February, 2014

NYS Commercial Landlord-Tenant Law & Procedure: A Primer—Part I

Gerald Lebovits

THE OFFICIAL PUBLICATION OF THE BROOKLYN BAR ASSOCIATION

BROOKLYN BARRISTER

©2014 Brooklyn Bar Association | February 2014 | VOL. 66 NO. 5

Free BBA Public Forum Featured Expensive Legal Advice

President **Andrew M. Fallek**, Past President **Diana J. Szochet**, Trustee **Fern Finkel** and Executive Director **Avery Eli Okin**, Esq. CAE.

By: Charles F. Otey, Esq.

This article is reprinted with the permission of the Brooklyn Eagle *and coincides with the recent selection of the Brooklyn Bar Association by the New York State Conference of Bar Leaders at the NYSBA Annual Meeting receiving the 2013 Bar Leaders Innovative Award for larger Bar Associations.*

Some very expensive and timely legal advice was recently given at a Brooklyn Bar Association Public Forum, where lawyers specializing in vital areas of the law imparted their expertise for free! Yes, no charge.

The public was invited!

This special public-service forum was started six years ago — initiated under the BBA presidency of Diane Szochet — has gone a long way toward helping the public to benefit from "the good that lawyers do." (The theme of this column for the last 13 years— "Pro Bono Barrister".)

Fern Finkel served as moderator and the program was organized by Jaime Lathrop.

The topic, "Co-op Living — Know your Rights as a Shareholder and as a Renter." Ms. Finkel's invitation stresses that "All members of the public are invited to attend (this) informational lecture on co-op law, share-holders rights ... under the Martin Act and the New York State Constitution."

How BBA's Public Forum Became a State Bar Star

In recognition of the steady effort by Barrister Finkel and the initial launch six years ago, handled by Diana Szochet, we asked Ms. Szochet, via email, a number of questions regarding the founding and the continuing agenda of the BBA Public Forum.

Not only did she reply, Ms. Szochet actually

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Theresa M. Ciccotto, Former BBA Trustee, Is Inducted as a Judge of The Civil Court Of the City of New York, Kings County

By: Glenn Verchick, Esq.

On December 18, 2013, the Induction Ceremony of Theresa M. Ciccotto as Judge of the Civil Court of the City of New York, County of Kings was held in the Ceremonial Courtroom of the Brooklyn Borough Hall. Judge Ciccotto's inspiring and steadfast rise to her Judgeship was celebrated and honored by a packed room of friends, colleagues, members of the judiciary and key members of her political party.

Becoming a judge was a life long dream for Theresa M. Ciccotto. She acknowledged that it could not have been accomplished without the help of friends, supporters and colleagues and, especially, not without the love and support of her

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The induction of Theresa M. Ciccotto

What's Inside

New York State Commercial Landlord-Tenant Law And Procedure: A Primer — Part I

By: Hon. Gerald Lebovits & Michael B. Terk, Esq.

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I. INTRODUCTION

Contrary to what the uninitiated believe, New York landlord-tenant law, both commercial and residential, is complex and specialized. Some of the more intricate aspects are limited to the residential context, such as rent regulation. But commercial landlord-tenant litigation can often be as complicated and confusing as residential landlord-tenant litigation, if not more so. New York commercial landlord-tenant law and procedure is full of land mines that can quickly consume the inexperienced practitioner. This three-part article is a roadmap that we hope will make the maze of New York commercial landlord-tenant litigation easier to navigate.

(Sections II and III will be published in the March and April issues of the Brooklyn Barrister.)

II. SUMMARY PROCEEDINGS TO RECOVER POSSESSION

A. Procedure and Pleadings

1. General Procedure

A tenant or other occupant may ordinarily be evicted from real property in New York pursuant only to a warrant of eviction issued by a court of competent jurisdiction. Although there is an near-absolute prohibition on self-help evictions of residential tenants, a limited common-law right to evict commercial tenants by extra-judicial self-help allows landlords to do so if doing so is expressly authorized by the lease and can be effectuated without force or violence.[i] Even when this common law self-help option is available, landlords will rarely exercise it in commercial cases, likely for fear of subsequent unlawful eviction liability under Real Property and Proceedings Law (RPAPL) 853.

In New York, summary proceedings are the primary method for a landlord, owner, or sublessor of real property to evict a tenant, subtenant, or other occupant. Summary proceedings are special proceedings to recover possession of real property under RPAPL Article 7. The party commencing the summary proceeding is styled the "petitioner," the equivalent of a plaintiff in a plenary action. The initiatory pleading a petitioner files is called a "petition," the equivalent of the complaint in a plenary action. And the party sought to be removed and against whom the summary proceeding is lodged is the "respondent," the equivalent to the defendant in a plenary action. The document accompanying the petition that summonses the respondent to court is the notice of petition, the equivalent of a summons in a plenary action.

There are two main categories of summary proceedings: (i) holdover proceedings, which are based on the expiration or termination of a right to possess the real property of the tenantii or non-tenant occupant,iii and (ii) nonpayment proceedings, which are based on a tenant's default in paying rent.[iv]

A court has subject-matter jurisdiction to hear summary proceedings only if the respondent — a tenant or an occupant— possesses the property when the proceeding is commenced. If a tenant vacates owing outstanding rent before the proceeding begins, the landlord's remedy is a plenary action for money.

