

2020 HOUSING COURT STUDY

and
Vital Preliminary Considerations for
Landlords (and Tenants)
Before Going to Housing Court

March 2020

Itkowitz PLLC
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Housing Court

A Presentation Prepared for LandlordsNY

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I. INTRODUCTION

I conducted a study of all the published New York City Housing Court decisions with final dispositions for the twelve-month period between January 1, 2019 and December 31, 2019 (“the Study”). I present my findings and draw conclusions therefrom. The results are not good for landlords. I make suggestions for how landlords can get better outcomes. I believe that tenants and their lawyers will also find this piece of some interest. Whenever I am telling a landlord how to do something correctly, I am also exposing possible defenses that tenants should look for.

II. MICHELLE’S 2020 YEAR-LONG STUDY OF HOUSING COURT CASES IN NEW YORK CITY

A. Study Methodology

1. Sources

I reviewed every case that was reported during the twelve-month period between January 1, 2019 and December 31, 2019 in the following three (3) sources (“the Sources”), which were:

1. Westlaw – in both the “Cases” database and the “Trial Court Orders” database;
2. The Habitat Group’s “Landlord v. Tenant” Resource; and
3. The New York Law Journal.

2. Types of Cases Considered

I only considered summary proceedings for the recovery of real property, both nonpayments and holdovers, brought in the residential parts of the Housing Court in the City of New York. I considered SRO cases and co-op cases in Housing Court. I was willing to consider any case where a tenant was suing a sub-tenant in Housing Court but do not think I saw any this time.

3. Types of Cases Not Considered

This Study was about Housing Court. Therefore, I did not consider landlord and tenant cases in the following forums:

- Any appellate court
- Supreme Court
- DHCR
- The Loft Board
- Part 52 of the Housing Court (where commercial landlord and tenant cases are heard)
- Any court outside of NYC
- NYCHA cases.

4. The Study Only Includes Cases with Final Dispositions

This study was about winners and loser. I only included cases with final dispositions in Housing Court. If a motion for summary judgment was denied or if discovery was granted for either side, I did not consider the cases because such cases are not over yet and you cannot tell who won and who lost. Likewise, I stayed away from restore-to-possession cases, cases where tenants were asking for stipulations of settlement to be opened up, and cases where landlords were asking for tenants to be found in default under a stipulation. Such matters are seldom “over” at those points.

I understand that any of these “final” dispositions could be later challenged, either within Housing Court on a motion to reargue or on appeal to a higher court. But to consider the future of any matter beyond the final disposition in Housing Court was beyond the scope of the study. I explain why below in the section “Why Study Housing Court Outcomes?”.

5. Information Recorded

I created an Excel spreadsheet (“the Chart”). On the Chart, I noted the following for each case I included in the Study:

1. Date of the case or the report on the case
2. Case name
3. Source
4. Case name and legal citation (where available)
5. County
6. Judge
7. Legal representation (5 choices):
 - Only landlord was represented
 - Only tenant was represented
 - Both were represented
 - Neither were represented
 - Unknown
8. Did the tenant have free legal services, yes or no?
9. Outcome/Winner:
 - Landlord
 - Tenant
 - Draw, examples:
 - A nonpayment case where landlord won a money judgment, but the court also awarded a substantial abatement; or
 - A nuisance case where landlord won a judgment of possession but execution of the warrant was stayed for a significant period of time for tenant to cure.
10. Short explanation of the outcome.

11. Type of case (20 choices):

- airbnb
- chronic nonpay
- end-of-lease non-regulated
- failure to renew Rent Stabilized lease or to complete income certification documents
- hoarding
- illegal activity
- illegal alterations
- illegal sublet
- illegal unit
- licensee holdover
- nonpayment
- non-primary residence
- nuisance (other; not hoarding)
- owner's use
- pets
- post-foreclosure
- profiteering (not airbnb)
- regulatory status (the landlord treated the unit as free market, but tenant asserts the unit is Rent Stabilized)
- substantial obligation lease breach
- succession / licensee holdover

6. Study NOT Peer Reviewed

This study has not yet been peer reviewed. I would welcome a volunteer and would share credit for the study with an attorney willing to do so.

7. Study Flaws

I do not know how the Sources aggregate cases. The results of the Study so strongly favor tenants, that I must wonder if there is some reason that tenant victories are more widely reported than landlord victories.

There were 181,204 new landlord and tenant cases filed in the New York City Civil Court in 2019¹. If the 162 cases included in the study are all the reported written decisions of final dispositions in that period, that means that this data represents only .09% of all cases filed.

I am not a research scientist. I am just a landlord and tenant lawyer. Thus, I say as a lay person – Correlation does not always equal causation.

B. Why Study Housing Court Outcomes? This is NOT Legal Research.

1. This is Not the Law!

All my other booklets explain to my readers what the law is in various areas of landlord and tenant law. Where do I find the law and where do I point you to in order to see the law for yourself? To the statutes and regulations enacted by the legislature and government agencies, and then to the appellate case law that further interprets those statutes and regulations.

“Appellate” cases are cases that may have started in Housing Court, but they were appealed by either the landlord or the tenant, to a higher (appellate) court. Sometimes appellate cases are further appealed, up to even higher appellate courts. Housing Court cases are appealed directly to the Appellate Term of the New York State Supreme Court. Appellate Term cases are sometimes further appealed to the Appellate Divisions. Appellate Division cases are sometimes further appealed to New York State’s highest court, the Court of Appeals. The higher the court, the more authority the case has, i.e. the more the Housing Court must follow the appellate case.

When you want to know what the law is, this is where you must look – first to the statutes and the regulations and then to the highest appellate cases in your jurisdiction. But that is NOT what I am offering you in this study. In fact, very few of the 162 cases included in the Study are likely to be cited to by lawyers as binding authority in their legal papers.

So why are the outcomes of these 162 Housing Court dispositions important?

¹ <http://www.courts.state.ny.us/COURTS/nyc/civil/statistics.shtml>. This number is atypically low because of the June 2019 HSTPA.

2. This is the Data!

The outcomes of these published 162 Housing Court cases with final dispositions are important because most cases settle. The likelihood of your cases to settle, be you landlord or tenant, on terms that you feel are favorable to you, is directly proportional to how much leverage you really have. And the amount of leverage you have is dependent on... *wait for it*...how likely the final disposition is to be in your favor if you proceed to the end of the case.

Some practitioners believe that even if you do not have a case that is likely to win, that you should push forward aggressively anyway. Maybe your adversary will back down? Maybe they will get tired? Or scared? I do not agree with this approach. Hope is not a strategy. Leveraging the strengths of your case is a strategy. But to leverage the strength of your case, you need to be able to understand the strength of your case.

