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Nuisance Holdovers in New York

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A Message from the Section Chair

Greetings! With over 5,000 members, the Real Property Law Section is now the largest Section of the New York State Bar Association! We are very pleased to have reached this milestone and are committed to continued growth and outstanding service to each Section member.

Over 360 members attended the Annual Meeting of the Real Property Law Section in January. Program Chair Joshua Stein offered an informative program including updates on NYS mortgage recording and transfer taxes, lease security issues, lease exit transactions, loan enforcement issues, lease litigation and mortgage loan issues including the release and substitution of collateral. The ethics portion of the program offered practical guidance on ethical issues in a transactional real estate practice, and engendered lively debate among the participants. Joshua also presented an overview of the numerous projects underway by the Section's Committees. If you are not yet a member of a Committee, we encourage you to contact any Section officer or Committee Chair for further information.

A highlight of the luncheon following the program was the presentation of the Section's Professionalism Award to Harold A. Lubell, Past Chair of our Section. In his acceptance speech, Harold stated that he defines himself as a lawyer, he likes being a lawyer and he is proud of being a lawyer. These qualities have been readily apparent in Harold's many contributions to our Section and the legal profession throughout his career. To those who know him, it is obvious that he enjoys what he does. Congratulations, Harold!

We are now gearing up for our Section's Summer Meeting, scheduled for July 14–17 at the Lake Placid Resort Hotel & Golf Club. Harry Meyer, Program Chair, is planning a fascinating meeting, including presentations on smart growth and new urbanism practices in land use and zoning, brownfields, electronic title registration and its impact on the legal profession, Adirondack architecture and the NYS "forever wild" requirements as they impact development and redevelopment. In addition to the CLE offerings, Harry is planning numerous social events to take full advantage of the range of amenities offered by the Resort and the natural beauty of the region. Please mark your calendars now for this event!

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Nuisance Holdovers in New York

By Gerald Lebovits and Daniel J. Curtin, Jr.

To constitute a nuisance the use of property must interfere with a person's interest in the use and enjoyment of land. The term "use and enjoyment" encompasses the pleasure and comfort derived from the occupancy of land and the freedom from annoyance. However, not every annoyance will constitute a nuisance.[1]

As in life, few things are more annoying in the landlord-tenant context than a nuisance. Life's solutions vary. One solution in the landlord-tenant context is for a landlord to commence a holdover proceeding against the allegedly objectionable tenant. Many questions arise in the unsettled area of nuisance-based holdovers. They include how to define a nuisance, what conduct constitutes a nuisance, how to settle a nuisance holdover, and what stay may be awarded to an unsuccessful tenant after a judgment of possession. This article offers some answers to the murky questions presented in nuisance holdovers.

Nuisance as a Basis for Holdover Proceedings

A landlord may bring a holdover proceeding against a tenant who commits a nuisance. The underlying concept is that tenants should not be permitted to engage in conduct that threatens other tenants, occupants, or the premises itself. Those who engage in nuisance do so under the threat of losing their tenancy.

The authority for nuisance-based holdover proceedings comes from statutes and lease provisions. In the rent-regulated context, a series of statutes provides that regulated tenancies may be terminated for nuisance conduct. In New York City, the Rent Stabilization Code (RSC) provides that a nuisance-based holdover to recover premises may be maintained when

> [t]he tenant is committing or permitting a nuisance in such housing accommodation or the building containing such housing accommodation; or the tenant engages in a persistent and continuing course of conduct evidencing an unwarrantable, unreasonable or unlawful use of the property to the annoyance, inconvenience, discomfort or damage of others, the primary purpose of which is intended to harass the owner or other tenants or occupants of the same or an adjacent building or structure by interfering substantially with their comfort or safety.[2]

The same basic wording is found in the Emergency Tenant Protection Regulations (ETPR), the statutory scheme governing rent-stabilized tenancies outside New York City.[3]

For rent-controlled tenancies in New York City, the New York City Rent and Eviction Regulations provide that an action or proceeding to recover possession of residential property may be maintained when

> [t]he tenant is committing or permitting a nuisance in such housing accommodations . . . or his conduct is such as to interfere substantially with the comfort and safety of the landlord or of other tenants or occupants of the same or another adjacent building or structure.[4]

The State Rent and Eviction Regulations, which govern rent-controlled tenancies outside New York City, have the same language providing for a nuisance-based holdover.[5]

For non-regulated, or free-market, housing accommodations, most leases allow landlords to terminate a tenancy if the tenant is committing or permitting a nuisance.[6] Absent that lease provision, the courts have no jurisdiction under Real Property Actions & Proceedings Law (RPAPL) 711(1) to entertain a nuisance-based holdover.[7] In *Dass-Gonzalez v. Peterson*, for example, the tenant had a lease that did not contain a provision allowing the landlord to terminate the tenancy for objectionable conduct.[8] Civil Court granted the landlord a judgment of possession, but the Appellate Term, First Department, reversed.[9] The Appellate Term held that a nuisance-based holdover may not be maintained absent an express provision in the lease giving the landlord the right to terminate a tenancy on that ground.[10] Thus, even though the tenant did not raise the defect in Civil Court, the Appellate Term found no jurisdictional basis for a possessory proceeding under RPAPL Article 7.[11] The Appellate Division, First Department, affirmed the Appellate Term's ruling and re-articulated that the defect may be raised for the first time on appeal.[12]

Nuisance Defined

A nuisance is a condition that threatens the health, safety, and comfort of a building's occupants.[13] The conduct complained of must be of a continuing or recurring pattern.[14] This stands to reason, at least for rent-stabilized apartments, for which the governing statutory language provides that the conduct must be "persistent and [a] continuing course."[15]

A single incident of problematic conduct will typically be insufficient to establish a nuisance,[16] although some cases say otherwise. Thus, a landlord's allegation that a tenant or subtenants had once plugged multiple extension cords into electrical sockets, causing a fire—conduct that obviously threatened the premises' occupants, not to mention the premises itself—was insufficient to support a nuisance holdover.[17] More typical of nuisance cases is when a pattern of problematic conduct occurs over a period of time. When a tenant engages in a course of offending behavior, like continually allowing offensive and excessive odors and water leaks to emanate from the subject premises, the tenant has engaged in "conduct [that] threaten[s] the comfort and safety of building tenants or occupants."[18]

The most recent Court of Appeals pronouncement regarding nuisance holdovers may be said to require for eviction a course of conduct, as opposed to a single incident of objectionable behavior. The Court of Appeals in *Domen Holding Company v. Aranovich* stated in dicta that "[n]uisance imports a continuous invasion of rights—'a pattern of continuity or recurrence of objectionable conduct.'"[19] Statements or explanations not necessary to a court's determination of the issue at hand are not binding precedent.[20] The *Domen* Court did not need to examine the contours of nuisance proceedings to determine that issues of fact precluded granting summary judgment for the landlord.[21] It can be argued, therefore, that the requirement of a pattern of objectionable behavior in nuisance cases is really no binding requirement at all. But dictum from the Court of Appeals is a statement of law from New York State's highest court and is thus highly persuasive on the lower courts.[22]

Here is where things get confusing, for many courts had held, pre-*Domen*, that a single instance of behavior can be an actionable nuisance if that single instance is sufficiently egregious.[23] And despite *Domen*, some courts still so hold.

For example, a recent, post-*Domen* case held that a landlord made a *prima facie* case for a holdover predicated on nuisance even though the proceeding was based on a single incident. In *160 West 118th Street Corporation v. Gray*, a 75-year-old rent-controlled tenant of some 50 years was alleged to have engaged in "anti-social, disruptive, destructive, dangerous, and/or illegal behavior" when she shot her son with an unlicensed gun. Although the court noted that nuisance generally requires more than one incident, the court weighed the qualitative and quantitative aspects of the behavior in deciding that the conduct complained of constituted a nuisance.[24] Yet the court also found that the tenant's possession of an unlicensed firearm, unless purchased on the day of the shooting, might represent "an ongoing pattern of objectionable behavior."[25]

Hence the conundrum of defining nuisance: Need there be a pattern of objectionable conduct, or may an isolated incident so terribly objectionable provide a sufficient basis to commence a nuisance holdover? The safe money is on saying that a pattern of behavior is required to establish, *prima facie*, a nuisance-based holdover proceeding. Civil Court (Gerald Lebovits, J.), citing *Domen*, so held in *Goodhue Residential Company v. Lazansky*.[26] So did the Appellate Term, First Department, four months later in *S&M Enterprises v. Lau*.[27] A continuous pattern of nuisance is therefore needed, unless, perhaps, like shooting your son with an unlicensed handgun that has been in your possession for some time, the conduct is really, really egregious.