A petitioner's holdover claim is often only against the tenant; a nonpayment claim, by definition, can only be against a tenant. As a practical matter, a landlord wishing to recover possession of real property in a summary proceeding needs to name as a respondent and serve any subtenant or other occupant in possession. Even when a landlord prevails and thus obtains a possessory judgment and a warrant of eviction, a subtenant or legal occupant not named as a respondent may not be evicted pursuant to the warrant.[v] If the identity of an occupant other than the tenant is unknown to the landlord but the occupant is in possession or might be in possession, the petitioner may name the occupant as a respondent by a fictitious name. The classic fictitious names are "John Doe" and "Jane Doe" in the case of natural persons or "XYZ Corp." in the case of corporations, companies, or other business entities.

A summary proceeding is typically commenced by filing a notice of petition and petition. Courts also have the power to issue an order to show cause in lieu of a notice of petition, although landlords' attorneys rarely commence summary proceedings that way. In contrast to plenary actions, in which a request for judicial intervention must be filed before a case is placed on the court's calendar, a summary proceeding is placed on the calendar on the petitioner's filing the notice of petition and petition, except for New York City nonpayment proceedings, which are placed on the calendar when the respondent files an answer.

Summary proceedings dispense with many other procedural aspects of plenary actions, such as disclosure conferences (disclosure in a summary proceeding may be obtained only with leave of court[vi]), separate trial calendars, and notes of issue or notices of trial to get the case onto a trial calendar.

Every summary-proceedings calendar is a trial calendar for Civil Practice Law and Rules (CPLR) purposes. The court may hold a trial whenever the proceeding is on the calendar, although, in parts of New York City, Manhattan in particular, the matter will often be transferred to a different part for trial. In practice, adjournments are common if it is the first court appearance in the matter.

The current filing fee in the courts that adjudicate summary proceedings in New York City and Long Island (New York City Civil Court and the District Court, respectively) is $45.00. Other than that filing fee, which the petitioner must pay, the only other court filing fees in a summary proceeding are when a party files a jury demand ($70.00) or a notice of appeal ($30.00). The notice of petition and petition are filed with the clerk. Upon this filing, the petition is kept in the court's file. The clerk then returns the notice of petition to the petitioner, who must timely re-file it along with the affidavit of service of both the notice of petition and petition.

In a holdover proceeding, as well as in a nonpayment proceeding outside New York City, the notice of petition designates the return date of the petition,vii which the court clerk selects and inserts into the notice of petition upon the filing.

In a nonpayment proceeding in New York City, the notice of petition is returnable before the clerk, and the respondent must serve and file with the clerk an answer within five days after being served with the notice of petition and petition.viii Upon the respondent's filing an answer, the clerk fixes a court date.ix If the respondent fails to answer, the petitioner may apply for a default judgment. Default-judgment applications are submitted to the clerk, who processes and forwards them to a judge. The judge then reviews the papers. If the papers are free of defects, including improper proof of service, the judge will issue a default judgment of possession and a warrant of eviction.

2. Requirements for Petitions in Summary Proceedings

Summary proceedings under RPAPL Article 7 are purely statutory in nature. A petitioner's strict compliance with the statute is required for a court to have jurisdiction to hear the proceeding.x The principles of liberalized-pleading requirements apply with more limited force to petitions in summary proceedings than to complaints in plenary actions. Despite the modern trend favoring a liberal construction of pleadings, procedural irregularities remain common, and often successful, defenses in summary proceedings.

RPAPL 741 enumerates the required contents of a summary-proceeding petition. An extensive body of case law interprets these requirements. A failure to comply with any requirement can result in the dismissal of the petition.

The petition must contain a description of the premises to be recovered.xi The description in the petition must be sufficient to allow a marshal to execute a warrant based on the description, without any additional information.xii Even if the description of the premises in the petition reflects the precise wording in the lease, the description will be inadequate if it leaves the exact location of the premises unclear.[xiii]

The petition must accurately state the petitioner's interest in the premises sought to be recovered,xiv the respondent's interest in the premises, and the respondent's relationship to the petitioner regarding the premises.[xv]

The petition must also set forth "the facts upon which the [summary] proceeding is based."xvi This includes these allegations:

(a) In the case of a holdover proceeding, when and how the tenancy terminated or expired (*e.g.*, natural expiration of the lease term, service of a termination notice under the lease, service of a thirty-day notice of termination on a month-to-month tenant with no written lease) and that the respondent remains in possession after the termination of expiration date. If the holdover alleges a ground other than the natural expiration of a lease term and a termination was effectuated by giving the respondent a notice of termination, the petition also should have annexed to it a copy of the notice of termination that was served on the respondent and proof of its service.

(b) In the case of a nonpayment proceeding, the amount of rent demanded from the respondent.

(c) How, or under what agreement, the tenant entered into possession and, in the case of a nonpayment proceeding, that the lease or agreement obligates the tenant to pay the rent sought in the petition.

These "the facts upon which the [summary] proceeding is based" [xvii] also include details less obvious to the inexperienced landlord-tenant practitioner. Even when the property sought to be recovered is commercial, special, additional allegations must appear in a petition where the property sought to be recovered is in New York City or another jurisdiction that has rent regulation or more stringent regulation of multiple dwellings.

