The Roommate Law: Origins and Purpose

The Roommate Law is the popular name for New York's Unlawful Restrictions on Occupancy Law, codified at Real Property Law (RPL) § 235-f. It was enacted as part of the Omnibus Housing Act (OHA) of 1983 in response to courts that "refus[ed] to extend the protection of the human rights law to unrelated persons sharing a dwelling."[1] The New York Legislature recognized that countless households were composed of unrelated persons who lived together for reasons of economy, safety, and companionship. The Legislature reasoned that unless corrective action was taken, these households would be in jeopardy. The Roommate Law is designed to prevent evictions of residential tenants who had nontraditional living arrangements. The law permits a tenant to share a rental unit with additional occupants and be afforded the same protections as a traditional family.

A traditional family enjoys the most protection under the law, but New York's Roommate Law also allows for nontraditional living arrangements. A tenant is granted a number of rights, including the right to privacy and the right to live with anyone, subject to some exceptions. This article explores the protections, and their limitations, afforded to tenants and roommates under the Roommate Law.

II. Definition of Roommate

Despite its popular name, the Roommate Law fails to define the term "roommate." The law refers to a roommate as an "occupant": "a person, other than a tenant or member of a tenant's immediate family, occupying premises with the consent of the tenant or tenants."[2] The term "tenant" refers to every individual with a lease, including all those living in rent-stabilized or rent-controlled apartments.[3]

These definitions neither answer nor address the problems that arise in disputes involving landlords and roommates. In the context of the Roommate Law, landlord-tenant rights and obligations depend on a number of factors, including a tenant's relationship with a co-habitant and whether a co-habitant is a party to the lease.[4] Different levels of liability, legal remedies, and protections apply to those who share space. Each definition becomes significant when disagreements can no longer be resolved in the living room and must be resolved in the courtroom.

III. Tenancy Relationships

A co-tenancy relationship exists when two or more individuals rent a unit and sign the same lease. This occurs either when a unit is initially rented or when a new tenant is added to an existing lease sometime later. Each co-tenant is independently liable for all the rent for a unit. Each co-tenant has equal tenancy responsibilities and is in privity of contract with the landlord.

A subtenant, on the other hand, enters into a sublease agreement and pays rent to the primary tenant—the tenant named on the lease. This creates a subtenancy relationship. A sublease is a "transfer of the tenant's interest in all or part of the leased property with reservation of a reversionary interest."[5] With an agreement to sublease, the primary tenant "retains privity of contract with the landlord and remains responsible for all obligations under the lease."[6]

If an occupant lives with the tenant but is not a member of a tenant's immediate family and does not execute a lease with the landlord or a sublease with the tenant, the occupant is a roommate whom the Roommate Law protects. A roommate, unlike a tenant or co-tenant, is "neither in privity of contract nor privity of estate with the landlord."[7] A landlord "cannot hold a roommate liable for the rent nor can the roommate bind the landlord to the benefits of the lease."[8]

A roommate is different from a guest, "who is temporarily received and entertained at one's home but who is not a regular occupant."[9]

IV. A Landlord's Right to Know

Tenants do not need a landlord's consent before an immediate family member or an additional occupant moves into a unit. The Roommate Law protects tenants from a landlord that attempts to reduce apartment-sharing rights, even when the landlord attempts to diminish these rights in a lease. Any clause in a tenant's lease that purports to waive or modify a tenant's right to share rental space is "unenforceable as against public policy."[10]

A landlord has the right to know about any occupant in the rental unit. A tenant must inform the landlord, upon the landlord's request, of the name of any occupant within 30 days after the occupancy begins.[11] A landlord's request need not be made in writing. Both the landlord and the Division of Housing and Community Renewal (DHCR) are authorized under the New York City Housing Maintenance Code (HMC) to demand that

a tenant provide a sworn affidavit containing information about all occupants residing in the rental unit, including the name, relationship, and age of any minor children.[12]