Prerequisite to a Nuisance-Based Holdover: Predicate Notices

Each of the statutory schemes allowing for maintaining a holdover proceeding predicated on nuisance requires that the tenant be afforded notice before the proceeding begins.[28] For free-market housing units, lease provisions govern the requisite notices that must be given before a proceeding begins. This article focuses on the notice required in the rent-regulated context. That requisite notice is known as a termination notice.[29] Rent-stabilized tenants must be afforded a minimum seven days' notice that their tenancy is being terminated and that their failure to vacate might result in a summary proceeding commenced against them.[30] Rent-controlled tenants are afforded 10 days' notice,[31] unless they are weekly tenants, in which case a minimum two days' notice is required.[32] In either event, for rent-controlled tenants, a landlord must also notify the Division of Housing and Community Renewal (D.H.C.R.)'s local office within 48 hours of serving the notice on the tenant.[33] A landlord need not, however, obtain a certificate of eviction before commencing a nuisance holdover against rent-controlled tenants.[34]

Regardless of the regulatory scheme, a notice to cure need not precede a termination notice.[35] If the lease terms require the landlord to serve a notice to cure as a predicate to terminating the tenancy, the landlord must comply with the requirement even if the eviction proceeding is based on nuisance.[36] Nuisance is, by definition, past conduct, incapable of meaningful cure.[37] A tenant need not be afforded a cure period when a nuisance is established, even if the holdover is based on both nuisance and substantial breaches of the lease.[38]

Even though a landlord need not serve a notice to cure in a nuisance holdover, courts will protect valuable leaseholds, and substantial defects in a predicate termination notice will result in dismissing the holdover proceeding.[39] Ideally, the termination notice should apprise the tenant of the lease provision and

statutory ground(s) on which the termination is based, the specific facts that establish the existence of the ground(s) alleged (including approximate dates, times, and individuals involved), and a date certain by which the tenant must vacate and surrender the subject premises.[40] But the test of a proper termination notice is reasonableness.[41] The facts alleged must be plentiful and specific enough to allow a tenant to defend an eviction proceeding. Non-fatal missing facts can be supplied later in a bill of particulars.[42]

Although the failure to articulate less essential elements like the lease provision violated might not be fatal,[43] the failure to proffer sufficient factual detail regarding the alleged wrongful conduct might be. By way of example, *Carriage Court Inn, Inc. v. Rains* involved a nuisance holdover based on the tenant's allegedly causing substantial damage to the housing accommodation, his (or his guests') harassment of the owner or other tenants, and an excessive number of guests, who themselves were allegedly abusive toward other residents, caused unreasonable noise, and threatened to burn down the premises.[44] The landlord failed to allege specific dates and times of the occurrences, the identities of the victims of the problematic behavior, or that the tenant even knew of threats made by his guests.[45] The notice was held insufficient because it failed to apprise the tenant of the specific facts on which the proceeding was based, and thus it could not support the holdover proceeding.[46]

Like all predicate notices, a defective termination notice in a nuisance holdover cannot be amended. A proceeding based on a defective notice will be dismissed.[47] But the landlord will be free to start again, whether or not the conduct continues, because the dismissal will be without prejudice.[48]

Nuisance vs. Breach of a Substantial Obligation of the Tenancy

Landlord-tenant practitioners must be mindful of the underlying theory on which the eviction proceeding is based and of the predicate-notice requirements involved in each. Under RSC § 2524.2(a), eviction for a tenant's wrongful acts is precluded without the landlord's first serving the tenant with proper notice. RSC § 2524.2(b) provides that termination notices must set forth on which of the permissible grounds for eviction listed in RSC § 2524.3 the proceeding relies. Under RSC § 2524.3, nuisance and substantial-breach-of-a-tenancy-obligations are separate grounds in which to seek eviction. A holdover proceeding based on a substantial breach of a tenant's obligation may, however, be maintained only after the owner first serves a notice to cure on the tenant to allow the tenant an opportunity to correct the violation.[49] If the termination notice is insufficient or otherwise defective, the proceeding must be dismissed because, again, a predicate notice cannot be amended.[50]

Examples of Nuisance

The heart of any nuisance proceeding is the tenant's allegedly problematic conduct. That conduct can take many forms, including maintaining a washing machine,[51] harboring a nuisance pet,[52] public urination and other offensive conduct,[53] illegal use,[54] abusive or antisocial behavior toward building staff or owners or other tenants and occupants,[55] conduct that results from a medical condition,[56] excessive noise[57] or odors,[58] the seemingly all-inclusive "objectionable conduct" of a tenant,[59] and, in some instances, even the failure to remit rent.[60] Although any number (or combination) of these (or other) types of conduct will support a nuisance-based holdover, some are litigated more often than others.

Objectionable Conduct

If the lease allows the landlord to terminate the tenancy for objectionable conduct, the landlord must prove in court by "competent evidence" as required by RPAPL 711(1) that the tenant engaged in that type of conduct.

When it comes to cooperative living, a recent development has been an apparent increase by cooperative boards to terminate tenancies for a shareholder-tenant's alleged "objectionable conduct." The basis for this development in the cooperative context is a proprietary-lease provision permitting the board or the shareholders to terminate a tenancy for the shareholder-tenant's objectionable conduct. Although what might constitute objectionable conduct itself is not defined in a standard New York State proprietary lease, the lease does, or should, delineate the procedures to terminate a cooperative lease on this ground. Those procedures used before a tenancy is terminated should minimally include notice to the shareholder-tenant; the shareholder-tenant's having an opportunity to be heard by the board or the shareholders, and a board or shareholder vote.

The leading case involving terminating a cooperative tenancy for objectionable conduct is *40 West 67th Street Corporation v. Pullman*.[61] In *Pullman*, the Court of Appeals applied business-judgment deference to a shareholder vote that terminated a shareholder's tenancy for objectionable conduct.[62] The shareholder's vote satisfied the competent-evidence standard, and the cooperative won its motion for summary judgment. The *Pullman* Court recognized that cooperative living is based on sharing control over what happens and who may live in the community.[63] The *Pullman* Court was careful to articulate procedural safeguards to ensure that shareholders are protected against bad-faith, arbitrary, or baseless terminations by

providing shareholders with three affirmative defenses.[64] To avoid affording business-judgment deference to cooperative determinations to terminate tenancies, shareholder-tenants must prove (1) that the cooperative acted outside the scope of its authority, (2) that the termination did not further the cooperative's corporate purpose, or (3) that the termination was made in bad faith.[65]

In *13315 Owner's Corporation v. Kennedy*, the shareholder-tenant successfully defended against a board-of-directors vote to terminate his tenancy.[66] The *Kennedy* court (Gerald Lebovits, J.) found that a two-phase analysis is required under *Pullman*.[67] First the court must decide whether the vote is entitled to business-judgment deference.[68] If the board is entitled to deference, the inquiry ends, and the cooperative must be awarded a final judgment of possession, whether on summary judgment or at trial. If the board is not entitled to deference, then the court must, if issues of fact arise, hold a trial to determine whether the cooperative has competent evidence of the shareholder's objectionable conduct under RPAPL 711(1).[69] The *Kennedy* court held that the shareholder had proven that the board acted outside the scope of its authority and in bad faith.[70] The *Kennedy* court in particular found that the shareholder had established that the board acted outside its authority in that the special-meeting notice required by the proprietary lease contained errors and that the board was not properly elected.[71] The *Kennedy* court also found that the board acted in bad faith when it failed to afford the shareholder a fair opportunity to be heard to defend against the board's accusations.[72]

One issue the *Kennedy* court addressed but ultimately was not required to resolve was whether the Court of Appeals's decision in *Pullman* applied to board votes to terminate tenancies for objectionable conduct.[73] This issue was addressed in *London Terrace Towers, Inc. v. Davis*, in which the court (Gerald Lebovits, J.) decided that the Court of Appeals intended that board votes—not just shareholder votes—be given business-judgment deference.[74] In *Davis*, the shareholder's tenancy was terminated by a unanimous board vote.[75] The shareholder was unable to show that the board had acted outside the scope of its authority, that the vote did not further the cooperative's corporate purpose, or that the board acted in bad faith.[76] The *Davis* court therefore found that the board vote satisfied the competent-evidence standard and granted the board's motion for summary judgment.