One requirement for petitions in summary proceedings in New York City is that they set forth the regulatory status of the premises to be recovered.[xviii] As a practical matter, it will normally suffice in a summary proceeding to recover exclusively commercial property to allege that the premises are not subject to rent stabilization or rent control on the basis that they are used solely for non-residential purposes.[xix]

In New York City, any building containing three or more residential units is a multiple dwelling. If the commercial premises to be recovered are located in a building containing three or more residential units, then, to maintain a summary proceeding, the building in which the premises are located must have a current multiple dwelling registration ("MDR") on file with the New York City Department of Housing Preservation and Development ("HPD").[xx]

This rule applies even if the specific premises to be recovered within the building are commercial. The summary-proceeding petition must plead either that (i) the premises are contained in a multiple dwelling that has a current MDR on file with HPD and provide the MDR number and the name and address of the registered managing agent or that (ii) the premises are not contained in a building that is a multiple dwelling.[xxi]

The petition must additionally set forth the relief sought.xxii The relief must always include a prayer for a judgment of possession and warrant of eviction. That is the primary relief to be awarded in a summary proceeding: A commercial petition that does not seek possession is without jurisdictional effect. The petition will further almost always include a prayer for a money judgment for the rent arrears in a nonpayment proceeding. The petition may also seek other, incidental monetary relief, such as a money judgment for use and occupancy based on the fair-market rental value for the period after termination or expiration during which the respondent remains in possession (if notice is given in the notice of petition that this relief will be sought), and for legal fees and costs, if the parties' lease authorizes that recovery. Courts will, moreover, typically allow petitioners to seek a money judgment for rent arrears in a holdover proceeding for a short period of time before the termination or expiration.

A petition in a summary proceeding may be verified by the petitioner or by the petitioner's counsel, even if counsel's office is located in the same county as the petitioner.[xxiii]

3. Answers in Summary Proceedings

In a nonpayment proceeding in New York City, the tenant must answer before the clerk within five days after service of the notice of petition and petition.[xxiv] A pre-answer motion to dismiss a nonpayment proceeding within the time to answer does not automatically toll the time to answer. Although particularly draconian (the benefit of CPLR 3211(f) having been found inapplicable to respondents in New York City nonpayment proceedings), a default judgment may be entered if an answer is not filed within the prescribed statutory time frame to answer notwithstanding the pendency of a pre-answer motion to dismiss, even if the respondent has "appeared" by moving to dismiss.[xxv]

To preserve the right to answer, a respondent may make a pre-answer motion to dismiss a nonpayment proceeding in New York City by order to show cause and include in the order to show cause a temporary restraining order to toll the respondent's time to answer while the motion is pending.

In all other summary proceedings besides New York City nonpayment proceedings, the answer is due when the petition is noticed to be heard, unless the notice of petition is served at least eight days before the petition is noticed to be heard and demands that the answer be made at least three days before the petition is noticed to be heard.xxvi Respondents in holdover proceedings or in nonpayment proceedings outside New York City will not be in default for failing to interpose a written answer if they appear in court on the return date.

A respondent may answer in a summary proceeding orally or in writing.xxvii Attorneys representing respondents will almost always submit written answers, but pro se respondents will frequently appear before the clerk to answer orally.

An answer in a summary proceeding may contain any legal or equitable defense or counterclaim.[xxviii]

Notwithstanding the limited statutory jurisdiction of the courts adjudicating summary proceedings, they retain the jurisdiction to adjudicate equitable defenses a respondent might raise.[xxix]

Lease provisions barring tenants from raising counterclaims in summary proceedings will be enforced, but a counterclaim inextricably intertwined with the petitioner's claim will be allowed notwithstanding a "no-counterclaims" lease provision.[xxx]

The ordinary statutory limits on monetary jurisdiction of the courts of limited jurisdiction that adjudicate summary proceeding are dis-

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pensed with in the context of summary proceedings, both for the petitioners' claims and for the respondents' counterclaims.[xxxi] There is no monetary limit to a petitioner's rent claims in a nonpayment proceeding, to a petitioner's ancillary claim for legal fees or use and occupancy, or to a respondent's counterclaims.

4. Motions in Summary Proceedings

Motions may be made in summary proceedings in substantially the same manner as any proceeding, including pre-answer motions to dismiss, summary-judgment motions, or motions to strike answers, bills of particular demands, or jury demands. A motion in a summary proceeding should be made returnable when the proceeding is scheduled to be heard.[xxxii]

B. Holdover Proceedings

1. Common Grounds for Holdover Proceedings

Here are the three most common grounds for holdover proceedings against commercial tenants:

(a) So-called "no-defense" holdover proceedings (also called "no-grounds" holdovers, because the petitioner need not allege grounds to terminate a tenancy), which are based on the natural expiration of the full term of a written lease or the termination of a month-to-month tenancy by serving a thirty-day termination notice (or a one-month termination notice outside New York City). If the lease has expired but the landlord has accepted rent after the expiration, the landlord will be deemed to have created a month-to-month tenancy on the same terms as the expired lease (except for the term of the tenancy and the monthly rent), and a thirty-day notice of termination must be given to terminate the tenancy.

(b) Holdover proceedings based on the tenant's alleged breach of a covenant of the lease.

(c) Holdover proceedings based on the landlord's exercising an early termination option that allows the landlord to effectuate an early cancellation of the lease under certain circumstances, such as a demolition, renovation, or selling the building.

2. Predicate Notices in Holdover Proceedings

Unless the full term of a written lease has expired and the landlord has not subsequently accepted rent, a termination notice is required to terminate the tenancy before a holdover proceeding may be maintained. The termination notice must be issued when the termination is, for example, based on a tenant's breach a covenant of the lease, on the landlord's exercising an early termination-for-demolition option, or when a landlord terminates a month-to-month tenancy if there is no written lease or the tenant has remained in possession paying monthly rent after a written lease expires.

In the case of a breach of lease, a commercial lease will typically require the landlord to serve a notice to cure, offering the tenant a prescribed time period to correct a lease breach before a termination notice may issue if the tenant fails to cure.