V. The Limitation on the Number of Occupants

Although landlords may not unlawfully place occupancy restrictions on a tenant, they have the right, at least initially on lease signing, to limit the number of occupants living in the rental unit. Under the Roommate Law, the number of occupants allowed to share living space depends on the number of tenants who signed the lease.[13] When one tenant is named in a lease, the law provides that "[a]ny lease or rental agreement for residential premises entered into by one tenant is construed to permit occupancy by the tenant, tenant's immediate family, and one additional occupant and occupant's dependent children. . . ."[14] When two or more tenants are named in a lease, the law provides that "the total number of tenants and occupants . . . may not exceed the number of tenants specified in the current lease or rental agreement. . . ."[15] The occupants' immediate family and dependent children are excluded from this calculation. The Roommate Law further requires that the apartment be the primary residence of either the tenant or the tenant's spouse.

Other limits also affect the number of occupants who may live in a rental unit. The Roommate Law does not inhibit a landlord's ability to restrict occupancy to comply with federal, state, or local laws, regulations, ordinances, or codes.[16] For example, the HMC provides a formula to determine the maximum number of persons who may occupy an apartment. According to the HMC, each person, including tenants and occupants, must have at least 80 square feet of livable space.[17] To determine the number of occupants allowed in a rental unit, the square footage of the livable space is divided by 80. In addition, for every two persons who may lawfully occupy the space, one child under four may reside there. The HMC does not distinguish between tenants, immediate family, and occupants.

If a family member or roommate resides in a rental unit according to the Roommate Law, the landlord may still restrict occupancy if the HMC's standard is not satisfied. But a landlord may not use the federal or state restrictions, including the proscription Multiple Dwelling Law § 31(6),[18] to evict a tenant in violation of the Roommate Law, unless an overcrowding violation has been placed against the premises. In one case of alleged overcrowding, a court held that the landlord was not permitted to evict absent dangerous conditions. The court noted that the HMC was not intended "as a sword by a landlord who seeks to evict low rent tenants who have not been proven to be a danger to the building."[19] One court held in 1949 that violations of the then-extant Department of Housing and Buildings does not require evicting a tenant if the violation can be cured through other means.[20] In another case, the court found that to evict a tenant for "so-called single-room violations" would be against the legislative intent manifested in § 6 of the Federal Rent Regulation for Housing in the New York City Defense-Rental Area and § 261 of the Multiple Dwelling Law.[21] Nevertheless, the Department of Housing Preservation and Development or the Department of Buildings can order the unit vacated if occupancy rules are violated and if there is a genuine safety or fire hazard not curable except by evicting the tenants.

VI. Immediate Family

The Roommate Law protects a tenant's right to have immediate family members living in the unit, but the Roommate Law does not define "immediate family." Case law provides some guidance. In one case involving an apartment subject to the Rent Stabilization Law (RSL), the court found that the tenant's mother qualified as a member of the tenant's immediate family.[22] Little controversy arises when a court finds that a tenant's mother is a member of the tenant's immediate family, because the Rent Stabilization Code (RSC) defines the phrase "immediate family" to include a "parent, grandparent, child, stepchild, grandchild, brother or sister of the tenant or of the tenant's spouse or the spouse of any of the foregoing."[23] The controversies lie elsewhere.

Defining the phrase "immediate family" gets more complicated when shareholders of cooperative apartments share living space with family members. The relationship between a cooperative corporation and a shareholder-proprietary lessee is that of a landlord and tenant. A proprietary lease into which a stockholder of a cooperative corporation enters is a lease by a tenant for residential rental premises.[24] A proprietary lessee of a cooperative apartment may invoke RPL § 235-f as a defense when a landlord improperly restricts occupancy. Using this rationale, one court declined to enforce a proprietary lease that restricted occupancy to the shareholder and his immediate family.[25]

In *Mitchell Gardens No. 1 Co-op. Corp. v. Cataldo*, a case involving a cooperative apartment, the court found it improper to use the RSC's definition of immediate family because cooperatives are excluded from the RSL.[26] In *Cataldo*, the court looked to the parties' cooperative agreement for the meaning of "immediate family." The cooperative rules and regulations defined the phrase to mean "those members of the Stockholder's family who lived with the Stockholder on the date he first took occupancy of his apartment and lived with the Stockholder continuously from that date."[27] Finding that a stepdaughter does not qualify as an immediate family member, the court

held that the cooperative corporation, acting as landlord, did not unlawfully restrict occupancy by denying the stepdaughter protection as an immediate family member.