Although *Davis* gives cooperative boards broad power to determine who may reside in the cooperative community, courts are under a directive from the Court of Appeals to exercise "heightened vigilance" in examining whether board actions are entitled to business-judgment deference.[77] Cooperative boards must comply with their procedures scrupulously by following proper election procedures, by providing shareholders detailed objectionable-conduct and termination notices, by properly holding required special meetings, by adhering to their lease provisions to give warning in writing (if one is required), and by affording shareholders a true opportunity to defend against the allegations before the board votes to terminate the tenancy.

Chronic Nonpayment or Late Payment of Rent

A tenant's chronic and unjustified withholding of rental payments might be a nuisance if the landlord can demonstrate aggravating conditions.[78] The significance of pleading nonpayment of rent as a nuisance is that it permits a landlord to circumvent the cure opportunities the tenant might otherwise enjoy had the landlord brought a nonpayment proceeding. The Court of Appeals in *Sharp v. Norwood* ruled that a nuisance proceeding based on nonpayment or late payment of rent cannot be maintained absent proof of interference with the landlord's or other tenants' use and enjoyment of the property.[79] But chronic nonpayment holdover proceedings are permitted when predicated on the ground that the tenant has breached a substantial obligation of the tenancy.[80] The Court of Appeals has not expressly ruled on whether chronic nonpayment or chronic late payment can ever be a nuisance.[81]

The Appellate Division foresaw the Court of Appeals's insistence that "additional proof of interference" be pleaded for a nuisance based on chronic nonpayment. In 1989, the Appellate Division, First Department, held that to maintain a nuisance holdover proceeding for nonpayment of rent, a "landlord must show that it was compelled to bring numerous nonpayment proceedings within a relatively short period and that the tenant's nonpayment was willful, unjustified, without explanation, or accompanied by an intent to harass the landlord."[82] In 1991, the First Department extended that rationale to chronic late payment of rent, finding that three nonpayment proceedings over the course of a three-year period, coupled with 49 late payments over a 52-month period, were grounds for a nuisance holdover.[83] Similarly, the Appellate Division, Second Department, was unwilling to permit nuisance proceedings based on chronic nonpayment absent a claim that "aggravating circumstances" existed that impaired the landlord's enjoyment of the property.[84] Thereafter, in 1997, the Court of Appeals decided *Sharp v. Norwood*, officially rendering chronic nonpayment nuisance proceedings nearly impossible to prosecute absent a clear showing of interference with the landlord's use and enjoyment of its property or an intent to harass the landlord by not paying rent on time and having no valid justification for paying rent late or not at all.

Sale and Use of Illegal Drugs

A tenant who engages in or permits illegal drug use or sales within the premises threatens the safety and well-being of neighboring tenants and is subject to eviction for creating a nuisance.[85] Landlords are authorized to begin a holdover proceeding under RPAPL 711(5), which provides that a landlord may maintain a special proceeding if "[t]he premises, or any part thereof, are used or occupied as a bawdy-house, or house or place of assignation for lewd persons, or for purposes of prostitution, or for any illegal trade or manufacture, or other illegal business." Under N.Y. Real Property Law § 231(1) (RPL), a lease terminates "[w]henever the lessee or occupant . . . shall use or occupy [any building or premises] for any illegal trade, manufacture or other business."

The landlord must therefore prove that the tenant has regularly engaged in the alleged activity.[86] A tenant need not be directly involved in illegal activity, but in that event the landlord must "establish that the tenant knew and/or acquiesced in the illegal activity."[87] The landlord must also establish a nexus between the use of the premises and the tenant's illegal activity.[88]

Sometimes a landlord will be required to show only that illegal activity took place in the subject premises and will not be required to demonstrate the tenant's knowledge of, or even acquiescence in, the activity at issue. Those instances occur when the premises or tenancy is covered by a government-subsidy program. Tenants in these programs receive subsidies for a portion of the monthly rent due the landlord.[89] The leases for premises in these programs often provide that the tenancy may be terminated for any drug-related criminal activity by the tenant of record or the tenant's guest.[90] When a tenant resides in subsidized housing and illegal drug activity takes place in or around the leased premises, the tenant can be evicted for that illegal activity, even if the tenant was not engaging in the activity and even if the tenant was unaware of the activity.[91] A landlord will still have to serve a termination notice and show that the illegal activity took place.[92]

Fire Hazards, Collyer's Condition, and Other Mental-Health Issues

A fire hazard may constitute a nuisance. If a tenant intentionally sets fires, the court will have no trouble finding that a nuisance has occurred.[93] An accumulation of newspapers and garbage in a tenant's apartment may constitute a nuisance when the condition is a health and fire hazard and when the tenant fails or refuses to abate or correct the violative condition.[94]

An extreme case of clutter that results in a fire hazard may be caused by a psychological condition akin to an obsessive-compulsive personality disorder.[95] The obsessive-compulsive tenants' condition is marked by an inability to throw things away; their solution is to keep everything. Colloquially this is known as a Collyer's condition.[96] A Collyer's condition will provide grounds for a nuisance-based holdover, particularly when the premises becomes a health or safety hazard.[97] A tenant residing in an apartment deemed excessively cluttered to the point of constituting a nuisance may be afforded an opportunity to cure the condition.[98] If the condition is cured timely, the warrant of eviction will be stayed permanently.

Obsessive-compulsive personality disorder is not the only mental health condition that may impact a tenancy. For example, in 1991, in *Frank v. Park Summit Realty Corporation*, the court upheld a judgment of possession against an 80-year-old tenant who allowed his schizophrenic nephew to live in the subject premises.[99] While living in the tenant's apartment, the nephew would often engage in bizarre and disturbing behavior, including walking around the building in the nude and verbally abusing other residents with threats of physical and sexual assault.[100] The nephew also caused a health and safety hazard to the other residents because of his poor personal hygiene and unsanitary behavior and to his uncle because he punched him in the face.[101] Although the nephew's behavior was markedly improved while he was medicated, he often failed to take his medication.[102] The police had to be summoned numerous times to usher the nephew to a nearby hospital to medicate him forcibly.[103] Although the nephew voluntarily underwent treatment to prevent future schizophrenic episodes, the court held that the other residents "had already been forced to endure an intolerable and continuing nuisance" and were entitled to immediate relief.[104]

The Supreme Court had issued two injunctions but the Appellate Division, First Department, saw them as ineffectual because the nephew was not precluded from visiting the tenant. Therefore, the First Department found that the behavior the other residents and the landlord's staff had already endured entitled the landlord to possession under RSC § 2524.3(b).[105] The Court of Appeals in turn affirmed the Appellate Division's ruling.[106]

Following the Court of Appeals decision in *Frank*, the Appellate Term, First Department, upheld the eviction of a tenant who suffered from schizophrenia despite the tenant's argument that her conduct did not constitute a nuisance because it was unintentional as caused by her mental illness.[107] In *301 East 69th Street Associates v. Eskin*, five neighbors testified that the tenant's abusive and antisocial behavior substantially interfered with their comfort and safety, that the tenant threatened them, and that the tenant often caused disturbances in the building's

public areas.[108] The tenant's psychiatrist testified that although he did not believe that the tenant was violent, the tenant's outbursts were likely to continue at some future point.[109] The tenant argued that she should not lose her home for unintentionally objectionable conduct.[110] The Appellate Term concluded that the tenant's state of mind is irrelevant when a holdover proceeding is predicated on nuisance, but rather that the effect of the tenant's conduct on the building staff and the other tenants is dispositive.[111]

In cases involving tenants unwilling or unable to attend to their personal needs and who cannot represent themselves, a guardian ad litem is required. Civil Practice Law and Rules (CPLR) article 12 gives a court the power to appoint a guardian for litigants "incapable of adequately prosecuting or defending" their rights.[112] A determination that the tenant is legally incompetent is not required for a court to appoint a guardian ad litem.[113] A guardian may be appointed on the court's own initiative[114] or on motion by one of the parties to the proceeding[115] at any point in the litigation.