But, *Michelle*, you ask, *doesn't the strength of my case depend more on those statutes and appellate cases, then on what happens in Housing Court?* Yes, but that's not the whole story. The law will always be important, and it must be on your side if you are a landlord or you have no ethical right to be in Housing Court in the first place. The facts of your case are also immensely important. But an often-overlooked factor in this business is what the *data* has to teach us.

When we look at these 162 Housing Court final outcomes, *in the aggregate*, we are not looking at them as individual expressions of legal authority. We are looking at them as data and asking the data to show us trends. In every other industry, professionals use data to make decisions. Landlords (and tenants) in Housing Court can as well.

Let us see a few examples of what I am talking about below.

C. Study Results

The Excel chart is available on the last seven pages of this booklet, without the short explanation column included.

There were 162 cases that met the above criteria and appear in the study.

In only 78% of the cases, I could tell if the parties were represented (because the Source I found the 22% of the case in lacked that information). In those 78%, free legal services organizations showed up 76% of the time for tenant. That tells us something right there. Free legal services organizations appear in a lot of trials. Moreover, free legal services organizations win a lot of trials. When free legal services organizations were involved, tenants won 90% of the time. This is so, even though landlord had a lawyer in every case where tenant was represented by a free legal services organization. Tenants without a free legal services organization still, however, won 86% of the time. Whenever landlords won, they had a lawyer.

Overall, tenants won 83% of the time. Landlords won 7% of the time. There were draws 10% of the time. Remember, I classified something as a draw if the landlord won but did not really get what she came for. An example of a draw would be where a landlord sued for \$15,000 in back rent and was only awarded \$7,500 in back rent, because tenant was given an abatement for warranty of habitability problems.

134	12	16	162
83%	7%	10%	100%
T	L	D	total

Here are how results broke down over the twenty categories of cases:

CASE TYPES	#	T	L	D	LL win %
airbnb	3	3	0	0	0
chronic nonpay	5	4	1	0	20%
end-of-lease non-regulated	12	11	1	0	8%
failure to renew Rent Stabilized lease or to complete income certification docs	7	5	0	2	0%
hoarding	3	1	0	2	0%
illegal activity - drugs guns	2	1	1	0	50%
illegal alterations	3	1	0	2	0%
illegal sublet	6	6	0	0	0%
illegal unit	2	2	0	0	0%
licensee holdover	5	5	0	0	0%
nonpay	47	34	3	10	6%
non-prime	10	10	0	0	0%
nuisance	14	13	1	0	7%
owner's use	7	7	0	0	0%
pets	4	4	0	0	0%
post foreclosure	2	2	0	0	0%
profiteering - not airbnb	1	1	0	0	0%
regulatory status	14	13	1	0	7%
substantial obligation	4	3	1	0	25%
succession	11	8	3	0	27%
Total:	162	134	12	16	LL win %
		83%	7%	10%	
		L	T	D	

III. VITAL PRELIMINARY CONSIDERATIONS *BEFORE* FILING A HOUSING COURT CASE

Landlord and tenant cases are often won (or lost) before the case is even filed. In this section of the booklet, we cover some things the landlord should be thinking about *BEFORE* filing a Housing Court case? Pay attention tenants, this information is vital for you to know as well!

A. Pick the Right Lawyer (And...honestly, I do not mean me...)

The Lawyer Wheel



Every lawyer can be evaluated based upon three criteria: How smart they are; how attentive they are; and how cheap they are. You can have two out of three of these things be true, but never three! *It's true!* Let us look at some examples:

If your lawyer knows her stuff and treats each case like a special project and you like a king, then that lawyer ain't cheap! Use this attorney when you have a particularly thorny legal problem where there is a lot at stake.

If your lawyer is affordably priced and gives you personal attention, that is likely because she is at an early stage in her career. She may not be an expert in the law just yet. She is competing on price and on personalized attention. That's ok. Use this attorney for your routine cases where the tenant owes a few months' rent and you anticipate the matter settling on the first or second court date. The young, hungry attorney is a great choice for this because they combine better service with better price.

Finally, if your lawyer knows the law and he is cheap, that's because his practice is a hot mess. You know this guy or gal! They are disorganized. Probably low tech. Office filled with piles of paper. You love this guy, and he does not cost you a lot of money, but he takes *forever* to get the work out. It takes him forever to call you back. Alas, there is a place for this guy too. Use him for cases where time is not a big issue, but you need the work done right.

You do NOT have to use just one law firm, people! That's lesson number one. Use the right lawyer for each particular case.² Too often people call me after they have used the cheap lawyer to lose the same case three times.

B. Understand – What is a Housing Court Case?

In most instances when a landlord finds it necessary to sue a tenant to recover rent or possession of a premises, the proper vehicle is a summary proceeding for the recovery of real property. A summary proceeding for the recovery of real property (“summary proceeding”) is an expedited lawsuit, for the recovery of rent and possession of a premises, governed by Article 4 of the Civil Practice Law and Rules (“CPLR”) and Article 7 of the Real Property Actions and Proceedings Law (“RPAPL”). Summary proceedings are expeditious because the parties’ procedural rights and remedies are severely limited. Among other things, for example, the tenant’s time to answer the lawsuit is accelerated and, absent leave of court, there is no discovery.³

Due to the accelerated nature of a summary proceeding and the limits on pre-trial discovery, a landlord prosecuting such a proceeding is held to a higher standard with respect to complying with the technical requirements of the RPAPL. In general, even though courts have

² Which type am I...? Well, I aint cheap...

³ See, e.g., CPLR § 408; RPAPL § 701; *NYU v. Farkas*, 121 Misc.2d 643 (N.Y. Civ. Ct. 1983) (defines “ample need” test for discovery to be allowed in a summary proceeding).

adopted more liberal standards in recent years, technical defects that might have no effect on a plenary action will mandate dismissal of a summary proceeding.⁴

Moreover, these cases all depend on the service of a proper predicate notice, which is not amendable.⁵ Therefore, mistakes made at the predicate notice stage, even before a pleading is drafted, can destroy a landlord and tenant case. If you do not discover that you made such a mistake until trial, it can be devastatingly wasteful of time and money.

The bottom line here is simply this – Housing Court is not regular court. The deadlines are truncated and there usually is not discovery. These things are huge benefits to landlords. Therefore, the *quid pro quo* is that landlords are held to a much higher standard of preparation in Housing Court than they are in regular court.

The rest of this publication explains what a landlord can do to be better prepared.

C. Be Prepared: Proof of Landlord’s Interest in the Property

At trial, the petitioner (i.e., landlord) must prove its interest in the premises and authority to bring the proceeding.⁶

Therefore, a few days before trial is the wrong time for a landlord’s attorney to discover things such as the following. The landlord, owner of a six-family building, technically has the deed to the house “in his mother’s name”, and as a result, landlord’s attorney named the wrong petitioner in the petition—case dismissed.