The Roommate Law's ambiguous definitions can work to a tenant's benefit. In cases not involving cooperative apartments with restrictive proprietary leases, uncles, aunts, nephews, and nieces may still move in as a roommate even if they do not qualify as an immediate family member as the RSC defines them.

VII. Profiteering from Roommates

Until RSC § 2525.7(b) went into effect on December 20, 2000, the Appellate Division, First Department, found "no cause of action for rent profiteering with respect to a roommate."[28] Section 2525.7(b) now protects roommates from primary tenants who profiteer. It prohibits a rent-stabilized tenant from charging a roommate anything more than a proportionate share of the legal regulated rent. To calculate the roommate's proportionate share, the legal regulated rent is divided by the number of tenants named on the lease and the total number of occupants living in the unit.[29] The formula does not cover the tenant's spouse and family members or the occupant's dependent children[30] or account for a situation in which one roommate invests much more into the rental unit than the other occupant, thus imposing an equal share division, unlike that of a subletting situation.[31] Thus, a court may take into account the apartment's furnishings, utilities, and other services when determining the proportionate rent.[32] The proportionate share requirement under RSC § 2525.7 represents a reasonable approximation of the individual's fair share of the apartment's expenses, including rent.[33]

A roommate's "remedy for a violation of § 2525.7 is not set forth in the code."[34] The DHCR, the agency that supervises rent-stabilized apartments, provides a remedy by allowing the overcharged roommate to file a rent overcharge complaint with the agency,[35] and courts have held the roommate has an implied cause of action and can sue the tenant for actual damages.[36] Unlike a rent-stabilized tenant whom a landlord overcharges, a roommate is not entitled to treble damages.[37]

Section 2525.7(b) of the RSC prohibits a tenant from charging the roommate more than a proportionate share of the apartment's rent.[38] If the tenant violates this provision, the overcharged roommate can sue the tenant, and a successful roommate will be refunded any rent paid over the apartment's proportionate share.[39] RSC § 2525.7(b) defines proportionate share as the registered rent of the apartment divided evenly by the number of tenants and occupants living therein, excluding tenant's family members and the occupant's dependent children.[40] If the tenant charges the roommate more rent than the tenant is paying the landlord (the authentic rent share), this is known as profiteering. No *prima facie* case of profiteering exists in a plenary action if the tenant has refunded the overcharge[41]; the tenant may move to dismiss for failure to state a cause of action.

In addition to the roommate's plenary action, a landlord may also start a holdover proceeding against a tenant charging the roommate more than the proportionate share of the legal rent.[42] Landlords will not always be successful in evicting a tenant for rent profiteering. Even if the tenant violates RSC § 2525.7 by unlawfully charging the roommate more than half the monthly stabilized rent, the landlord may not prevail if the overcharge was small and there was no evidence of bad faith or intent to profit.[43] Courts do not always allow a tenant's cure to alleviate a violation under the cure provision of Real Property Actions and Proceedings Law 753. One court that examined the amount of rent charged over the proportionate share held that preventing a landlord from evicting a tenant based on the cure is inconsistent with the law.[44] The court held that the cure provision "is not to be rotely applied"[45] to all cases. If the tenant collects grossly excessive rent, for example, no cure is allowed for the profiteering tenant in a holdover proceeding,[46] although the court will allow a cure if "the surcharge amounts, though not insubstantial, do not reflect commercial exploitation of the regulated tenancy."[47] Ultimately, courts are much more likely to allow cures when a roommate as opposed to a subtenant is overcharged.