Unless the parties consent, a court should hold a hearing to resolve any motion seeking to appoint a guardian to ascertain the facts regarding the tenants' ability to protect or defend their rights.[116] The CPLR requires that before any order appointing a guardian is effective, the proposed guardian submit to the court a written consent to the appointment,[117] although noncompliance with this requirement has been excused.[118]

In the nuisance context, the appointment of a guardian, or the failure to appoint a guardian later determined to have been needed from the proceeding's outset, will result in the court's staying the proceeding to appoint a guardian.[119] The court should not stay the execution of the warrant to appoint a guardian ad litem if it is clear, however, that appointing a guardian will not assist in curing the nuisance.[120]

Washing Machines

To support a nuisance holdover claim for a tenant's use of a washing machine in an apartment, a landlord must establish that the tenant's washing machine damaged individual apartments or the building's plumbing or electrical systems.[121]

If no proof of nuisance exists, the landlord may still seek to remove the tenant, or compel the tenant to cure the condition, for a substantial lease violation. Most standard leases and cooperative house rules provide that tenants may not, without the landlord's consent, install a washing machine in the apartment.[122] A breach of this provision may be grounds to terminate the tenancy for a substantial breach of a lease obligation.[123] A landlord who does not move to terminate the tenancy after becoming aware of the tenant's washing machine may be found to have waived the right to terminate the tenancy under the lease.[124] Courts recognize non-waiver provisions providing that lease requirements may be modified only by a written agreement between the landlord and the tenant.[125] Courts have found that landlords can waive their right to object to a tenant's washing machine despite a non-waiver clause if the landlord or the landlord's employees were aware of the washing machine and if the landlord did not move to enforce the right to terminate for many years.[126] The waiver of non-waiver clauses protects tenants from landlords acting inconsistently with the agreement and then moving to evict.

Pets

As in washing-machine cases, landlords must show facts that the tenant's pet constitutes a nuisance because it substantially and unreasonably interfered with other tenants' property rights.[127] Harboring a pet may also be a substantial breach of a tenancy obligation.[128] Under the New York City "Pet Law," New York City Administrative Code § 27-2009.1(b), once a tenant has begun openly and notoriously to harbor a pet, a landlord has a 90-day window in which to object to a pet's presence as a substantial breach of a tenancy obligation. After the 90 days have passed without the landlord's objection, the landlord will be deemed to have waived any objection to the pet.[129] When the pet in question is alleged to constitute a nuisance, however, the Pet Law will not operate to prevent the tenancy's termination, even if the landlord misses the 90-day window. When the pet is causing a nuisance, the termination is based not on a breach of a substantial obligation of the pet's tenancy, but on the objectionable conduct.[130]

Stipulations and Post-Judgment Stays

Nuisance-based holdover proceedings, like all types of litigation, are often settled by stipulation between the parties. Absent a settlement, and assuming a successful landlord, another issue that frequently arises in resolving nuisance holdovers is the issue of a post-judgment stay.

A settlement agreement in a nuisance-based holdover should be clear and unequivocal and delineate the parties' rights and responsibilities.[131] Because the proceeding is predicated on the tenant's conduct, this often means defining that conduct and providing for a period of "good behavior" that, when concluded, will result in discontinuing the proceeding with prejudice about the prior acts. If the tenant does not comply with the stipulation during the probationary period, the landlord must return to court to prove that the tenant did not abide by the

stipulation and to ask the court for a final judgment and leave to execute a warrant of eviction.[132]

Under RPAPL 753(4) and CPLR 2201, the court may, in appropriate circumstances, allow tenants a cure period before the warrant of eviction issues or is executed. Under RPAPL 753(4), courts shall stay the issuance of the warrant of eviction for a 10-day cure period "[i]n the event that such proceeding is based upon a claim that the tenant or lessee has breached a provision of the lease." In proceedings to recover possession of homes based on the tenant's holding over after the tenancy has terminated, RPAPL 753(1) provides that the court may grant a stay no longer than six months. If a court decides to grant the tenant a stay, RPAPL 753(2) requires the court to direct the tenant to pay continued use and occupancy at the rental value of the premises. A stay under RPAPL 753 is unavailable if the landlord has proven that the premises will be demolished for new construction or that the tenant is objectionable.[133]

When the circumstances do not support staying the proceeding under RPAPL 753(4), it is within the court's discretion under CPLR 2201 to stay conditionally the execution of the warrant on "appropriate terms."[134] Courts have no set rule that defines appropriate terms. The court's exercise of its statutory authority under CPLR 2201 is subject to a reasonableness test.[135] The court must consider the facts of each case when deciding what amounts to appropriate terms.[136] If appropriate circumstances exist, the conditional stay may exceed the six-month statutory maximum set by RPAPL 753.[137]

Conclusion

Litigating nuisance proceedings can be annoying. Knowing the pitfalls and practicalities of these cases will help resolve one of life's problems.