A notice to cure must set forth the tenant's claimed defaults under the lease and that the landlord will terminate the tenancy if the tenant does not cure the default by a specified date.xxxiii To be effective, a notice to cure must specify the lease provision allegedly violated.[xxxiv] In addition to setting forth the alleged violation, a notice of cure must advise the tenant what remedial action is required to effectuate a cure and avoid termination.[xxxv]

When a landlord claims to have exercised an early termination option under a lease provision allowing cancellation of the lease, the cancellation provisions are strictly construed in the tenant's favor.[xxxvi] This furthers a policy disfavoring forfeiting tenancies.[xxxvii]

If the tenancy is a month-to-month tenancy with no written lease, a petitioner must give the tenant a thirty-day notice (or one-month's notice outside New York City) allowing one final month.[xxxviii] If the tenancy is a month-to-month tenancy, the termination notice, in addition to giving at least thirty days' notice (or one month's notice outside New York City), must set the last day of the month as the termination date.xxxix A landlord wishing to terminate a month-to-month tenancy should serve a notice that expires at the end of the following month. A process server must serve a thirty-day notice of termination of a month-to-month tenancy in New York City in the same manner as a notice of petition and petition, the service of which is governed by RPAPL 735.[xl]

A one-month notice of termination of a month-to-month tenancy outside New York City has no prescribed method of service, may be served by mail, and is not required to be in writing, although written notice with proof of service is preferable for petitioners to avoid a "he said/she said" dispute at trial about what notice was given and when.[xli]

To terminate a tenancy, a termination notice must terminate a tenancy in a manner that is clear, definite, unequivocal, and unambiguous.xlii An equivocal or ambiguous notice is insufficient and will form a basis to dismiss the petition.

A petitioner must sign a termination or other notice required by a lease provision or statute. The notice must contain the signature of an individual whose authority to act on the petitioner's behalf is readily apparent and clear on its face, specifically identified in the lease, known to the tenant from prior dealings, or established by proof of authority furnished with the notice. A termination notice signed by a petitioner's attorney or agent who is unknown to the tenant and not named in the lease is ineffective. The respondent is entitled to disregard it as not emanating from the petitioner.[xliii] An unsigned termination notice is similarly ineffective.xliv

If the notice is signed by an attorney or agent with whom the tenant is familiar and the tenant knows or should know of the attorney or agent's authority to act on the landlord's behalf, the attorney's or agent's signature is sufficient.xlv A typewritten name does not constitute a signature, but a handwritten signature, whether actually signed by the petitioner or a signature stamp, is sufficient.

Accepting rent after service of the termination notice but before filing the petition and notice of petition will vitiate the termination and reinstate the tenancy if the rent accepted is for any month after the termination date set forth in the notice.xlvi In the case of a notice to terminate a lease, the effect will be the reinstatement of the lease. In the case of a thirty-day notice to terminate a month-to-month tenancy, the effect will be to reinstate the month-to-month tenancy. There are exceptions to this rule. When the petitioner's acceptance of the rent was clearly inadvertent, such as acceptance through a bank lockbox, and the rent is promptly returned when the petitioner discovers the inadvertent acceptance, the termination notice will stand despite the acceptance of rent.[xlvii]

Commencing a nonpayment proceeding after the expiration date of the termination notice will vitiate the notice of termination; commencing a nonpayment proceeding seeks to enforce the tenant's obligations under the lease and is inconsistent with asserting that the tenancy was terminated.[xlviii] A nonpayment proceeding commenced after service of the termination notice but before the termination date will not affect the termination notice. If a landlord commences a nonpayment proceeding before the tenancy terminates and then commences a holdover proceeding, both proceedings may be maintained simultaneously.[xlix]

Service of a later termination notice will also vitiate an earlier termination notice.[l]

If a holdover proceeding is dismissed or discontinued, the same predicate notice may not be re-used in a later holdover proceeding. A new termination notice must issue.[li] A limited exception allowing a termination notice to be re-used in a subsequent proceeding arises if the second proceeding is begun before the first is terminated.lii For this exception to apply, the second proceeding must be brought within a reasonable time after the first and no discernable prejudice to the respondent may result from the re-use of the notice.[liii]

Some laws that protect residential tenants in holdover proceedings do not exist for commercial tenants: (i) the RPL 223-b prohibition against retaliatorily evicting residential tenants does not protect commercial tenants, (ii) conditional limitations, which permit a landlord to terminate the lease and prosecute a holdover proceeding instead of maintaining a nonpayment proceeding for a tenant's default in the payment of rent, which are enforceable in commercial leases but are unenforceable in residential leases, and (iii) commercial-lease provisions in fine print are enforceable, despite the unenforceability under CPLR 4544 of fine-print residential leases.[liv]

C. Nonpayment Proceedings

1. Grounds and Parties

A landlord may maintain a nonpayment proceeding against a tenant when (i) the respondent is a tenant (not an occupant who lacks a landlord-tenant relationship with the landlord), (ii) the tenant agreed to pay a specific rent amount under a lease or rental agreement, (iii) the tenant has defaulted in paying that rent required under the lease or rental agreement, and (iv) the landlord has demanded the rent.[lv]

Only "rent" may be recovered in a nonpayment proceeding. Sums a tenant owes to the landlord that do not constitute rent under a lease or rental agreement may not be demanded or recovered in a nonpayment proceeding. A landlord wishing to recover these sums must commence a plenary action.lvi Landlords will often include provisions in leases deeming these charges "additional rent" to render into rent what would otherwise be non-rent charges or fees and thus make them recoverable in a nonpayment proceeding and enable the tenant's eviction for failure to pay them.