A landlord may also move for injunctive relief. One court enjoined a rent-controlled tenant from leasing or subleasing the apartment to roommates, occupants, and subtenants for the duration of her tenancy.[48]

Courts have not extended the same protection to roommates sharing living space regulated by the Rent Control Law and the Loft Law. RSC § 2525.7 prohibits only rent-stabilized tenants from charging roommates more than a proportionate share of the legal rent. The Appellate Term, First Department, has held that RSC § 2525.7 does not allow a rent-controlled tenant to be evicted for overcharging a roommate.[49] The court found no rent-control regulation that parallels RSC § 2525.7; no rent-control provision authorizes evicting rent-controlled tenants for rent profiteering. Similarly, a landlord has no cause of action to evict a loft tenant who charges a roommate more than a proportionate share of the legal rent.[50] Nothing in the Loft Law or its regulations prohibit tenants from overcharging roommates more than the proportionate share of the legal rent, and the Loft Law does not give the landlord a cause of action to evict a tenant for that conduct.[51] A landlord may bring an eviction proceeding

against a tenant subleasing a rent-controlled apartment for profit, but the restrictions in sublet situations do not apply to situations involving roommates.[52]

VIII. Succession Rights

After *Braschi v. Stahl*,[53] a 1989 Court of Appeals decision, the DHCR amended its rent regulations, now set out in RSC § 2204.6(d), to provide for leasehold succession rights in accordance with *Braschi*'s broad definition of the term "family." The Court of Appeals in *Braschi* held that a family includes "two lifetime partners whose relationship is long term and characterized by an emotional and financial commitment and interdependence."[54]

A person claiming succession rights to a rent-stabilized apartment must (1) be a member of the tenant's family; (2) use the premises as a primary residence; and (3) live in the apartment with the primary tenant for two years immediately before the primary tenant's move or death (unless the family member is a senior citizen or disabled). The preceding Code narrowly defined "family"[55] and excluded non-traditional family members from the right to succeed.

The DHCR amendments broadened the definition of family members entitled to succession rights as the *Braschi* court required. The current definition includes those who can prove that the apartment was their primary residence and that an emotional and financial commitment demonstrates interdependence between that individual and the record tenant. Courts consider eight factors in determining whether the requisite emotional and financial commitments exist: (1) the length of the relationship; (2) sharing of expenses; (3) intermingling of finances; (4) engaging in family-type activities; (5) the parties' formalized legal obligations and responsibilities; (6) holding themselves out as family members through words or acts; (7) regularly performing family functions; and (8) any other pattern of behavior that evidences an intent to create a long-term, emotionally committed relationship. No single determining factor preponderates. Courts will look at the totality of the evidence.[56] These factors give roommates who are non-traditional family members an opportunity to show their right to continue residing in the apartment.

Courts will grant succession rights to occupants who can prove that they were more than the deceased tenant's roommate—that they are a non-traditional family member. The occupant must meet the burden of proving the necessary emotional and financial commitment.[57] In one case when a landlord tried to evict a deceased tenant's alleged roommate, the court was particularly persuaded by the facts that the roommate lived with the tenant for 15 years without paying rent, took care of the tenant while battling cancer, and used the apartment's address on a W-2 form, bank statement, and voter registration card. The court acknowledged that "while the statute considers intermingling of finances, the absence of this factor here does not negate the conclusion that she is in fact a non-traditional family member."[58]

Another court held that an occupant was not subject to eviction after the record tenant died. In that case, the occupant could not establish through documentary evidence a financial interdependence between the occupant and the tenant. The landlord proved that the occupant and tenant maintained separate checking accounts and credit cards, but the court found that the occupant had a valid succession claim because the "totality of the circumstances evince[d] a long-term relationship characterized by emotional and financial commitment."[59]

Tenants living in rent-controlled and rent-stabilized apartments can protect their roommate's succession rights. A tenant may complete a DHCR form entitled "Notice to Owner of Family Members Residing with the Named Tenant in the Apartment Who May Be Entitled to Succession Rights/Protection from Eviction." This form informs landlords about those people living in the tenant's apartment as their primary residence. Assuming that a roommate is ready to accept the liabilities and responsibilities of tenancy, the roommate may also list the roommate as a co-tenant on the lease. A roommate's right to remain in the apartment is contingent on the tenant's continued occupancy unless succession rights accrue.