Endnotes

1. *Domen Holding Co. v. Aranovich*, 1 N.Y.3d 117, 123–24, 769 N.Y.S.2d 785, 789 (2003) (citations omitted).
2. RSC (9 N.Y. Comp. Codes R. & Regs) § 2524.3(b) (9 N.Y.C.R.R.).
3. *See* ETPR (9 N.Y.C.R.R.) § 2504.2(b).
4. N.Y.C. Rent & Evict. Regs. (9 N.Y.C.R.R.) § 2204.2(a)(2); *see also* N.Y.C. Admin. Code § 26-408(a)(2).
5. *See* Rent & Evict. Regs. (9 N.Y.C.R.R.) § 2104.2(b).
6. *See, e.g., Garfield v. O'Donnell*, N.Y.L.J., Jun. 8, 1994, at 24, col. 5 (Hous. Part Civ. Ct. N.Y. Co.).
7. *Dass-Gonzalez v. Peterson*, 258 A.D.2d 298, 298, 685 N.Y.S.2d 197, 197 (1st Dep't 1999) (mem.) ("[B]ecause the parties' lease contained no provision permitting termination of the tenancy if the landlord deemed the tenants' conduct objectionable, Civil Court was without jurisdiction to entertain the instant summary holdover proceeding.").
8. *See Dass-Gonzalez v. Peterson*, 177 Misc. 2d 940, 941–42, 678 N.Y.S.2d 855, 856 (App. Term 1st Dep't 1998) (per curiam), *aff'd mem.*, 258 A.D.2d 298, 685 N.Y.S.2d 197 (1st Dep't 1999).
9. *Id.*
10. *See id.*
11. *See id.*
12. *See Dass-Gonzalez*, 258 A.D.2d at 298, 685 N.Y.S.2d at 197.
13. *Frank v. Park Summit Realty Corp.*, 175 A.D.2d 33, 35, 573 N.Y.S.2d 655, 657 (1st Dep't 1991) ("A nuisance is a condition that threatens the comfort and safety of others in the building . . . ") (citing *Novak v. Fischbein, Olivieri, Rozenholc & Badillo,* 151 A.D.2d 296, 299, 542 N.Y.S.2d 568, 570 (1st Dep't 1989) ("The only question before the Civil Court was whether the conditions also comprised a nuisance so as to threaten the comfort and safety of the occupants of the building and to entitle the landlord to a final judgment of possession'")), *mod. on other grounds*, 79 N.Y.2d 789, 587 N.E.2d 287, 579 N.Y.S.2d 649 (1991); *see, e.g., J.H. Taylor Constr. Corp. v. Liguori*, 2004 N.Y. Slip Op. 24449, at *2, 2004 N.Y. Misc. LEXIS 2192, at *4 (App. Term 1st Dep't Nov. 12, 2004) (per curiam) ("[U]nder any realistic interpretation, the evidence makes it painfully clear that the tenant's 'continued residency in the building places the comfort and health of others in the building at a constant risk.'") (quoting *Domen*, 1 N.Y.3d at 125, 802 N.E. at 140, 769 N.Y.S.2d at 790).
14. *Park Summit Realty*, 175 A.D.2d at 35, 573 N.Y.S.2d at 657; *S&M Enters. v. Lau*, N.Y.L.J., Apr. 21, 2004, at 24, col. 1 (App. Term 1st Dep't) (per curiam) (finding that isolated occurrences of water leaks emanating from tenant's bathtub were not "'continuous invasion of rights' necessary to support a finding of nuisance") (quoting *Domen*, 1 N.Y.3d at 124, 802 N.E.2d at 139, 769 N.Y.S.2d at 789).
15. *See supra* at text accompanying notes 2 and 3.
16. *Lexington Ave. Props. v. Charrier*, N.Y.L.J., Jan. 29, 1986, at 11, col. 4 (App. Term 1st Dep't) (per curiam) (holding isolated instance of objectionable conduct ordinarily insufficient to compel removal of tenant); *Metropolitan Life Ins. Co. v. Moldoff*, 187 Misc. 458, 460, 63 N.Y.S.2d 385, 387 (App. Term 1st Dep't 1946) (per curiam) (finding that releasing illuminating gas in kitchen in "mere isolated instance of an attempt at self-destruction is not and does not constitute a nuisance"), *aff'd,* 272 A.D. 1039, 74 N.Y.S.2d 910 (1st Dep't 1947).
17. *Vukovic v. Wilson*, 245 A.D.2d 1, 2, 666 N.Y.S.2d 115, 116 (1st Dep't 1997) (mem.); *Pamac Realty v. Bush*, 101 Misc. 2d 101, 102, 420 N.Y.S.2d 614, 615 (Hous. Part Civ. Ct. N.Y. Co. 1979) (finding that alcoholic tenant who started fire after getting drunk and falling asleep with cigarette did not engage in nuisance behavior).
18. *Uses Realty Corp. v. Johnson*, N.Y.L.J., Dec. 3, 1997, at 29, col. 1 (App. Term 1st Dep't) (per curiam) (finding nuisance established when tenant allowed excessive noise, water, and offensive odors to emanate from subject premises over course of time).
19. *Domen*, 1 N.Y.3d at 124, 802 N.E.2d at 139, 769 N.Y.S.2d at 789 (quoting *Park Summit Realty*, 175 A.D.2d at 35, 573 N.Y.S.2d at 657).
20. *E.g., Chiasson v. N.Y.C. Dep't of Consumer Affairs*, 138 Misc. 2d 394, 396, 524 N.Y.S.2d 649, 651 (Sup. Ct. N.Y. Co. 1998).
21. *See generally Domen*, 1 N.Y.3d at 125, 802 N.E.2d at 140, 769 N.Y.S.2d at 790.
22. *London Terrace Towers, Inc. v. Davis*, 2004 N.Y. Slip Op. 24497(U), *11, 2004 N.Y. Misc. LEXIS 2491, at *28–29 (Hous. Part Civ. Ct. N.Y. Co. Dec. 6, 2004) (Gerald Lebovits, J.) ("The court from which the dicta comes is an important consideration when deciding what weight to give the dicta. . . . Lower courts must consider nonbinding statements from a jurisdiction's highest court to be a prophecy about what the law is.").
23. *See, e.g., RNR Realty Corp. v. Smith*, N.Y.L.J., Aug. 6, 1998, at 23, col. 2 (Hous. Part Civ. Ct. Kings Co.) (stating that single occurrence does not constitute nuisance unless incident is so egregious that

it causes serious injury or damage to property, landlord, or other persons).