⁴ *Clarke v. Wallace Oil Co.*, 284 A.D.2d 492 (2d Dept. 2001). (“[F]ailure strictly to comply with the statutes governing summary proceedings deprives the court of jurisdiction and mandates dismissal. '[A] summary proceeding is a special proceeding governed entirely by statute and it is well established that there must be strict compliance with the statutory requirements to give the court jurisdiction.'”) citing *MSG Pomp Corp. v. Jane Doe*, 185 A.D.2d 798, 799-800 (1st Dept. 1992), quoting *Berkeley Assocs. Co. v. Di Nolfi*, 122 A.D.2d 703, 705 (1st Dept. 1986)); *but see 17th Holding LLC v Rivera*, 195 Misc.2d 531 (2d Dept. 2002) (distinguishing *Clarke* by limiting the case to its own facts and stating that “First Department has now adopted the more liberal rule of construction (*433 Assocs. V. Murdock*, [715 N.Y.S. 2d 6 (1st Dept)]) and has stated that a rule of strict construction was applied in *MSG Pomp Corp. v. Doe*...only as a matter of equity.”).

⁵ *Chinatown Apts., Inc. v. Chu Cho Lam*, 51 N.Y.2d 786 (1980).

⁶ RPAPL § 741 (1).

Your lawyer must get his hands on and carefully examine the documents that prove landlord’s interest in the premises before drafting any documents for the lawsuit. Here is a chart demonstrating what you need:

PETITIONER'S INTEREST IN PREMISES	DOCUMENT YOU NEED TO PROVE IT
Petitioner owns building.	Deed
Petitioner is a tenant who sublet to a subtenant and now wants to evict the subtenant.	Lease
Petitioner is the net-lessee of the building.	Net Lease
Petitioner is trustee of a trust that owns the building	Deed and Trust Documents
Petitioner is the executor of the estate of the deceased who owned the building	Deed and Court Order Appointing Executor and Outlining Executor’s Authority
Petitioner is the owner of a coop apartment and sublet the apartment and now wants to evict the sub-tenant.	Proprietary Lease

You will need a certified copy of a deed and other relevant documents for trial.

It should be noted, however, that there are consistent holdings that “proof of ownership” is *not* a prerequisite to maintaining a proceeding pursuant to RPAPL § 721 which authorizes summary proceedings by “Landlord or lessor...”, and that introduction of the lease agreement is sufficient proof of petitioner’s right to maintain a summary proceeding.⁷ Although it is probably less trouble to bring proof of ownership to trial, if for some reason such proof is not available *and* petitioner is the lessor named in the lease, this is an important line of cases to keep in mind.

Sometimes the landlord will be a Limited Liability Company, but the deed will be in the name of a previous partnership. Not to worry, this is one of the few situations where it is not hazardous to your *prima facie* case for the deed to be in a different name than the petitioner.

Limited Liability Company Law § 1007 (Effect of conversion) states:

⁷ *Fifth Ave & 60th St. Corp. v. Kinney E. 60th St. Parking Corp.*, NYLJ, July 28, 1994 (App. Tm. 1st Dept.), citing *K.R.F. Management Co. v. Bartle*, NYLJ, October 19, 1987, p. 9, c. 2 (App. Tm. 1st Dept.) (and cases cited). Introduction of the lease agreement, like here, is sufficient proof of a petitioner’s right to maintain a summary proceeding. *Id.*; see also *201-222 Realty LLC v. Headley*, 2003 WL 21355416 (App. Tm. 2nd and 11th Dept.) (“[L]andlord was not required to establish proof of ownership, only that it was tenants’ lessor (RPAPL 721), and this was adequately proven by the introduction of the lease”).

(a) A partnership or limited partnership that has been converted pursuant to this chapter is for all purposes the same entity that existed before the conversion.

(b) When a conversion takes effect:

(i) all property, real and personal, tangible and intangible, of the converting partnership or limited partnership remains vested in the converted limited liability company;

EXAMPLE FROM STUDY: After purchase, new owner failed to properly describe relationship between parties; case dismissed. NYLJ 1565501330NY53125119/

EXAMPLE FROM STUDY: Tenant argued DI⁸ was not the proper petitioner arguing it was not the landlord under the lease under which this action was brought. Both parties produced a lease between 1108 S Holding and tenant, thus DI was not the landlord in the lease signed by tenant, but a fee simple owner of the property. [INDIVIDUAL] signed the lease as 1108's president, but the petition named DI as the premises' landlord and owner, making no reference to [INDIVIDUAL] as an individual or to 1108. DI was the sole shareholder of 1108 which did not assign its interest in the lease to DI. DI argued tenant waived his right to raise a standing issue as it was not pleaded in the answer or pre-answer motion to dismiss. DI argued as 1108's parent company it was entitled to bring this action as a third-party beneficiary, but cited no authority for same. DI's compliance with RPAPL §721 was an element of its *prima facie* case, and tenant's failure to raise lack of standing was not fatal to its consideration. Dismissal was granted. NYLJ 1571654395NYLT900863/

⁸ Changed names slightly to protect the innocent.

D. Be Prepared: Understand the Role of the Occupant

“Landlord and tenant law” often deals with people and companies who are neither landlords nor tenants. The key to getting someone out of a space, is understanding the legal relationship the person and the space. Different occupants get different predicate notices. And as we studied above, if you give the wrong predicate notice, the case gets dismissed.

1. Tenant

There is a written or oral contract between a landlord and a tenant that includes: (a) fixed term, (b) fixed rental amounts, (c) a clearly delineated premises, (d) a grant of exclusive use of the subject premises, and (e) a grant of exclusive control over the business conducted in the subject premises.⁹

2. Tenant at Will

A tenancy-at-will is “One who enters upon lands by permission of the owner, without any term being prescribed or rent reserved...”¹⁰ The obligation to pay rent is not an absolute element of “tenancy at will”.¹¹ Exclusive use and possession...is sufficient to create a “tenant at will”.¹² The dispositive test is whether “he who is in possession has, by some act or agreement, recognized the other as his lessor or landlord and taken upon himself the character of a tenant under him, so that he is not at liberty afterwards to dispute his title[.]”¹³ An example of a tenancy-at-will is when an employee remained in possession after employment relationship ended.¹⁴

⁹ *Williams v. City of New York*, 248 N.Y. 616 (1928); *Davis v. Dinkins*, 206 A.D.2d 365 (2d Dept. 1994). *American Jewish Theatre v. Roundabout Theatre*, 203 A.D. 155 (1st Dept. 1994).

¹⁰ *Larned v. Hudson*, 60 N.Y. 102 (1875).

¹¹ *Fisher v. Queens Park Realty Corp.*, 41 A.D.2d 547 (2d Dept. 1973).