IX. Liability for Roommate's Conduct

A tenant may be held liable for a roommate's conduct that rises to the level of a nuisance.[60] A nuisance is a condition that threatens the comfort and safety of others in the building.[61]

A landlord seeking to evict a tenant must give a tenant sufficient notice to cure the nuisance if the nuisance is curable and cite the specific lease prohibition or law allegedly violated.[62] The landlord must also prove more than one isolated instance of nuisance. The conduct must be recurring, frequent, or continuous.[63] To qualify as a nuisance, therefore, the conduct must "import[] a continuous invasion of rights—'a pattern of continuity or recurrence of objectionable conduct.'"[64]

In one leading case, an uncle allowed his sister and his schizophrenic nephew to share his apartment.[65] The court found that the tenant-uncle "permitted and condoned the nuisance and whose tenancy itself, in all likelihood will encourage the nuisance to continue unabated."[66] As a result, the court held that evicting the tenant-uncle was appropriate to protect the other tenants in the building.

X. Increasing the Rent

The DHCR sets the approval guidelines for situations when a landlord may increase rent.[67] A landlord may be entitled to increase the rent for a rent-controlled apartment when a tenant takes a roommate. The landlord may not increase the rent if the additional occupant is a member of the tenant's immediate family. The landlord must first apply to the DHCR, and the agency's administrator may grant the appropriate adjustment only during the period "of subletting or increase in the number of occupants."[68] The total rent can be increased by as much as 10 percent when a tenant shares the apartment with roommates.

Landlords of rent-stabilized apartments are not entitled to increase the tenant's rent when the tenant shares an apartment with roommates. But when roommates decide to change their status to co-tenants by placing their names on the lease, the DHCR allows the landlord to increase the rent at lease renewal. By adding a new co-tenant to the renewal lease, the landlord may issue a vacancy rent increase.[69]

XI. Acceptance of Rent

A roommate may get mixed signals from a landlord who accepts rent even when a roommate has no succession rights to the apartment. A landlord who accepts rent from a tenant's roommate "does not in and of itself, create a tenancy when the tenant has vacated the apartment."[70] The landlord's intent will determine whether the acceptance of rent will create a tenancy. According to dozens of cases, the tenant must establish that the landlord "knowingly and purposefully accepted" the rent.[71] This rationale is consistent with the policies behind waiver in landlord-tenant law. In the context of a holdover proceeding, for example, a tenant may assert the defense that the landlord waived the default by accepting rent even if a "no waiver" clause is in the lease. This defense applies only if the tenant can prove that the landlord intended to enter or maintain the landlord-tenant relationship.[72] A landlord's waiver is inferred from accepting rent, but the acceptance of rent with knowledge of a breach, and without a diligent effort to terminate the lease, triggers an inference that the landlord has elected to ignore the noncompliance and hold the tenant to the parties' agreement.[73]

XII. Conclusion

New York has made a legislative determination that tenants may have roommates, at least during the tenancy, and sometimes beyond the tenancy. But tenants may not abuse their right to live with roommates, and limitations affect the roommates' number and behavior and the rent a tenant may charge them.