24. *160 W. 118th St. Corp. v. Gray*, N.Y.L.J., Dec. 15, 2004, at 19, col. 1 (Hous. Part Civ. Ct. N.Y. Co.).
25. *See id.*
26. *See Goodhue Residential Co. v. Lazansky*, 1 Misc. 3d 907(A), 781 N.Y.S.2d 624(A), 2003 N.Y. Slip Op. 51559(U), 2003 N.Y. Misc. LEXIS 1662 (Hous. Part Civ. Ct. N.Y. Co. Dec. 29, 2003) (dismissing nuisance holdover predicated on tenant's urinating due to termination notice that alleged only one incident of urination).
27. *See* N.Y.L.J., Apr. 21, 2004, at 24, col. 1.
28. *See* RSC (9 N.Y.C.R.R.) § 2524.3(b); ETPR (9 N.Y.C.R.R.) § 2504.2; N.Y.C. Rent & Evict. Regs. (9 N.Y.C.R.R.) § 2204.2(a); Rent & Evict. Regs. (9 N.Y.C.R.R.) § 2104.2.
29. *See* RSC (9 N.Y.C.R.R.) § 2524.2; ETPR (9 N.Y.C.R.R.) § 2504.3; N.Y.C. Rent & Evict. Regs. (9 N.Y.C.R.R.) § 2204.3; Rent & Evict. Regs. (9 N.Y.C.R.R.) § 2104.3.
30. RSC (9 N.Y.C.R.R.) § 2524.2(c)(2); ETPR (9 N.Y.C.R.R.) § 2504.3(c)(2).
31. N.Y.C. Rent & Evict. Regs. (9 N.Y.C.R.R.) § 2204.3(d)(1); Rent & Evict. Regs. (9 N.Y.C.R.R.) § 2104.3(d)(2).
32. N.Y.C. Rent & Evict. Regs. (9 N.Y.C.R.R.) § 2204.3(d)(1).
33. N.Y.C. Rent & Evict. Regs. (9 N.Y.C.R.R.) § 2204.3(c); Rent & Evict. Regs. (9 N.Y.C.R.R.) § 2104.3(c).
34. N.Y.C. Rent & Evict. Regs. (9 N.Y.C.R.R.) § 2204.2(a)(4); Rent & Evict. Regs. (9 N.Y.C.R.R.) § 2104.2(d); *Club Mgmt. Co. v. Scleiffer*, N.Y.L.J., Sep. 9, 1996, at 26, col. 6 (App. Term 1st Dep't) (per curiam) ("[W]here . . . a landlord seeks to evict a rent controlled tenant based on nuisance, the landlord is not required to first obtain a certificate of eviction from DHCR.").
35. *E.g.*, *Kast Realty v. Houston*, 2003 N.Y. Slip Op. 50892(U), *3, 2003 N.Y. Misc. LEXIS 574, at *2 (App. Term 1st Dep't Apr. 23, 2003) (per curiam) ("Tenant's argument on appeal that a notice to cure was required is without merit since the proceeding was premised upon the theory of nuisance as set forth in the notice of termination."); *Lemle v. Gerwitz*, N.Y.L.J., Sep. 9, 1996, at 25, col. 2 (App. Term 1st Dep't) (per curiam) (holding that no notice to cure is required in holdover proceeding grounded on landlord's allegation that tenant is committing nuisance); *72nd St. Partners v. Otis*, N.Y.L.J., Apr. 17, 1993, at 24, col. 3 (App. Term 1st Dep't) (per curiam).
36. *221 E. 10th St. v. Walker*, N.Y.L.J., June 3, 1992, at 23, col. 4 (Hous. Part Civ. Ct. N.Y. Co.) (finding that although RSC does not mandate service of a notice to cure, landlord is required to comply with lease if its terms require serving notice).
37. *Unicorn 151 Corp. v. Small*, 181 Misc. 2d 304, 310, 693 N.Y.S.2d 883, 887 (Hous. Part Civ. Ct. Kings Co. 1999) ("This court is cognizant of the distinction between a nuisance incapable of cure and a breach of lease.").
38. *Carnegie Park Assocs. v. Graff*, 2003 N.Y. Slip Op. 51198(U), at *3, 2003 N.Y. Misc. LEXIS 1039, at *2 (App. Term 1st Dep't Aug. 8, 2003) (per curiam) ("The service of a notice to cure for the alternative ground of violation of the lease does not require that an opportunity to cure be given where, as here, a nuisance is proven and the court has found that the tenant's pattern of behavior over a period of years continuing through the trial 'shows no sign of abating.'").
39. *See, e.g.*, *Carriage Court Inn, Inc. v. Rains*, 138 Misc. 2d 444, 446, 524 N.Y.S.2d 647, 648 (Hous. Part Civ. Ct. N.Y. Co. 1988).
40. *See* RSC (9 N.Y.C.R.R.) § 2524.2(b); ETPR (9 N.Y.C.R.R.) § 2504.3(b); N.Y.C. Rent & Evict. Regs. (9 N.Y.C.R.R.) § 2204.3(b); Rent & Evict. Regs. (9 N.Y.C.R.R.) § 2104.3(b); *Harrison v. Rankin*, N.Y.L.J., Feb. 18, 1993, at 22, col. 4 (Hous. Part Civ. Ct. N.Y. Co.) (holding that ambiguous termination notice is fatally defective); *Palomino v. Link*, N.Y.L.J., Apr. 22, 1992, at 25, col. 2 (Hous. Part Civ. Ct. Kings Co.) (holding that termination notice that fails to allege dates of misconduct is fatally defective).
41. *Hughes v. Lenox Hill Hosp.*, 226 A.D.2d 4, 17, 651 N.Y.S.2d 418, 427 (1st Dep't 1996), *appeal dismissed*, 90 N.Y.2d 829, 683 N.E.2d 17, 660 N.Y.S.2d 552 (1997); *Carnegie Park Assocs.*, 2003 N.Y. Slip Op. 51198(U), *3, 2003 N.Y. Misc. LEXIS 1039, at *2; *Lincoln Shore Owners Inc. v. Springer*, 2003 N.Y. Slip Op. 50991(U), *1, 2003 N.Y. Misc. LEXIS 712, at *1 (App. Term 1st Dep't May 1, 2003) (per curiam).
42. *City of New York v. Valera*, 216 A.D.2d 237, 237, 628 N.Y.S.2d 695, 695 (1st Dep't 1995); *McGoldrick v. DeCruz*, 195 Misc. 2d 414, 414, 758 N.Y.S.2d 756, 757 (App. Term 1st Dep't 2003) (per curiam); *Gracie Gardens Owners Corp. v. Goldfarb*, 189 Misc. 2d 620, 620, 735 N.Y.S.2d 349, 350 (App. Term 1st Dep't 2001) (per curiam).
43. *Dafodil Purchasing Corp. v. Pritzker*, N.Y.L.J., Oct. 1, 1996, at 21, col. 1 (App. Term 1st Dep't) (per curiam) (finding that because notice was factually detailed and specific, it was not a "fatal jurisdictional defect that the notices failed to identify any lease provision(s) violated").
44. *See* 138 Misc. 2d at 446, 524 N.Y.S.2d at 648.
45. *Id.*, 524 N.Y.S.2d at 648.
46. *See id.*, 524 N.Y.S.2d at 648.
47. *See Chinatown Apts., Inc. v. Chu Cho Lam*, 51 N.Y.2d 786, 788, 412 N.E.2d 1312, 1324, 433 N.Y.S.2d 86, 88 (1980); Warren A. Estis & William J. Robbins, *Determining Adequacy of Communication is No Easy Task*, N.Y.L.J., Apr. 7, 1999, at 5, col. 2 (discussing predicate-notice requirements).
48. *See generally Valley Cts., Inc. v. Newton*, 47 Misc. 2d 1028, 1031, 263 N.Y.S.2d 863, 866 (Syracuse City Ct. 1965); 2 Joseph Rash, *New York Landlord and Tenant—Including Summary Proceedings* § 30:60, at 468 n.230 (Robert F. Dolan 4th ed. 1998).
49. RSC (9 N.Y.C.R.R.) § 2524.2(a).
50. *See Chinatown Apts.*, 51 N.Y.2d at 788, 412 N.E.2d at 1324, 433 N.Y.S.2d at 88.
51. *E.g.*, *RNR Realty*, N.Y.L.J., Aug. 6, 1998, at 23, col. 2; *Fanchild Investors, Inc. v. Cohen*, 43 Misc. 2d 39, 42, 250 N.Y.S.2d 446 (Civ. Ct. Bronx Co. 1964) (discussing washing machine as nuisance when it "overburden[s] plumbing or electrical outlets").
52. *E.g.*, *Piazza v. Greitzer*, N.Y.L.J., Feb. 6, 1996, at 25, col. 3 (App. Term 1st Dep't) (per curiam) (finding that tenant's harboring ten pigeons and two dogs with attendant odors and infestation are grounds for nuisance); *John Dean Realty Corp. v. Supple*, N.Y.L.J., July 26, 1984, at 6, col. 1 (App. Term 1st Dep't) (per curiam) (finding that biting dog constitutes nuisance); *cf., Thelen v. Torres*, N.Y.L.J., Oct. 21, 1998, at 29, col. 5 (Hous. Part Civ. Ct. Bronx Co.) (finding presence of four dogs not a nuisance).
53. *E.g.*, *Acorn Realty, L.L.C. v. Torres*, 169 Misc. 2d 670, 671, 652 N.Y.S.2d 472, 473 (App. Term 1st Dep't 1996) (per curiam) (finding that occurrences of vandalism and urinating in public areas, together with other conduct, constituted nuisance); *but see Goodhue Residential*, 1 Misc. 3d 907(A), 2003 N.Y. Slip Op. 51559(U), 781 N.Y.S.2d 624, 2003 N.Y. Misc. LEXIS 1662 (dismissing nuisance holdover because termination notice alleged but one urination incident).
54. *E.g.*, *Harrison*, N.Y.L.J., Feb. 18, 1993, at 22, col. 4 (upholding termination notice in nuisance proceeding when notice referenced tenants' fear resulting from drug activity in premises, even though fearful tenants were not named in notice); *1021-27 Ave. St. John H.D.F.C. v. Hernandez*, 154 Misc. 2d 141, 143–45, 584 N.Y.S.2d 990, 991–93 (Hous. Part Civ. Ct. Bronx Co. 1992) (allowing nuisance holdover when tenant lacks willingness or ability to restrict illegal use of premises).
55. *E.g.*, *Acorn Realty*, 169 Misc. 2d at 671, 652 N.Y.S.2d at 473 (finding that antiso-

cial behavior of tenant's children, including "verbal abuse of other residents and actual assaults on building staff," constituted nuisance); *Aldus I Assocs. v. Maldonado*, 13 H.C.R. 6A, Jan 11, 1985 (Hous. Part Civ. Ct. Bronx Co.).

56. *See, e.g.*, *Park Summit Realty*, 175 A.D.2d at 36, 573 N.Y.S.2d at 657.

57. *E.g.*, *Davis*, 2004 N.Y. Slip Op. 24497, *13, 2004 N.Y. Misc. LEXIS 2491, at *34.

58. *E.g.*, *Mosholu Preservation Corp. v. Fisher*, N.Y.L.J., July 27, 1999, at 22, col. 1 (App. Term 1st Dep't) (per curiam) (upholding nuisance proceeding based on consistent stench from premises).

59. *E.g.*, *40 W. 67th St. Corp. v. Pullman*, 100 N.Y.2d 147, 760 N.Y.S.2d 745 (2003).

60. *E.g.*, *Greene v. Stone*, 160 A.D.2d 367, 368, 552 N.Y.S.2d 421, 422 (1st Dep't 1990); *25th Realty Assocs. v. Griggs*, 150 A.D.2d 155, 157, 540 N.Y.S.2d 434, 436 (1st Dep't 1989); *but see Sharp v. Norwood*, 89 N.Y.2d 1068, 659 N.Y.S.2d 834 (1997).

61. 100 N.Y.2d 147, 760 N.Y.S.2d 745 (2003).

62. *See id.* at 150, 760 N.Y.S.2d at 747.

63. *See id.* at 154, 760 N.Y.S.2d at 750.

64. *See id.* at 155, 760 N.Y.S.2d at 751.

65. *Id.*, 760 N.Y.S.2d at 751.