Common examples include real-property tax-escalation charges, water and sewer charges, condominium common charges where the subject property is owed as a condominium, and legal fees. In the context of commercial tenancies, courts in nonpayment proceedings will enforce these provisions, rendering these additional charges rent.

Part II of this three-part article continues in the March 2014 issue of the Brooklyn Barrister with rent-demand requirements in nonpayment proceedings, illegal lockout proceedings by tenants against landlords, and personal jurisdiction and service of process in summary proceedings. Part III will appear in the April 2014 issue of the Brooklyn Barrister.

i *Michaels v. Fishel*, 169 N.Y. 381, 389, 62 N.E.2d 425, 427 (1902); *Arthur at the Westchester, Inc. v. Westchester Mall, LLC*, 104 A.D.3d 471, 471-72, 960 N.Y.S.2d 417, 418 (1st Dep't 2013); *In re 110-45 Queens Blvd. Garage, Inc. v. Park Briar Owners, Inc.*, 265 A.D.2d 415, 415-16, 696 N.Y.S.2d 490, 491 (2d Dep't 1999); *N. Main St. Bagel Corp. v. Duncan*, 6 A.D.3d 590, 591, 775 N.Y.S.2d 362, 363 (2d Dep't 2004); *Cohen v. Carpenter*, 128 A.D. 862, 864, 113 N.Y.S. 168, 168 (2d Dep't 1908); *Bozewicz v. Nash Metalware Co.*, 284 A.D.2d 288, 288, 725 N.Y.S.2d 671, 671 (2d Dep't 2001); *Sol De Ibiza, LLC v. Panjo Realty, Inc.*, 29 Misc. 3d 72, 75, 911 N.Y.S.2d 567, 569 (App. Term 1st Dep't 2010); *Metered Appliances, Inc. v. Lafayette Ct. Apt. Corp.*, 35 Misc. 3d 1238(A), 954 N.Y.S.2d 760, 2012 N.Y. Slip Op. 51038(U), *9 (Sup. Ct. Kings County 2012) ("[A]bsent an express lease provision granting the landlord permission to re-enter the premises upon default or termination, which was not included in the Original Lease, a landlord may not resort to self help."); *Greaves Lane, LLC v. NBM Development, LLC*, 2002 N.Y. Slip Op. 50317(U), *22-25 (Civ. Ct. Richmond County 2002).

ii RPAPL 711(1).

iii RPAPL 713.

iv RPAPL 711(2).

v *First Nat'l City Bank v. Wall St. Leasing Corp.*, 80 Misc. 2d 707, 708, 363 N.Y.S.2d 699, 700 (Civ. Ct. N.Y. County 1974).

vi *N.Y. Railways Corp. v. Savoy Assoc., Inc.*, 239 A.D. 504, 508, 268 N.Y.S. 181, 185 (1st Dep't 1933); *Triborough Bridge & Tunnel Auth. v. Wimpfheimer*, 165 Misc. 2d 584, 586, 633 N.Y.S.2d 695, 696 (App. Term 1st Dep't 1995).

vii CPLR 408.

viii RPAPL 731(2).

ix RPAPL 732(1).

x RPAPL 732(2).

xi *MSG Pomp Corp. v. Doe*, 185 A.D.2d 798, 799, 586 N.Y.S.2d 965, 966 (1st Dep't 1992).

xii RPAPL 741(3).

xiii *272 Sherman, LLC v. Vasquez*, 4 Misc. 3d 370, 372, 777 N.Y.S.2d 853, 854 (Civ. Ct. N.Y. County 2004); *Empire State Bldg. Co., LLC v. Progressive Catering Services, Inc.*, 2 Misc. 3d 545, 547, 769 N.Y.S.2d 691, 693 (Civ. Ct. N.Y. County 2003); *Elul Realty Corp. v. Java N.Y. Ltd.*, 12 Misc. 3d 336, 337-38, 816 N.Y.S.2d 885, 886-87 (Civ. Ct. Kings County 2006); *City of N.Y. v. Mortel*, 156 Misc. 2d 305, 307, 592 N.Y.S.2d 912, 912 (Civ. Ct. Kings County 1992).

xiv*Elul Realty*, 12 Misc. 3d at 338–39, 816 N.Y.S.2d at 887.

xv RPAPL 741(1).

xvi RPAPL 741(2).

xvii RPAPL 741(4).

xviii RPAPL 741(4).

xix *MSG Pomp Corp.*, 185 A.D.2d at 800, 586 N.Y.S.2d at 966; *Villas of Forest Hills Co. v. Lumberger*, 128 A.D.2d 701, 702, 513 N.Y.S.2d 116, 117 (2d Dep't 1987).

xx *See* Rent Stabilization Code § 2520.11(n).

xxi *See* Multiple Dwelling Law § 325; 22 N.Y.C.R.R. 202.42(g).

xxii 22 N.Y.C.R.R. 202.42(g).

xxiii RPAPL 741(5).

xxiv RPAPL 741.

xxv RPAPL 732(1).

xxvi *860 Nostrand Assoc., LLC v. WF Kosher Food Distributors. Ltd.*, 27 Misc. 3d 16, 17, 898 N.Y.S.2d 753, 754 (App. Term 2d Dep't 2010).

xxvii RPAPL 743.