Endnotes

1. L. 1983, ch. 403, § 1.
2. RPL § 235-f(1)(b).
3. *Id.* § 235-f(1)(a).
4. For an overview of the rent regulatory system, see Andrew Scherer, *Residential Landlord and Tenant Law in New York* § 4:1, at 150 (2006 ed.).
5. Daniel Finkelstein & Lucas A. Ferrara, *Landlord and Tenant Practice in New York* § 3:39, at 17 (2006 ed.).
6. Scherer, *supra* note 4, at § 2:44, at 36.
7. Finkelstein & Ferrara, *supra* note 5, at § 3:38, at 16-17.
8. *Id.*
9. *Id.* § 3:40, at 17-18.
10. RPL § 235-f(2).
11. *Id.* § 235-f(5).
12. N.Y.C. Admin. Code § 27-2075(2)(c).
13. RPL § 235-f(3), (4).
14. *Id.* § 235-f(3).
15. *Id.* § 235-f(4).
16. RPL § 235-f(8); Scherer, *supra* note 4, at § 2:42, at 35-36.
17. N.Y.C. Admin. Code § 27- 2075(a)(1).
18. *Sima Realty LLC v. Philips*, 282 AD2d 394, 395, 724 N.Y.S.2d 51, 52 (1st Dep't 2001) (mem.) (noting that Multiple Dwelling Law "was enacted to protect tenants of multiple dwellings against unsafe living conditions, not to provide a vehicle for landlords to evict tenants on the ground that premises are unsafe"); *Porto v. Watts*, 2006 N.Y. Slip Op. 50436(U), at *4 (Hous. Part. Civ. Ct., N.Y. Co., Feb. 26, 2006) ("[A] landlord may not maintain a proceeding for overcrowding under MDL § 31(6)(a) unless an overcrowding violation has been placed against the building by reason of the tenant's occupancy.") (citing *210 W. 94 LLC v. Concepcion*, 2003 N.Y. Slip Op. 50612(U), *3, 2003 WL 1873768, at *1 (App Term 1st Dept, Mar. 3, 2003) (*per curiam*)).
19. *338 W. 17th St. Assoc. v. Katehis*, N.Y.L.J., Oct. 5, 1994, p. 22, col. 2 (Hous. Part Civ. Ct., N.Y. Co.).
20. *Kirschenbaum v. Finkelstein*, 275 App. Div. 683, 683, 86 N.Y.S.2d 428, 428 (2d Dep't 1949) (mem.).
21. *2025 Broadway, Inc. v. Wolf*, 187 Misc. 1065, 1066, 66 N.Y.S. 2d 17, 17 (App. Term 1st Dep't 1946) (*per curiam*).
22. *38th Astoria Assocs. v. Chavez*, 126 Misc. 2d 811, 813, 484 N.Y.S.2d 467, 469 (Hous. Part Civ. Ct., Queens Co. 1985).
23. RSC § 2520.6(n).
24. *Silverman v. Alcoa Plaza Assocs.*, 37 A.D.2d 166, 172, 323 N.Y.S.2d 39, 45 (1st Dep't 1971) (quoting *Susskind v. 1136 Tenants Corp.*, 43 Misc. 2d 588, 590 (Civ. Ct., N.Y. Co. 1964)); *Suarez v. Rivercross Tenants' Corp.*, 107 Misc. 2d 135, 137, 438 N.Y.S.2d 164, 166 (App. Term 1st Dep't 1988) (*per curiam*); *Sherwood Village Cooperative A, Inc. v. Slovik*, 134 Misc. 2d 922, 924, 513 N.Y.S.2d 577, 578 (Hous. Part Civ. Ct., Queens Co. 1986).
25. *Southridge Cooperative Section No. 3, Inc. v. Menendez*, 141 Misc. 2d 823, 826, 535 N.Y.S.2d 299, 302 (Hous. Part Civ. Ct., Queens Co. 1988).
26. 175 Misc. 2d 493, 494, 670 N.Y.S.2d 190, 191 (App. Term 2d Dep't 2d & 11th Jud. Dists. 1997) (mem.) (citing RSC § 2520.6(n)).
27. *Id.* at 496, 670 N.Y.S.2d at 192.