66. *See* 4 Misc. 3d 931, 951, 782 N.Y.S.2d 554, 570–71 (Hous. Part Civ. Ct. N.Y. Co. 2004).

67. *See id.* at 938, 782 N.Y.S.2d at 561.

68. *Id.* at 943, 782 N.Y.S.2d at 565.

69. *Id.* at 950, 782 N.Y.S.2d at 570.

70. *See id.* at 948–49, 782 N.Y.S.2d at 568–70.

71. *See id.* at 943–45, 782 N.Y.S.2d at 565–67 (finding that notice did not name officers entitled to call special meeting and did not properly name petitioner).

72. *See Kennedy*, 4 Misc. 3d at 948–49, 782 N.Y.S.2d at 569–70.

73. *See id.* at 939–43, 782 N.Y.S.2d at 562–65.

74. *See* 2004 N.Y. Slip Op. 24497, at *11, 2004 N.Y. Misc. LEXIS 2491, at *28–29 (Hous. Part Civ. Ct. N.Y. Co. 2004).

75. *See id.* at *2.

76. *Id.* at *12–13.

77. *See Pullman*, 100 N.Y.2d at 158, 760 N.Y.S.2d at 753.

78. *Sharp*, 89 N.Y.2d at 1069, 659 N.Y.S.2d at 835; Andrew Scherer, *Residential Landlord-Tenant Law in New York* § 8:81 (2004 ed.).

79. *See Sharp*, 89 N.Y.2d at 1069, 659 N.Y.S.2d at 835; s*ee also Swingtime, LLP v. The White House (NY) Inc.*, N.Y.L.J., Jul. 31, 2001, at 18, col. 1 (App. Term 1st Dep't) (per curiam); *ACP 305 E. 72nd St. Assocs. v. Kokkinogoulis*, N.Y.L.J., Jan. 13, 1998, at 25, col. 1 (App. Term 1st Dep't) (per curiam) (holding that in nuisance holdovers premised on chronic late payment of rent, landlord must show "aggravating circumstances" to support eviction).

80. *Carol Mgmt. Corp. v. Mendoza*, 197 A.D.2d 687, 687, 602 N.Y.S.2d 941, 942 (2d Dep't 1993) (mem.).

81. *See Sharp*, 89 N.Y.2d at 1069, 659 N.Y.S.2d at 835.

82. *Griggs*, 150 A.D.2d at 156, 540 N.Y.S.2d at 435.

83. *See Stone*, 160 A.D.2d at 368, 552 N.Y.S.2d at 422.

84. *See Carol Mgmt.*, 197 A.D.2d at 687, 602 N.Y.S.2d at 942.

85. *Hernandez*, 154 Misc. 2d at 148, 584 N.Y.S.2d at 994.

86. *See Grosfeld Realty Co. v. Lagares*, 150 Misc. 2d 22, 23, 575 N.Y.S.2d 220, 220 (App. Term lst Dep't 1989) (per curiam) (quoting *Lituchy v. Lathers*, 35 Misc. 2d 556, 557, 232 N.Y.S.2d 627, 627 (App. Term 1st Dep't 1962); *Howard Ave. Assocs. v. Rojas*, N.Y.L.J., Apr. 5, 2002, at 20, col. 6 (Hous. Part Civ. Ct. Kings Co.) (Gerald Lebovits, J.); *Hernandez*, 154 Misc. 2d at 145.

87. *Rojas*, N.Y.L.J., Apr. 5, 2002, at 20, col. 6; *Pim Consultants Corp. v. Santos*, N.Y.L.J., Feb. 21, 2001, at 25, col. 5 (Hous. Part Civ. Ct. N.Y. Co.).

88. *See RRW Realty Corp. v. Flores*, N.Y.L.J., Feb. 10, 1999, at 28, col. 3 (Hous. Part Civ. Ct. N.Y. Co.).

89. *See generally* Daniel Finkelstein & Lucas A. Ferrara, *Landlord and Tenant Practice in New York* § 19-1 et seq. (Subsidized Housing) (2004 ed.).

90. *See, e.g.*, *B&L Assocs. v. Wakefield*, 2004 N.Y. Slip Op. 24473, at *1, 6 Misc. 3d 388, 785 N.Y.S.2d 681, 2004 N.Y. Misc. LEXIS 2361, at *2 (Hous. Part Civ. Ct. Kings Co.).

91. *HUD v. Rucker*, 535 U.S. 125 (2002) (holding that federal regulations governing subsidized housing permit landlords to evict tenants for illegal drug activity whether or not tenant was aware that drug activity was taking place).

92. *N.Y.C. Hous. Dev., LLC v. Arias*, 2 Misc. 3d 343, 346, 772 N.Y.S.2d 789, 792 (Hous. Part Civ. Ct. N.Y. Co. 2003) (dismissing drug holdover when landlord established that drug activity was on-going in premises but failed to issue termination notice).

93. *See, e.g.*, *177 E. 90th St. Co. v. Niemela*, 115 Misc. 2d 189, 190, 453 N.Y.S.2d 567, 568 (Civ. Ct. N.Y. Co. 1982) (holding that petition alleging that tenant started fires in subject premises set forth sufficient basis for nuisance proceeding).

94. *Stratton Co-op., Inc. v. Fener*, 211 A.D.2d 559, 559, 621 N.Y.S.2d 77, 78 (1st Dep't 1995) (lifting stay of warrant of eviction when tenant failed to cure fire hazard consisting of collection of newspapers and debris); *Kast Realty, LLC v. Houston*, N.Y.L.J., Nov. 13, 2002 , at 19, col. 1 (Hous. Part Civ. Ct. Bronx Co.), *aff'd*, 2003 N.Y. Slip Op. 50892U, 2003 N.Y. Misc. LEXIS 574 (App. Term 1st Dep't 2003) (per curiam) (finding apartment a nuisance overcome with thousands of books, magazines, cans, bottles, pictures, rags, and assorted other items).

95. Diagnostic and Statistical Manual of Disorders IV 301.4(5).

96. The name comes from the story of Homer and Langley Collyer, two brothers who lived in Harlem in the early 1900s. The brothers were hermits who stuffed their home to the rafters with over 180 tons of debris and rigged booby traps to protect their property. The condition of their home was discovered when the police received a tip that a dead person was in their house. Because of the amount of debris in their house, the police were forced to gain entry by climbing through a second-floor window. When the police made it inside, they found Homer dead. Langley was found dead nine days later while the city cleared the house. He was less than 10 feet from where his brother was found. The police surmised that Homer, who was unable to feed himself, had starved to death after Langley was killed by one of the booby traps they had fashioned out of their stuff. For the Collyer brothers' story, see Robert D. McFadden, *Bronx Man is Rescued From His Own Prison*, N.Y. Times, Dec. 30, 2003, B1, col. 2.

97. *Stratton Co-op*, 211 A.D.2d at 559, 621 N.Y.S.2d at 78.

98. *4G Realty LLC v. Vitulli*, 2 Misc. 3d 29, 773 N.Y.S.2d 776 (App. Term 2d Dep't 2003) (mem.); *Lindsay Park Hous. Corp. v. Clarke*, N.Y.L.J., March 12, 1993, at 33, col. 1 (App. Term 2d Dep't .) (mem.); *but see Eberhart v. Smith*, N.Y.L.J., May 19, 1993, at 25, col. 2 (App. Term 1st Dep't) (per curiam) (upholding eviction after tenant was given opportunity to cure Collyer's condition but no cure occurred); *see also* discussion of post-judgment stays, *infra*.

99. 175 A.D.2d 33, 36, 573 N.Y.S.2d 655, 657 (1st Dep't 1991), *aff'd as modified by*, 79 N.Y.2d 789, 579 NY.S.2d 649 (1991).

100. *Park Summit Realty*, 175 A.D.2d at 33, 573 N.Y.S.2d at 657.

101. *Id* at 33, 35, 573 N.Y.S.2d at 657.

102. *Id*. at 33, 573 N.Y.S.2d at 657.

103. *Id*. at 34, 573 N.Y.S.2d at 657.

104. *Id*. at 34–35, 573 N.Y.S.2d at 657.