¹² See *Burns v. Bryant*, 31 N.Y. 453 (1865) (“The defendant was in possession, holding for no particular time, paying no rent, making no compensation for the use of the land, ... He was clearly a tenant at will”).

¹³ *Benjamin v. Benjamin*, 5 N.Y. 383 (1851).

¹⁴ See, e.g., *Harris v. Frink*, 49 N.Y. 24 (1872); *Stiles v. Donovan*, 100 Misc. 2d 1048 (Civ. Ct. 1979).

3. Tenant at Sufferance

One holding over, with no privity to the landlord. But the wrongful holding is by the laches of the landlord because it is the folly of the owner to suffer him to continue in possession after the determination of the preceding estate. No liability for rent, not really a "tenant". Nor can the owner maintain an action of trespass against such a person.¹⁵

4. Squatter

A Squatter is an intruder, no one let them in.

The difference between a Tenant at Will, a Tenant at Sufferance, and a Squatter is as follows. A Tenant-at-Will is let in by landlord with no term or rent. A Tenant-at Sufferance comes in legally, but not via the landlord, usually via tenant as an illegal sub, and through the landlord's laches the tenant-at-sufferance gets a kind of estate in the land. A Squatter is an intruder, no one let them in. Nevertheless, they are entitled to a notice, probably again via the landlord's laches.¹⁶

5. Contract Vendee

Generally, a tenant's exercise of an option to purchase contained in a lease merges the landlord-tenant relationship into a vendor/vendee relationship thereby serving to terminate the landlord-tenant relationship unless the parties intend otherwise. The same is true when a seller under a contract of sale of real property allows the purchaser into the space before the closing.¹⁷ Thus, if the closing falls apart, the former-contact-vendee-occupant-left-in-the-space is not a tenant. Again, there was no meeting of the minds creating a tenancy, setting a rent and a term, etc.

¹⁵ *Livingston v. Tanner*, 14 N.Y. 64 (1856).

¹⁶ See *Hecsomar Realty Corp. v. Camerena*: 62 Misc.3d 143(A), 2019 NY Slip Op 50115(U) (App. T. 1 Dept.; 1/28/19; Shulman, PJ, Ling-Cohan, Edmead, JJ); RPAPL § 713(3).

¹⁷ *Kaygreen Realty Co., LLC v IG Second Generation Partners, L.P.*, 78 A.D. 3d 1010 (N.Y. App. Div. 2010). *But see Lind v. Lind*, 203 A.D.2d 696 (3d Dept. 1994) holding that parties to a contract of sale do not have a landlord-tenant relationship, but there are exceptions to this rule, such as when the contract expressly avoids a merger by an express declaration in the contract that the relationship will remain that of landlord and tenant.

The best you can hope for in this situation is to be able to get the occupant out using RPAPL § 713 “Grounds where no landlord–tenant relationship exists”.¹⁸

6. Former Mortgagor in Possession after Foreclosure

After a property is conveyed at a foreclosure sale, the former mortgagor is not the new owner’s “tenant”. Again, as above, there was no meeting of the minds creating a tenancy, setting a rent and a term, etc. Once more, you need RPAPL § 713 “Grounds where no landlord–tenant relationship exists.”¹⁹

7. Licensee

Connotes use or occupancy of the grantor's premises, not exclusive possession of designated space²⁰. In the residential context, a “licensee” usually means a family member of a tenant who is not on the lease.²¹

8. Look for Evidence of Additional Occupants

It is important for a landlord to figure out who she is dealing with in the space. What you are trying to avoid is a failure to name all the parties to the proceeding. Anyone you have not named will not get evicted on eviction day.

- Does the landlord know who occupies the space?
- Has the lease been assigned?

¹⁸ RPAPL § 713: A special proceeding may be maintained under this article after a ten-day notice to quit has been served upon the respondent in the manner prescribed in section 735, upon the following grounds:...9. A vendee under a contract of sale, the performance of which is to be completed within ninety days after its execution, being in possession of all or a part thereof, and having defaulted in the performance of the terms of the contract of sale, remains in possession without permission of the vendor.

¹⁹ RPAPL § 713: A special proceeding may be maintained under this article after a ten-day notice to quit has been served upon the respondent in the manner prescribed in section 735, upon the following grounds:...5. Subject to the rights and obligations set forth in section thirteen hundred five of this chapter, the property has been sold in foreclosure and either the deed delivered pursuant to such sale, or a copy of such deed, certified as provided in the civil practice law and rules, has been exhibited to him.

²⁰ *Senrow Concession, Inc. v. Shelton Properties, Inc.* 10 N.Y.2d 320 (1961); *Lordi v. Nassau Cnty.*, 20 A.D.2d 658 (2d Dept. 1964).

²¹ *Kakwani v. Kakwani*, 40 Misc.3d 627 (Dist. Ct. Nassau Cty., 2013).

- Did the landlord give permission to anyone else to be in the space – either written or oral?
- Has the landlord encountered anyone other than the tenant with respect to the premises?
- Have subtenants, authorized or unauthorized, moved into the premises?
- Has the superintendent or the landlord noticed if the tenant is missing in action and unknown people are coming in and out of the premises?
- What are the names on the mailbox?
- Get the last three checks that the rent has been paid with – what is the name on the account?

EXAMPLE FROM THE STUDY: Landlord sued to evict tenant for illegally subletting his apartment. Tenant claimed that landlord's notice to cure and termination notice were defective and that, therefore, the case should be dismissed. The court ruled for tenant. The termination notice stated that landlord's agent visited the apartment on Feb. 22, 2018, and that occupant was still residing there while tenant hadn't returned. But the termination notice was dated Feb. 20, 2018--two days earlier than the claimed conversation. In addition, landlord's court petition claimed that tenant had improperly sublet or assigned the apartment. But neither of landlord's notices contained facts supporting a claim that tenant had assigned the apartment to the occupant. LVT Number: #29883; NYLJ No. 1545297624.

EXAMPLE FROM THE STUDY: Eviction of named respondent; but someone else showed up in court and demonstrated that landlord had constructive knowledge of that person's presence, so landlord needed to begin a new action against that person, no judgment against the "Jane Doe". 65 Misc.3d 1223(A).

E. Be Prepared: Compile the WHOLE Lease

A landlord's lawyer needs the WHOLE lease, all of it, when preparing a proceeding. Do not give your lawyer only the cover page, the default paragraph, and the signature page, no matter how long the full document is. This means you need to compile, and your lawyer needs to examine, the whole original lease, all its riders, and every single renewal form and the riders thereto. Do NOT tell your lawyer that all your leases are the same. You never know what is really in a lease chain until you look. The lease is the contract between landlord and tenant and, as such,

governs the relationship. To start a landlord and tenant case without reading the complete lease is ridiculous.