28. *Handwerker v. Ensley*, 261 A.D.2d 190, 191, 690 N.Y.S.2d 54, 55 (1st Dep't 1999) (mem.).
29. RSC § 2525.7(b).
30. *Id.*
31. *Bryant v. Carey*, 196 Misc. 2d 412, 414, 765 N.Y.S.2d 146, 148 (Civ. Ct., N.Y. Co. 2003).
32. *719 W. 180th St. LLC v. Gonzalez*, 193 Misc. 2d 736, 739, 752 N.Y.S.2d 214, 217 (Hous. Part Civ. Ct., N.Y. Co. 2002).
33. *Id.* at 740, 752 N.Y.S.2d at 217.
34. *Bryant*, 196 Misc. 2d at 414, 765 N.Y.S.2d at 148-49.
35. *Scherer, supra* note 4, at § 8:163, at 571.
36. *Bryant*, 196 Misc. 2d at 414, 765 N.Y.S.2d at 149.
37. *Compare* RSC § 2526.1 *with Bryant*, 196 Misc. 2d at 416, 765 N.Y.S.2d at 150.
38. RSC § 2525.7.
39. *Bryant*, 196 Misc. 2d at 416, 765 N.Y.S.2d at 150.
40. RSC § 2525.7(b).
41. *Ariel Assoc., L.L.C. v. Brown*, 271 A.D.2d 369, 370, 706 N.Y.S.2d 116, 117 (1st Dep't) (mem.), *appeal dismissed*, 95 N.Y.2d 844, 713 N.Y.S.2d 517, 735 N.E.2d 1282 (2000); *Alverjan Holding Corp. v. Weiss*, N.Y. L.J., May 19, 1994, p. 27, col. 1 (App. Term 1st Dep't 1994) (*per curiam*); *L.E.S.P.M.H.A., Inc. v. Nunez*, N.Y. L.J., Dec. 18, 2002, p. 23, col. 4 (Hous. Part Civ. Ct., N.Y. Co. 2002).
42. *See, e.g.*, *W. 148 LLC, v. Yonke*, N.Y. Slip Op. 23068(U), at *1 (App. Term 1st Dep't Feb. 8, 2006) (*per curiam*) (evicting tenant who charged series of roommates nearly double monthly stabilized rent and advertised the apartment under Internet listing for "Affordable Hotels"); *Ram 1 L.L.C. v. Mazzola*, 2001 N.Y. Slip Op. 50073(U), at *1, 2001 WL 1682829, at *1 (App. Term 1st Dep't 2001) (*per curiam*).
43. *See, e.g.*, *54 Greene St. Realty Corp. v. Shook*, 8 A.D.3d 168, 168, 779 N.Y.S.2d 77, 77 (1st Dep't 2004) (mem.), *lv. denied*, 4 N.Y.3d 704, 792 N.Y.S.2d 1, 825 N.E.2d 133 (2005).
44. *Continental Towers v. Freuman*, 128 Misc. 2d 680, 681, 494 N.Y.S.2d 595, 596 (App. Term 1st Dep't 1985) (*per curiam*).
45. *Id.*, 494 N.Y.S.2d at 596 (citing *Beekman Estate v. Hanson*, N.Y. L.J., Dec 5, 1984, p. 6, col. 2 (App. Term 1st Dep't) (*per curiam*)).
46. *Id.*
47. *Roxborough Apts. Corp. v. Becker*, __ Misc. 3d __, 2006 N.Y. Slip Op. 26120, at *2 (App. Term 1st Dep't, Mar. 29, 2006) (*per curiam*) (citing *54 Greene St. Realty*, 8 A.D.3d 168, 779 N.Y.S.2d; *Ariel Assoc., L.L.C. v. Brown*, 271 A.D.2d 369, 706 N.Y.S.2d 116 (1st Dep't), *lv. dismissed*, 95 N.Y.2d 844, 713 N.Y.S.2d 517, 735 N.E.2d 1282 (2000); *270 Riverside Dr., Inc. v. Braun*, 4 Misc. 3d 77, 79, 781 N.Y.S.2d 551, 551 (App. Term 1st Dep't 2004) (*per curiam*) (finding violation curable because tenant collected $1,270 in rent from two roommates when legal regulated rent was $1,192); *W. 148 LLC*, 2006 N.Y. Slip Op. 26038).
48. *Leonori Assoc. v. Sultan*, N.Y.L.J., Mar. 23, 2005, p. 18, col. 1 (Sup. Ct., N.Y. Co. 2005).
49. *270 Riverside*, 4 Misc. 3d at 77, 781 N.Y.S.2d at 551; *see also Porto*, 2006 N.Y. Slip Op. 50436(U), at **1-3 (collecting cases).