105. *See id.* at 35–36, 573 N.Y.S.2d at 657.

106. 79 N.Y.2d 789, 579 NY.S.2d 649 (1991).

107. *See 301 E. 69th St. Assocs. v. Eskin*, 156 Misc. 2d 122, 123, 600 N.Y.S.2d 887, 888 (App. Term 1st Dep't 1993) (per curiam).

108. *See id.*, 600 N.Y.S.2d at 888.

109. *Id.*, 600 N.Y.S.2d at 888.

110. *Id.*, 600 N.Y.S.2d at 888.

111. *See id.*, 600 N.Y.S.2d at 888.

112. CPLR 201.

113. *Kaliman v. Driscoll*, N.Y.L.J., Mar. 6, 1991, at 22, col. 3 (Civ. Ct. N.Y. Co.), *aff'd*, N.Y.L.J., July 20, 1992, at 23, col. 4 (App. Term 1st Dep't) (per curiam); *Grasso v. Matarazzo*, N.Y.L.J., Apr. 9, 1998, at 32, col. 3 (Hous. Part Civ. Ct. Kings Co.).

114. CPLR 1202(a).

115. CPLR 1202(a)(3).

116. *State v. Kama*, 267 A.D.2d 225, 226, 699 N.Y.S.2d 472, 473 (2d Dep't 1999) (mem.); *Parras v. Ricciardi*, 185 Misc. 2d 209, 213, 710 N.Y.S.2d 792, 796 (Civ. Ct. Kings Co. 2000); *Daejan Ltd. v. Cohen*, N.Y.L.J., Apr. 11, 1991, at 24, col. 1 (App. Term 1st Dep't) (per curiam) (requiring hearing to determine whether tenant's condition was under control after tenant initially held to be nuisance and later adjudged incompetent).

117. CPLR 1201(c).

118. *Hotel Preservation v. Byrne*, N.Y.L.J., May 6, 1998, at 30, col. 2 (Hous. Part Civ. Ct. N.Y. Co.).

119. CPLR 1201; *see generally Shad v. Shad*, 167 A.D.2d 532, 533, 562 N.Y.S.2d 202, 203 (2d Dep't 1990) (holding that courts have duty to protect litigants who need guardians).

120. *See, e.g.*, *Stratton Co-op*, 211 A.D.2d at 559, 621 N.Y.S.2d at 78 (affirming Appellate Term's refusal to stay eviction to appoint guardian for tenant because tenant continually refused access to allow landlord to clean her apartment).

121. *E.g.*, *RNR Realty*, N.Y.L.J., Aug. 5, 1998, at 23, col. 2 (finding that tenant's washing machine caused numerous floods and backed-up soap water to enter other apartments); *A & B Cabrini Realty Co. v. Newman*, 237 N.Y.S.2d 970, 973 (Civ. Ct. N.Y. Co. 1963) (finding that landlord failed to establish that tenant's washing machine caused any damage).

122. *See, e.g.*, *Crystal Acts. Grp. v. Cook,* 147 Misc. 2d 676, 677, 558 N.Y.S.2d 786, 786–87 (Hous. Part Civ. Ct. Queens Co.) (holding that portable washing machine is "installed" for purposes of violating lease provision against installing washing machines).

123. *Starrett City, Inc. v. Granthan*, 2 Misc. 3d 132(A), 784 N.Y.S.2d 924, 2004 N.Y. Slip Op. 50121(U), *1, 2004 N.Y. Misc. LEXIS 157, at *1 (App. Term 2d Dep't 2d & 11th Jud. Dists Jan. 29, 2004) (mem.); *see also Cannon Point North, Inc. v. Abeles*, 160 Misc. 2d 30, 31–32, 612 N.Y.S.2d 289, 290 (App. Term 1st Dep't 1993) (per curiam) (holding that business-judgment rule governs enforceability of no-washing-machine rule).

124. *255 Fieldston Buyers Corp. v. Michaels*, 196 Misc. 2d 105, 106, 761 N.Y.S.2d 762, 763 (App. Term 1st Dep't 2003) (per curiam); *Binaku Realty Co. v. Penepede*, 2001 N.Y. Slip Op. 40111(U), *2-4, 2001 N.Y. Misc. LEXIS 454, at *3–6 (Hous. Part Civ. Ct. Bronx Co. June 12, 2001).

125. *See Cannon Point North*, 160 Misc. 2d at 31–32, 612 N.Y.S.2d at 290 (upholding validity of non-waiver provision); George M. Heymann, Outside Counsel, *Washing Machine Holdover Proceedings for Residential Premises*, N.Y.L.J., July 5, 1996, at 1, col. 1.

126. *Barker Ave. Co. v. Rivera*, N.Y.L.J., Oct. 27, 1993, at 27, col. 3 (Hous. Part Civ. Ct. Bronx Co.).

127. *See 980 Fifth Ave. Corp. v. Smith*, 295 A.D.2d 133, 133, 743 N.Y.S.2d 435, 436 (1st Dep't 2002) (mem.).

128. *Hollywood Leasing Corp. v. Rosenblum*, 109 Misc. 2d 124, 126, 442 N.Y.S.2d 833, 834 (App. Term 2d Dep't 2d & 11th Jud. Dists. 1981) (per curiam).

129. *1700 York Assocs. v. Kaskel*, 182 Misc. 2d 586, 588, 701 N.Y.S.2d 233, 237 (Hous. Part Civ. Ct. N.Y. Co. 1999) (holding that landlord's agent's knowledge of ferret was sufficient to impute knowledge to landlord).

130. 2 Joseph Rasch, *Landlord Tenant–Including Summary Proceedings* § 30:61, at 470 (Robert F. Dolan ed., 4th ed. 1998). *See* discussion of nuisance proceedings versus termination for breach of a substantial obligation of the tenancy, *supra*.

131. *See generally* Finkelstein & Ferrara, *supra* note 89, at §§ 15:531 et seq.

132. *See, e.g.*, *Lexington Partners, LLC v. Pelter*, 5 Misc. 3d 126(A), 2004 N.Y. Slip Op. 51151(U), at *1, 2004 N.Y. Misc. LEXIS 1676, at *1–2 (App. Term 1st Dep't Oct. 5, 2004) (per curiam) (holding that landlord had failed to establish that tenant had substantially violated stipulation although tenant "postur[ed] with a horned 'deer head' as if 'to charge' at . . . building superintendent and point[ed] a decorative bow and arrow set at building staff and contractors while 'laughing like crazy'"); *Sacchetti v. Rosen*, 2001 N.Y. Slip Op. 40306(U), *2, 2001 N.Y. Misc. LEXIS 565, at *1-2 (App. Term 1st Dep't Sept. 25, 2001) (per curiam) (affirming Civil Court's granting leave to landlord to execute warrant because landlord proved that tenant's antisocial behavior did not stop).

133. *See* RPAPL 753(3).

134. *326-330 E. 35th St. Assocs. v. Sofizade*, 191 Misc. 2d 329, 332, 741 N.Y.S.2d 380, 382 (App. Term 1st Dep't 2002) (per curiam); *203 E. 13th St. Corp. v. Lechycky*, 67 Misc. 2d 451, 452, 324 N.Y.S.2d 560, 561 (App. Term 1st Dep't 1971) (per curiam); *New York Univ. v. Arnold*, 133 Misc. 2d 1040, 1041, 508 N.Y.S.2d 869, 870 (Hous. Part Civ. Ct. N.Y. Co. 1986).

135. *MacLeod v. Shapiro*, 20 A.D.2d 424, 428, 247 N.Y.S.2d 423, 427 (1st Dep't 1964) (per curiam) (holding five-month stay unreasonable); *Niego Prop., Ltd. v. Schuette*, N.Y.L.J., May 22, 2002, at 25, col. 4 (White Plains City Ct.).

136. *E.g.*, *Newman v. Sherbar Devel. Co.*, 47 A.D.2d 648, 648, 364 N.Y.S.2d 20, 21–22 (2d Dep't 1975) (mem.).

137. *Arnold*, 133 Misc. 2d at 1041 n.3, 508 N.Y.S.2d at 870 n.3.

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