xxviii*Id.*

xxix *Id.*

xxx *Lun Far Co. v. Aylesbury Assoc.*, 40 A.D.2d 794, 794, 338 N.Y.S.2d 84, 84 (1st Dep't 1972); *Dandey Realty Corp. v. Nick's Hideaway, Inc.*, 24 Misc. 3d 105, 106, 886 N.Y.S.2d 549, 550 (App. Term 2d Dep't 2009).

xxxi *All 4 Sports & Fitness, Inc. v. Hamilton, Kane, Martin Enterprise, Inc.*, 22 A.D.3d 512, 513-14, 802 N.Y.S.2d 470, 471 (2d Dep't 2005); *Bomze v. Jaybee Photo Suppliers, Inc.*, 117 Misc. 2d 957, 958, 460 N.Y.S.2d 862, 863 (App. Term 1st Dep't 2009); *Ring v. Arts Int'l, Inc.*, 7 Misc. 3d 869, 880-81, 792 N.Y.S.2d 296, 305-06 (Civ. Ct. N.Y. County 2004).

xxxii N.Y.C. Civ. Ct. Act § 204; Uniform Dist. Ct. Act § 204; Uniform City Ct. Act 204; Uniform Justice Ct. Act § 204.

xxxiii CPLR 406; *Goldman v. McCord*, 120 Misc. 2d 754, 754-55, 466 N.Y.S.2d 584, 585 (Civ. Ct. N.Y. County 1983)

xxxiv *542 Holding Corp. v. Prince Fashions, Inc.*, 46 A.D.3d 309, 310, 848 N.Y.S.2d 37, 38 (1st Dep't 2007).

xxxv *Cohn v. White Oak Coop. Hous. Corp.*, 243 A.D.2d 440, 440, 663 N.Y.S.2d 62, 62 (2d Dep't 1997); *Kabro Assoc. LLC v. KDMC Rest., Inc.*, 10 Misc. 3d 127(A), 809 N.Y.S.2d 481, 2005 N.Y. Slip Op. 51896(U), **1-2 (App. Term 2d Dep't 2005).

xxxvi *Chinatown Apts., Inc. v. Chu Cho Lam*, 51 N.Y.2d 786, 788, 412 N.E.2d 1312, 1314, 433 N.Y.S.2d 86, 88 (1980); *Westhampton Cabins & Cabanas Owners Corp. v. Westhampton Bath & Tennis Club Owners Corp.*, 62 A.D.3d 987, 988, 882 N.Y.S.2d 124, 125 (2d Dep't 2009); *496 Broadway Realty LLC v. Kim*, 18 Misc. 3d 1119(A), 856 N.Y.S.2d 498, 498, 2008 N.Y. Slip Op. 50139(U), *6 (Civ. Ct. N.Y. County 2008); *200 W. 58th St. LLC v. Little Egypt Corp.*, 7 Misc. 3d 1017(A), 801 N.Y.S.2d 243, 2005 N.Y. Slip Op. 50640(U), *2 (Civ. Ct. N.Y. County 2005) ("The notice to cure must inform the tenant unequivocally and unambiguously how it has violated the lease and the conduct required to prevent eviction."); *Jamay Ltd. Partnership v. Chung Wah Cheung Sang Funeral Corp.*, 2002 N.Y. Slip Op. 40284(U), *3 (Civ. Ct. N.Y. County 2002) ("A notice to cure must be sufficiently specific to demonstrate what remedial action is required and which lease provision requires it.").

xxxvii *67 Wall St. Co. v. Franklin Nat'l Bank*, 37 N.Y.2d 245, 248, 333 N.E.2d 184, 186 , 371 N.Y.S.2d 915, 917 (1975); *Greenwich Vill. Assoc. v. Salle*, 110 A.D.2d 111, 113, 493 N.Y.S.2d 461, 463 (1st Dep't 1985); *Leighton's, Inc. v. Century Circuit*, 95 A.D.2d 681, 682, 463 N.Y.S.2d 790, 791 (1st Dep't 1983).

xxxviii *JNA Realty Corp. v. Cross Bay Chelsea, Inc.*, 42 N.Y.2d 392, 397-400, 366 N.E.2d 1313, 1315-18, 397 N.Y.S.2d 958, 959-62 (1977); *57 E. 54 Realty Corp. v. Gay Nineties Realty Corp.*, 71 Misc. 2d 353, 354, 335 N.Y.S.2d 872, 873 (App. Term 1st Dep't 1972).

xxxix RPL (Real Property Law) § 232-a (governing termination of month-to-month tenancies in New York City; this provision requires "thirty days" notice); RPL § 232-b (governing termination of month-to-month tenancies in the outside New York City; this provision requires "one month" of notice, rather than thirty days' notice.)

xl *People ex rel. Botsford v. Darling*, 47 N.Y. 666, 667, 2 Sickels 666 (1872); *Ferro v. Lawrence*, 195 Misc. 2d 529, 530, 758 N.Y.S.2d 460, 460-61 (App. Term 2d Dep't 2002); *Avalonbay Communities, Inc. v. Betts*, 4 Misc. 3d 133(A), 791 N.Y.S.2d 867, 2004 N.Y. Slip Op. 50750(U), *1 (App. Term 2d Dep't 2004).

xli RPL § 232-a.