50. *Giachino Enters. v. Inokuchi*, 7 Misc. 3d 738, 740, 791 N.Y.S.2d 814, 815-16 (Hous. Part Civ. Ct., N.Y. Co. 2005); *cf. BLF Realty Holding Corp. v. Kasher*, 299 A.D.2d 87, 747 N.Y.S.2d 457 (1st Dep't 2002) (sublets under Loft Law), *appeal dismissed*, 100 N.Y.2d 535, 762 N.Y.S.2d 876, 793 N.E.2d 413 (2003).
51. *Giachino Enters.*, 7 Misc. 3d at 740, 791 N.Y.S.2d at 816.
52. *See BLF Realty Holding*, 299 A.D.2d at 91, 747 N.Y.S.2d at 461 (citing *Hurst v. Miske*, 133 Misc. 2d 362, 365, 505 N.Y.S.2d 984, 986 (Hous. Part Civ. Ct., N.Y. Co. 1986)).
53. *Braschi v. Stahl*, 74 N.Y.2d 201, 544 N.Y.S.2d 784, 544 N.E.2d 784 (1989).
54. *Id.* at 211-12, 544 N.Y.S.2d at 789-90, 544 N.E.2d at 789.
55. *See* RSC § 2204.6.
56. *RHM Estates v. Hampshire*, 18 A.D.3d 326, 327, 795 N.Y.S.2d 214, 215 (1st Dep't 2005) (mem.).
57. *Riverview Develop. Holding Corp. v. Doe*, 8 Misc. 3d 132(A), 803 N.Y.S.2d 20, 2005 N.Y. Slip Op. 51140(U), *1, 2005 WL 1704431, at *1 (App. Term 1st Dep't 2005) (*per curiam*).
58. *RHM Estates*, 18 A.D.3d at 327, 795 N.Y.S.2d at 215; *accord* RSC § 2520.6(o)(2).
59. *St. Marks Assets, Inc. v. Herzog*, 196 Misc. 2d 112,113, 760 N.Y.S.2d 608, 609 (App. Term 1st Dep't 2003) (*per curiam*).
60. *Acorn Realty v. Torres*, 169 Misc. 2d 670, 671, 652 N.Y.S.2d 472, 473 (App. Term 1st Dep't 1996) (*per curiam*).
61. *Novak v. Fischbein, Olivieri, Rozenholc & Badillo*, 151 A.D.2d 296, 298, 542 N.Y.S.2d 568, 570 (1st Dep't 1989) (mem.).
62. *Chinatown Apts. v. Chu Cho Lam*, 51 N.Y.2d 786, 786, 433 N.Y.S.2d 86, 86, 412 N.E.2d 1312, 1313 (1980).
63. *Domen Holding Co. v. Aranovich*, 1 N.Y.3d 117, 124, 769 N.Y.S.2d 785, 789, 802 N.E.2d 135, 139 (2003).
64. *Id.* 769 N.Y.S.2d at 789, 802 N.E.2d at 139 (quoting *Frank v. Park Summit Realty Corp.*, 175 A.D.2d 33, 35, 573 N.Y.S.2d 655, 657 (1st Dep't 1991), *modified on other grounds*, 79 N.Y.2d 789, 579 N.Y.S.2d 649, 587 N.E.2d 287 (1991)); *accord Goodhue Residential Co. v. Lazansky*, 1 Misc. 3d 907(A), 781 N.Y.S.2d 624, 2003 N.Y. Slip Op. 51559(U), 2003 WL 23148836 (Hous. Part Civ. Ct., N.Y. Co., Dec. 29, 2003) (Gerald Lebovits, J.).
65. *Frank*, 175 A.D.2d at 34, 573 N.Y.S.2d at 656.
66. *Id.*
67. RSC § 2522.4.
68. *Id.* § 2522.4(a)(2).
69. *See In re 427 Senator St.*, DHCR Admin. Rev. Dkt. No. GG 210085-RO (Mar. 19, 1993).
70. *171 W. Fourth LLC v. Fennell*, N.Y.L.J., Feb. 24, 1999, p. 29, col. 1 (App. Term 1st Dep't 1999) (*per curiam*).
71. *E.g., Park Holding Co. v. Power*, N.Y.L.J., Jan 17, 1992, p. 26, col. 1 (App. Term 1st Dep't) (*per curiam*).
72. *E.g.*, *Pollack v. J. A. Green Const. Corp.*, 40 A.D.2d 996, 996, 338 N.Y.S.2d 486, 487 (2d Dep't 1972), *aff'd*, 32 N.Y.2d 720, 722, 344 N.Y.S.2d 363, 363, 297 N.E.2d 99, 99 (1973).
73. Scherer, *supra* note 4, at 11:4-11:12, at 664-68.

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