EXAMPLE FROM STUDY: The court stated the law as applied to the facts mandated a finding landlord's renewal offer was improper, ruling the law did not require tenant to sign back-dated leases--four of the leases were backdated--and, the letter expressly demanded tenant sign "additional renewal leases until you reach a lease which includes the current date." NYLJ 1552267889NY8447218/ This problem could have been flushed out by a more thorough review of the lease chain before the case started.

EXAMPLE FROM STUDY: Failure to offer proper renewal lease to tenant dismisses landlord's holdover proceeding. NYLJ 1564911726NY5047019/

F. Be Prepared: Make Sure the Building is Being Occupied in Accordance with the Certificate of Occupancy

All too common in New York City is the phenomena of “the illegal three family house.” In other words, the certificate of occupancy says the house is a two family, but the owner or previous owner created an extra apartment in either the basement (or anywhere within the building) and someone is living in the illegal apartment.

Multiple Dwelling Law (“MDL”) § 301(1) requires multiple dwellings (buildings with 3 or more units) built after a certain date to have a valid certificate of occupancy, as follows:

No multiple dwelling shall be occupied in whole or in part until the issuance of a certificate [of occupancy] by the department that said dwelling conforms in all respects to the requirements of this chapter, to the building code and rules and to all other applicable law...

MDL § 302 generally prohibits a landlord from collecting and/or suing for rent where there is no certificate of occupancy, or where the present use violates an existing certificate of occupancy. Specifically, that section states:

1(a) If any dwelling or structure be occupied in whole or in part for human habitation in violation of [MDL § 301,]... (b), [n]o rent shall be recovered by the owner of such premises for said period, and no

action or special proceeding shall be maintained therefor, or for possession of said premises for non-payment of such rent.

Where rent for an illegal apartment has already been paid, however, it cannot be recovered by tenant from landlord. *Goho Equities v Weiss*, 149 Misc 2d 628, 630–31 [App Term, 1st Dept 1991] (“With respect to tenants' counterclaims for reimbursement of rent previously paid, we search the record and grant summary judgment to [landlord]...Section 302 of the Multiple Dwelling Law, which is penal in nature and is to be strictly construed, does not by its terms provide for the recovery of rent previously paid for use and occupancy.”)

A holdover proceeding (unlike a nonpayment) is not barred by the MDL based on the landlord's failure to obtain a certificate of occupancy for the premises. *Lee v. Gasoi*, 113 Misc.2d 760, *affd.* 126 Misc.2d 719, *affd.* 119 A.D.2d 1016 [1st Dept. 1986].

If the tenant is Rent Stabilized, however, and in an illegal apartment, it is well settled by appellate case law that a landlord may not remove a tenant on the ground of illegal occupancy where the landlord created or looked the other way while tenant created the illegality. *816 Fifth Ave., Inc. v Purdy*, 127 N.Y.S.2d 695 (1st Dept 1951). Furthermore, it is well settled by appellate case law that a landlord may not remove a tenant on the ground of illegal occupancy where the illegality is susceptible of cure without undue expense or difficulty. *In the Matter of K&G Co. v Reyes*, 52 Misc 2d 606 (N.Y. Civ. Ct. 1966); *See 625 West End v. Jason Howard*, 2001 WL1682615 (AT 1st 2001) (“Even assuming the existence of a violation, landlord would be required to demonstrate that the certificate of occupancy is incapable of amendment.”); *McDonnell v. Sir Prize Contr. Corp.*, 32 A.D.2d 660 (2d Dept 1969) (dismissing holdover petition because “landlord failed to establish that the violation in question can be removed only by eviction of the tenant ... or that compliance with the legal requirements would be unduly burdensome or economically improvident”). In *Hornfeld v. Gaare*, 130 A.D.2d 398, 399–400 (1st Dept 1987) the court required tenant to surrender a cellar apartment, *after landlord*: (1) received a violation, (2) hired an engineer to cure the violation, (3) filed an application with DOB to legalize the space, and (4) found out the application was denied pursuant to the MDL, leaving landlord exposed to civil and criminal sanctions).

EXAMPLE FROM THE STUDY: MDL §301 Rent collection bar grants tenant dismissal of landlord's petition for rent – even though the certificate of occupancy discrepancy in commercial part of building. NYLJ 1546757551NY6699218/

EXAMPLE FROM STUDY: Multiple Dwelling Law Section 302 provides that a landlord can't collect rent when a unit's residential use is in violation of the building's C of O. There was an open, unresolved ECB violation stating that occupancy of tenant's apartment was in violation of the C of O. So, the case must be dismissed. LVT Number: 30427.

G. Be Prepared: Make Sure a Multiple Dwelling has Been Registered with HPD

Multiple Dwelling Law § 325 states that no rent shall be recovered by the owner of a multiple dwelling who is not properly registered, until the owner complies with the requirements. A certified multiple dwelling registration (“MDR”) is required for trial.

H. Be Prepared: DHCR Documents

Where the premises is Rent Stabilized, a certified copy of the New York State Division of Housing and Community Renewal (“DHCR”) printout for the premises is required at trial to show that the building and the current lease are properly registered with DHCR.

Under Rent Stabilization, rent increases for Rent Stabilized tenants are controlled by the New York City Rent Guidelines Board, which sets maximum rates for rent increases once a year, which are effective for leases beginning on or after October 1st.²² Moreover, landlord is required to follow a very specific procedure for Rent Stabilized lease renewals. Leases must be entered into and renewed for one- or two-year terms, at the tenant's choice. RSC § 2522.5. Owners are also required to register all Rent Stabilized apartments initially and then annually with the DHCR and to provide tenants with a copy of the annual registration.

Therefore, it is vital that you check the information on the DHCR print out and make sure that it:

- Matches the tenant’s lease chain; and
- Matches the Rent Guideline’s Board rent increases. If there is a rent overcharge, you want to know about it as soon as possible, and:

²² <https://www1.nyc.gov/site/rentguidelinesboard/index.page>.

- If there were recent MCI's (Major Capital Improvements) you need the DHCR orders that support them.
- If there were recent IAI's (Individual Apartment Improvements) you need to support them with: (a) work orders (b) receipts marked paid (c) cancelled checks (d) affidavits from contractors (e) pictures.²³

EXAMPLE FROM THE STUDY: Landlord sued to evict tenant for nonpayment of rent. Tenant claimed rent overcharge. The court ruled for tenant after landlord failed to present proof of claimed individual apartment improvements (IAIs) to the apartment. Review of lease and rent registration records showed that tenant had been overcharged. The court ordered landlord to refund \$14,000, including triple damages for willful overcharge. LVT Number: #29879; Index No. 28249/17, NYLJ, 12/19/18, p. 21, col. 2

EXAMPLE FROM STUDY: Lease was wrong because of illegal 2002 jump up, Court looked at this because it could look back as per HSTPA, overcharge counterclaim granted. 2019 N.Y. Slip Op. 29347.