xlii *Morse v. Brozzo*, 94 A.D.3d 1184, 1185-86, 942 N.Y.S.2d 246, 247-48 (3d Dep't 2012); *Higbie v. Ripka*, 2002 N.Y. Slip Op. 50018(U), **2-3 (Dist. Ct. Nassau County 2002); *Monaghan v. Kane*, 186 Misc. 698, 701-03, 59 N.Y.S.2d 892, 895-97 (Erie County Ct. 1946)

xliii *City of Buffalo Urban Renewal Agency v. Lane Bryant Queens*, 90 A.D.2d 976, 977, 456 N.Y.S.2d 568, 569 (4th Dep't 1982), *aff'd*, 59 N.Y.2d 825, 451 N.E.2d 501, 456 N.Y.S.2d 568, 569 (1983); *Ellivkroy Realty Corp. v. HDP 86 Sponsor Corp.*, 162 A.D.2d 238, 238, 556 N.Y.S.2d 339, 340 (1st Dep't 1990); *Garsen v. Hohenleitner*, 73 Misc. 2d 192, 193, 341 N.Y.S.2d 181, 182 (App. Term 1st Dep't. 1973); *RKO Century Warner Theatres, Inc. v. Morris Industrial Builders*, 174 Misc. 2d 954, 957-58, 667 N.Y.S.2d 217, 219-20 (Sup. Ct. N.Y. County 1997); *Granet Constr. Corp. v. Longo*, 42 Misc. 2d 798, 801-02, 249 N.Y.S.2d 231, 233-35 (Sup. Ct. N.Y. County 1964); *Carriage Court Inn, Inc. v. Rains*, 138 Misc. 2d 444, 445, 524 N.Y.S.2d 647, 648 (Civ. Ct. N.Y. County 1988); *Kirschenbaum v. M-T-S Franchise Corp.*, 77 Misc. 2d 1012, 1014-15, 355 N.Y.S.2d 256, 259-60 (Civ. Ct. N.Y. County 1974).

xliv *Siegel v. Kentucky Fried Chicken of Long Island.*, 108 A.D.2d 218, 220, 488 N.Y.S.2d 744, 746 (2d Dep't 1985), *aff'd*, 67 N.Y.2d 792, 492 N.E.2d 390, 501 N.Y.S.2d 317 (1986); *Filmtrucks, Inc. v. Express Indust. & Terminal Corp.*, 127 A.d.2d 509, 510, 511 N.Y.S.2d 862, 864 (1st Dep't 1987) ("The law is now clear that where, as here, the agreement provides for notice to be given by the landlord, a notice of termination, not signed by the owner or the attorney named in the lease, is insufficient and may be ignored by the tenant as not in compliance with the lease provisions concerning notice"); *Linroc Enterprises, Inc v. 1359 Broadway Assoc.*, 186 A.D.2d 95, 95, 588 N.Y.S.2d 34, 35 (1st Dep't 1992); *E. 4th St. Garage, Inc. v. L.B. Mgmt. Co.*, 172 A.D.2d 292, 292, 568 N.Y.S.2d 111, 112 (1st Dep't 1991); *Second & E. 82 Realty LLC v. 82nd St. Gily Corp.*, 192 Misc. 2d 55, 58-59, 745 N.Y.S.2d 371, 374-75 (Civ. Ct. N.Y. County 2002).

xlv *Warehouse Eyes v. Hann*, NYLJ, Dec. 19, 1990, at 22, col. 4 (Civ. Ct. N.Y. County).

xlvi *Eklecco Newco, LLC v. Schlomit, Inc.*, 13 Misc. 3d 133(A), 831 N.Y.S.2d 347, 2006 N.Y. Slip Op. 51935(U), *1 (App. Term 2d Dep't 2006); *152 W. Realty, LLC v. N & G Luggages, Inc.*, 15 Misc. 3d 1121(A), 839 N.Y.S.2d 434, 2007 N.Y. Slip Op. 50789(U), *4 (Civ. Ct. N.Y. County 2007).

xlvii *205 E. 78th St. Assoc v. Cassidy*, 192 A.D.2d 479, 479, 598 N.Y.S.2d 699, 699 (1st Dept. 1993), *rev'g* Appellate Term on the dissent of McCool, J., NYLJ, Sept. 27, 1991, at 21, col. 4 (App. Term 1st Dep't); *Int'l Business Machines v. Joseph Stevens & Co., LP*, 300 A.D.2d 222, 223, 754 N.Y.S.2d 233, 234 (1st Dep't 2002); *184 W. 10th Corp. v. Westcott*, 8 Misc. 3d 132(A), 2005 N.Y. Slip Op. 51150(U), *1 (App. Term 1st Dep't 2005); *Roxborough Apt. Corp. v. Becker*, 176 Misc. 2d 503, 504-05, 673 N.Y.S.2d 814, 815 (Civ. Ct. N.Y. County 1998); *Associated Realties v. Brown*, 146 Misc. 2d 1069, 1070, 554 N.Y.S.2d 975, 976 (Civ. Ct. N.Y. County 1990); *Shulen Realty v. R&R House of Lites*, NYLJ, May 1, 1989, at 25, col. 2 (Civ. Ct. N.Y. County); *S&R Two Stage Realty v. Oedipal Rage Ltd.*, NYLJ, Sept. 9, 1987, at 13, col. 3 (Civ. Ct. N.Y. County); *Burr v. Merrill Lynch Realty*, NYLJ, Dec. 13, 1988, at 25, col. 3 (Dist. Ct. Nassau County).