Owner's must be very careful when filing DHCR registrations because once they are filed they cannot be amended without initiating a DHCR proceeding and explaining the reason for the amendment, which is time consuming and costly and which makes the landlord look suspicious in the eyes of DHCR or the Courts. RSC§ 2528.3. I do not recommend filing for years during which you lack information. You cannot register guesses, only facts.²⁴

²³ <http://www.nyshcr.org/Rent/OperationalBulletins/orao20161.pdf>

²⁴ See *207 W 14th Realty LLC*: DHCR Adm. Rev. Docket No. HO410009RO (9/25/19) LVT #30447 In 2018, landlord asked the DHCR for a ruling on its request to amend an incorrect registration filed in 2015. Landlord pointed out that the apartment was listed on that year's annual registration as vacant but that a tenant actually moved into the apartment in April 2015 and should have been registered. The DRA ruled against landlord, who appealed and lost. Landlord didn't comply with the DHCR's directions for seeking rent registration amendment. Landlord submitted only a letter and lease agreement. But landlord also was required to submit building/apartment registration forms with the amendments indicated and marked as "amended" covering those years to be amended. Since landlord didn't fully comply with DHCR instructions, its application to amend registrations was properly dismissed.

See also *Gelaj*: DHCR Adm. Rev. Docket No. GN610031RO (9/10/19) LVT #30448 Landlord asked the DHCR to amend annual rent registrations for one apartment for years 2013 through 2016. The DRA ruled against landlord, who appealed and lost. Landlord asked the DHCR to change the tenant's name from Atanas Stoychev to George Stoychev. Landlord claimed that it made a clerical error. But tenant argued that Atanas Stoychev was the tenant of record. The DHCR found that an incorrectly identified tenant for

See also NYC Admin Code § 26-516(h), which allows a court or DHCR, “in investigating complaints of overcharge and in determining legal regulated rents, [to] consider all available rent history which is reasonably necessary to make such determinations...” This is why we look back throughout an apartment’s history from the 1980’s forward and test that history against the following laws, which applied at relevant times.

It is also very important to keep in mind that a court or the DHCR can look back as far as they want to determine whether an apartment is subject to Rent Stabilization. *72A Realty Associates v. Lucas*, 28 Misc.3d 585 (N.Y. City Civ. Ct., 2010), *Affirmed as Modified by 72A Realty Associates v. Lucas* 32 Misc.3d 47 (AT1st 2011), *Affirmed as Modified by 72A Realty Associates v. Lucas*, 101 A.D.3d 401 (1st Dept. 2012); *Gersten v. 56 7th Avenue LLC*, 88 AD3d 189 (1st Dept. 2013).

[EXAMPLE FROM STUDY: Landlord LOSES. rent demand did not match DHCR printout! NYLJ 1555893371NY687452018/](#)

I. Be Prepared: HPD Violations, Painting, and Violation of the Warranty of Habitability

In a nonpayment proceeding, the tenant may have defenses to paying the rent based on the Warranty of Habitability. Every residential lease implicitly carries with it a “warranty of habitability” as articulated in New York Real Property Law §235-b. The leading case in this area is *Park West Management Corp. v. Mitchell*²⁵, which explains the evolution of this special right in residential tenancies. We learn the following lessons from *Park West*:

- Landlords have a duty to maintain a premises in a habitable condition.
- The obligation of the tenant to pay rent is dependent upon the landlord’s satisfactory maintenance of the premises in habitable condition.

four consecutive years was simply not the sort of mistake that could be called ministerial or clerical. Any question concerning who actually was the lawful apartment tenant must be pursued in other proceedings.

²⁵ 47 N.Y.2d 316 (1979).

- A residential lease is now effectively deemed a sale of shelter and services by the landlord who impliedly warrants: first, that the premises are fit for human habitation; second, that the condition of the premises is in accord with the uses reasonably intended by the parties; and, third, that the tenants are not subjected to any conditions endangering or detrimental to their life, health or safety.
- Landlord is not a guarantor of every amenity customarily rendered in the landlord-tenant relationship. The warranty of habitability was not legislatively engrafted into residential leases for the purpose of rendering landlords absolute insurers of services which do not affect habitability.
- As the statute places an unqualified obligation on the landlord to keep the premises habitable, conditions occasioned by ordinary deterioration, work stoppages by employees, acts of third parties or natural disaster are within the scope of the warranty as well.
- The Warranty of Habitability is nondelegable and nonwaivable.
- Violation of a housing, building or sanitation code constitutes *prima facie* evidence that the premises are not in habitable condition, but does not necessarily constitute automatic breach of the warranty. In some instances, it may be that the code violation is *de minimis* or has no impact upon habitability. Thus, once a code violation has been shown, the parties must come forward with evidence concerning the extensiveness of the breach, the manner in which it impacted upon the health, safety or welfare of the tenants and the measures taken by the landlord to alleviate the violation.
- The proper measure of damages for breach of the warranty is the difference between the fair market value of the premises if they had been as warranted, as measured by the rent reserved under the lease, and the value of the premises during the period of the breach.
- The award may take the form of a sum of money awarded the tenant in a plenary action or a percentage reduction of the contracted-for rent as a setoff in summary nonpayment proceeding in which the tenant counterclaims or pleads as a defense breach by the landlord of his duty to maintain the premises in habitable condition.

Certain HPD violations are classified by the HPD as “rent impairing.” If such violations exist against a premises for six months or more, tenants of that premises are not obligated to pay rent.²⁶ You should check the HPD web site to see what violations exist against your subject building and how long they have been there.

Lack of proper or recent painting is often a source of Warranty of Habitability violations and is governed by the New York City Housing Maintenance Code (“HMC”) § 27-2013 (Painting of public parts and within dwellings). Note that while the HMC, in general, applies to all dwellings, certain sections of the painting section of the law apply ONLY to multiple dwellings, which means three or more residential units. Here are some key takeaways from the “painting statute”:

- In a multiple dwelling, landlord must paint every three years.
- The lease can shorten this requirement, so be careful if you are cutting and pasting from some other lease! The lease can NOT lengthen the requirement.
- Landlord can get out of the three-year-paint-job if ONE month prior to the expiration of the three year cycle the landlord and tenant agree that the painting requirement can be extended. In that case, the extension can be for up to two years. This needs to be in a separate agreement, however, not part of a lease. I assume this provision is there in case tenants do not want the hassles that come along with a paint job.
- The landlord of a multiple dwelling is required to keep and maintain records relating to the refinishing of public parts and dwelling units showing when such parts were last painted or papered or covered with acceptable material and who performed the work. Such records shall be open to inspection by the department and shall be submitted to the department upon request.