xlviii *Hudson River Park Trust v. Basketball City USA*, 22 A.D.3d 422, 423, 803 N.Y.S.2d 58, 58 (1st Dep't 2005); *Schneider v. McEnaney*, NYLJ, Mar. 19, 1999, at 26, col. 2 (App. Term 1st Dep't); *Pacer Realty Assoc. v. Bishop*, NYLJ, Dec. 12, 1996, at 29, col. 1 (App. Term 1st Dep't); *83rd St. Assoc. v. Gourmet Wine & Spirits, Ltd.*, NYLJ, June 7, 1993, at 28, col. 5 (App. Term 1st Dep't); *1412 Broadway LLC v. Great White Bear, LLC*, 18 Misc. 3d 1121(A), 856 N.Y.S.2d 500, 2007 N.Y. Slip Op. 52525(U), *3 (Civ. Ct. N.Y. County 2007); *170 E. 77th 1 LLC v. Berenson*, 12 Misc. 3d 1017, 1020-21, 820 N.Y.S.2d 693, 696 (Civ. Ct. N.Y. County 2006).

xlix *Harris v. Timecraft Indus., Inc.*, 132 Misc. 2d 386, 389, 503 N.Y.S.2d 987, 989 (Civ. Ct. N.Y. County 1986); *Ansonia Assoc. v. Pearlstein*, 122 Misc. 2d 566, 567-70, 471 N.Y.S.2d 527, 528-30 (Civ. Ct. N.Y. County 1984).

l *1050 Tenants Corp. v. Lapidus*, 12 Misc. 3d 1196(A), 824 N.Y.S.2d 769, 2006 N.Y. Slip Op. 51593(U), **14-16 (Sup. Ct. N.Y. County 2006), *aff'd*, 39 A.D.3d 379, 835 N.Y.S.2d 68 (1st Dep't 2007).

li *28 Mott St. Co. v. Summit Import Corp.*, 64 Misc. 2d 860, 864, 316 N.Y.S.2d 259, 263 (Civ. Ct. N.Y. County 1970) ("[E]ach subsequent notice was a waiver of the preceding one."); *Besdine v. Leitner*, 166 Misc. 658, 660, 2 N.Y.S.2d 271, 272-73 (Mun. Ct. Borough of Brooklyn 1938); *Morgan v. Powers*, 31 N.Y.S. 954, 83 Hun 298 (Sup. Ct., 5th Dep't, 1894); *Bastede v. Levan*, 171 Misc. 140, 142-44, 13 N.Y.S.2d 200, 202-04 (City Ct. City of Jamestown, Chautauqua County 1939).

lii *Kaycee W. 113th St. Corp. v. Diakoff*, 160 A.D.2d 573, 573, 554 N.Y.S.2d 216, 216 (1st Dep't 1990); *AREP 19 Fifty-Fifth LLC v. McLaughlin*, 28 Misc. 3d 135(A), 957 N.Y.s.2d 634, 2010 N.Y. Slip Op. 51406(U), *1 (App. Term 1st Dep't 2010); *Mau v. Stapleton*, 136 Misc. 2d 793, 795, 519 N.Y.S.2d 178, 179 (Civ. Ct. Kings County 1987); *Fromme v. Simsarian*, 121 Misc. 2d 792, 793-94, 468 N.Y.S.2d 990, 991-92 (Civ. Ct. N.Y. County 1983); *Weinberger v. Driscoll*, 89 Misc. 2d 675, 676-77, 392 N.Y.S.2d 236, *237 (Civ. Ct. N.Y. County 1977).

liii *Arol Dev. Corp. v. Goodie Brand Packing Corp.*, 83 Misc. 2d 477, 481-83, 372 N.Y.S.2d 324, 329-31 (Civ. Ct.Bronx County 1975), *aff'd*, 84 Misc. 2d 493, 378 N.Y.S.2d 231 (App. Term 1st Dep't 1975), *aff'd*, 52 A.D.2d 538, 382 N.Y.S.2d 215 (1st Dep't 1976).

liv *145 E. 16th St. LLC v. Spencer*, 36 Misc. 3d 128(A), 954 N.Y.S.2d 760, 2012 N.Y. Slip Op. 51199(U), *1 (App. Term 1st Dep't 2012); *890 Park LLC v. Rosenfeld*, 34 Misc. 3d 130(A), 946 N.Y.S.2d 66, 2011 N.Y. Slip Op. 52338(U), *1 (App. Term 1st Dep't 2011); *Bowman Realty Corp. v. Morrison*, 24 Misc. 3d 141(A), 901 N.Y.S.2d 898, 2009 N.Y. Slip Op. 51700(U), *1 (App. Term 1st Dep't. 2009); *WM Wellington LLC v. Grafstein Diamond, Inc.*, 22 Misc. 3d 1123(A), 880 N.Y.S.2d 228, 2009 N.Y. Slip Op. 50255(U), *6 (Civ. Ct. N.Y. County 2009); *Hudson Waterfront Assoc. IV, LP v. MTP 59 St. LLC*, 8 Misc. 3d 136(A), 803 N.Y.S.2d 18, 2005 N.Y. Slip Op. 51222(U), *2 (App. Term 1st Dep't 2005).

lv Jay B. Itkowitz & Barry Gottlieb, *Some Basic Differences Between Commercial Dispossess Case and Residential Dispossess Cases, available at* itkowitz.com/publications-01.htm (last visited Dec. 10, 2014).

lvi RPAPL 711(2).

lvii *Ross Realty v. V & A Fabricators, Inc.*, 42 A.D.3d 246, 250, 836 N.Y.S.2d 242, 245-46 (2d Dep't 2007); *Bedford Gardens Co. v. Silberstein*, 269 A.D.2d 445, 445, 702 N.Y.S.2d 884, 884 (2d Dep't 2000); *Graham Realty Assoc. LLC v. Peller*, 11 Misc. 3d 132(A), 816 N.Y.S.2d 695, 2006 N.Y. Slip Op. 50352(U), *1 (App. Term 2d Dep't 2006).