EXAMPLE FROM STUDY: Landlord sued to evict rent-stabilized SRO tenant for nonpayment of rent. The court dismissed landlord's claim at trial based on landlord's default, but considered the counterclaims raised in tenant's answer. The court granted tenant a rent abatement based on breach of the warranty of habitability in the amount of 15 percent for a 30-month period based on severely cracked plaster and peeling paint on the

²⁶ MDL § 302-a.

walls and ceilings throughout the apartment, crumbling mortar on the exposed brick wall in the living room, defective flooring, infestations of mice and cockroaches, and a nonworking stove and oven. In the building's common areas there was exposed electrical wiring, defective flooring in the stairs and landings, cracked plaster, and peeling paint on the walls and ceilings. Landlord had notice of these conditions. The court also found that landlord harassed tenant in violation of NYC Admin. Code 27-2005(d) = \$2,000 penalty. 64 Misc.3d 1231(A)

J. Be Prepared: Previous Litigation that Effects the Case

This item is especially relevant for Rent Stabilized tenancies. When a tenancy has been a long one, you should always check whether an important issue in your case was already decided by a court or the DHCR. Sometimes landlords either do not remember the details of or they do not understand the impacts of prior litigation on a tenancy. This author has seen situations where either party thought they had to litigate an issue regarding the tenancy, but the issue was already decided by DHCR or a court. An example of such an issue would be whether an apartment is subject to Rent Stabilization or what the legal rent under Rent Stabilization should be. When dealing with a tenancy that is multiple decades old where the landlord and tenant have been engaged in prior disputes, a diligent search should be made of the party's files, the court system, and of DHCR records for any decisions which have a collateral estoppel effect on a current dispute.

The following case is an example of this phenomenon. In *Ordway Holdings, LLC/Pugmire*: DHCR Adm. Rev. Docket Nos. EO410042RO, EO410059RT (1/26/17) LVT Number: #27572, Tenants complained to the DHCR of a rent overcharge in 2012 and claimed that landlord failed to properly register the apartment. They claimed they moved into the apartment in 1992 under a fraudulent lease. They also claimed that landlord failed to properly file an amended initial registration form although directed to do so in a 1996 DHCR decision. Landlord pointed out that, in a 2013 nonpayment proceeding against tenants, the housing court had ruled that even if landlord hadn't served or filed the amended RR-1, this didn't bar landlord from collecting the lawful rent upon lease renewal. The District Rent Administrator ("DRA") ruled that the housing court had already resolved the overcharge claim but ordered landlord to amend a renewal lease that commenced on Dec. 1, 2012, but had been offered late on Nov. 15, 2013. The DRA said that the renewal lease should reflect a commencement date of March 1, 2014, and that any rent increase collected before that date should be refunded. Landlord and tenants both appealed. The DHCR found that the DRA had correctly ordered amendment of the

renewal lease. And the housing court had resolved the overcharge claim and its decision was affirmed on appeal.

Furthermore, when a new owner takes over a building (or, preferably, before they close), it absolutely must obtain a DHCR “Cases By Building Report”, which will let the owner know about all of the decisions ever made by DHCR with respect to that building.

Finally, the Court of Appeals (NYS’s highest court) held that DHCR must consider rent reduction orders entered outside of four-year limitations period in determining amount of overcharge. *Cintron v. Calogero*, 15 N.Y.3d 347 (2010). So if there is a rent reduction order anywhere in the tenancy’s history, which has not been overcome with a restoration order, then you are likely looking at a viable overcharge counterclaim in a nonpayment proceeding.

EXAMPLE FROM STUDY: Landlord sued to evict tenant for nonpayment of rent. The court ruled against landlord and dismissed the case. There was a DHCR rent reduction order in effect that froze tenant's legal rent at \$278 per month. The DHCR had denied a rent restoration application in 2015. Yet landlord signed a settlement agreement in court with tenant in 2016, agreeing that the legal rent was \$1,000 per month. Tenant properly sought to vacate the settlement agreement. LVT Number: #29966; 62 Misc.3d 1207(A), 2019 NY Slip Op 50025(U)

K. Be Prepared: Take Note of the Requirements of Benefits Programs

In *Emeagwali v. Burgos*, Queens County, NYLJ January 11, 2017, 55544/2016, a landlord sued to recover possession of an apartment from tenants in a summary holdover proceeding alleging the parties' lease expired. Tenants' moved for dismissal for lack of jurisdiction and failure to state a cause of action. The court noted the parties executed a lease rider providing that its terms of the Living in Communities (LINC) Program superseded any conflicting terms of the lease agreement. Thus, while the lease expired on its own terms, the rider was clear the parties agreed to an automatically, self-executing lease renewal unless there was a lack of program funding along with respondents' ineligibility, or their inability to pay rent for the next year. As landlord did not properly terminate respondents' tenancy before commencing the action, the petition was dismissed.

EXAMPLE FROM STUDY: Landlord commenced a nonpayment proceeding against tenant Ortiz whose lease incorporated a LINC rider with a \$1,515 preferential rent, terms

for permissible renewal increases to rent, entitling her to a self-executing renewal lease at \$1,515, and three more one-year leases. Landlord sued for rent. NYLJ 1549191625NY2507518/

EXAMPLE FROM STUDY: Preferential rent issue – landlord bound by parties' lease, LINC rider with preferential rent; Nonpayment Dismissed. NYLJ 1570345696NY926018/

EXAMPLE FROM STUDY: Williams Consent Decree Section 8 service issue; Landlord's failure to serve notices of petition, termination on NYCHA warrants dismissal. NYLJ 1572250652NY713172019/

L. Be Prepared: Cameras

1. Why cameras?

There are certain cases that I refuse to bring on behalf of a landlord-client if the client has not properly installed cameras outside of the subject apartment. These include:

- non-primary residence cases
- illegal sublet cases
- illegal short-term sublet cases (like Airbnb)
- succession rights cases, and
- many types of nuisance cases.

Such cases are almost un-winnable without a camera.

Let us consider a non-primary residence case, for example. In the Rent Stabilized context, a tenant must reside in his or her apartment as his or her primary residence. Therefore, the first thing that a landlord needs to prove in a non-primary residence case is that the tenant is NOT there. How could a landlord prove that the tenant is not there? The following is a sample colloquy between a lawyer and a landlord-client on this topic.

Landlord: The tenant in B5 no longer lives in the apartment as his primary residence.

Lawyer: How do you know that tenant does not live in the subject apartment anymore?

Landlord: Because he isn't there.

Lawyer: I heard you say that already. But *how* do you know? What is the source of your knowledge?

Landlord: The super.

Lawyer: The super lives on the same floor as the tenant and is home all day long?

Landlord: No the super doesn't live on tenant's floor and he is obviously out and about all day.

Lawyer: The super lives in the building at least?

Landlord: No, the super lives in another building.

Lawyer: OK, so the super attends to only the tenant's building?

Landlord: No, the super cares for ten buildings, tenant's building is one of the ten.

Lawyer: So, if the super works 40 hours per week, and tenant's building is one of ten, at best he or she spends about 4 hours per week in tenant's building?

Landlord: I don't know; maybe more.

Lawyer: So what is the super (who is already a biased witness because he is testifying on behalf of his employer) going to testify to, that in the four hours per week that he is in the building he never sees tenant around?

Landlord: Something like that, I guess.

Lawyer: Then you lose. Because tenant will come in and testify that she lives in the apartment, and you have not done anything significant to discredit her.

Landlord: Well a private investigator got me a printout that shows that someone with the same name as tenant owns a house in the Catskill Mountains.

Lawyer: What name is that?

Landlord: "John Smith".

Lawyer: That is a very common name. Does anything else in the report connect tenant to that address?

Landlord: No.

Lawyer: Even if Tenant John Smith of Apt. B5 does own that house in the Catskill Mountains, what are you going to do when Smith says this is just a summer home he only goes to occasionally and he rents it out to others for investment purposes?

Landlord: Well, I just know tenant doesn't live there. I just know it.

Lawyer: Does the super ever see anyone else coming and going from the subject apartment?

Landlord: No.

Lawyer: Has the tenant had any repairs done in the apartment recently?

Landlord: 18 months ago he complained of a leak and we went in and fixed it.

Lawyer: Well that suggests to me that tenant lives there.

Landlord: I just know tenant doesn't live there. I just know it.

Lawyer: Your psychic knowledge or strong hunch is NOT admissible evidence. You need ADMISSIBLE PROOF in a court.

A picture (or a video) is worth a thousand words, or a thousand guesses and speculations.

Cameras are cheaper than legal fees. If a landlord is not willing to pay for cameras, he is not going to be willing to pay legal fees for a protracted trial that landlord is likely to lose.

EXAMPLE FROM STUDY: Grandson Found Entitled to Grandmother's Rent-Controlled Tenancy; Holdover Suit Dismissed; The court found Occupant credibly testified he lived in the apartment since birth as tenant of record raised him. There would not have been a question about when the occupant moved in and how long he was there if landlord had a camera in the hallway. Landlord did not. Occupant's testimony could not be challenged. NYLJ 1549173362NY6044717/

EXAMPLE FROM STUDY: He submitted documents to support his alleged primary residency at the premises, including mobile bills and a driver's license reflecting the premises' address. Landlord did not meet its burden to establish Tenant did not maintain his primary residence at the premises and did not prove Tenant did not reside at the premises for an aggregate of less than 183 days each year during the relevant time frame. E-Z pass records were not found probative as Tenant had a girlfriend in NJ he visited, while documentary evidence supported his testimony he resided at the premises but shopped in NJ. Landlord's witnesses were unable to credibly testify that Tenant did not reside at the premises as his primary residence. NYLJ 1576493344NY8222015/ Why so much testimony?! Use cameras to prove where tenant is.

2. How to do cameras correctly.

Cameras should be set up by a professional licensed private investigations and/or security firm. The more experience the company has with this type of work, the better.

First, the camera must be set up so that it does NOT look into the tenant's apartment when the door is opened, thus invading tenant's privacy. See more about that below.

The camera must be set up so that it gets a clear view of the subject apartment, but not so that multiple apartments are under surveillance, because then there will be a lot of unnecessary footage to review.

The camera should be motion activated; otherwise, it will be difficult to review all the footage.

Landlord's counsel needs to work closely with the surveillance camera technologists to streamline both the technical and legal process involved with utilizing cameras, or the evidence obtained from the cameras might not be admissible. A videotape must be "authenticated" before it can be used as evidence in a court proceeding. Testimony from someone who has knowledge of the circumstances and who actually reviewed the footage is usually sufficient.²⁷

I strongly prefer that the same person:

- install the camera;
- maintain the camera (i.e. changes its batteries);
- retrieves the data card from the camera and take it to where it will be stored;
- superintend the storage system;
- review the footage; and
- produces a detailed log of what each incident reveals.

This person is your witness in court!

Landlord's counsel can see why attending to the details of this type of thing BEFORE a case gets started is vital to bringing a healthy case. Tenant's counsel can also see how useful it is when landlord's counsel leaves this important evidentiary work unattended to until trial.

²⁷ See *Zegarelli v. Hughes*, 3 N.Y.3d 64, 69 (2004). A surveillance videotape of plaintiff, sought to be introduced by defendant, was properly authenticated where defendant's investigator testified that he had observed plaintiff; that the exhibit shown to him was a copy of a videotape he had made of the observation; that the tape fairly and accurately showed what he had observed; and that the tape had not been edited at all. Testimony from the videographer that he took the video, that it correctly reflects what he saw, and that it has not been altered or edited is normally sufficient to authenticate a videotape.

3. Cameras Legality

Courts in New York have ruled that tenants have an expectation of privacy inside their apartment behind the closed entry door. *Otero v. Houston Street Owners Corp.*, 2012 WL 692037 (Sup. Ct. NY. Co.); *see also People v. Mercado*, 68 N.Y.2d 874 (1986) (“Once the door is closed, an individual is entitled to assume that while inside he or she will not be viewed by others”).

On the other hand, New York courts have found that residents in multi-family buildings lack a reasonable expectation of privacy in the building’s common areas, such as lobbies, stairwells and hallways because it is accessible to other persons. *People v. Funches*, 89 N.Y.2d 1005, 1007 (1997).

IV. APPENDIX: STUDY CHART

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DATE OF CASE	CASE NAME	SOURCE	CITATION OR ID INFO	COUNTY	JUDGE	REPRESENTATION L, T, B = both, N = neither, U =	tenant free legal	OUTCOME = T, L, or D (Draw)	T	L	DRAW	TYPE OF CASE = see list
11/1/2018	Maxwell Dev. LP v. France	Habitat Group LVT	LVT Number: #29877; NYLJ No. 1545027500	New York	Ramseur,	U	0	D	0	0	1	nonpayment
11/9/2018	Ilonze v. Santiago	Habitat Group LVT	LVT Number: #29880; NYLJ No. 1545046772	Kings	Harris,	U	0	T	1	0	0	regulatory status
11/10/2018	Corrado v. Parker	NYLJ	almID/1546654088NY8939017/	Kings	Finkelstein, M.	B	1	T	1	0	0	regulatory status
11/29/2018	Morris Realty v. Caceres	Habitat Group LVT	LVT Number: #29879; Index No. 28249/17, NYLJ, 12/19/18, p. 21, col. 2	Bronx	Spears, B.	U	0	T	1	0	0	nonpayment
12/5/2018	Gold Is Gold LLC v. Martinez	NYLJ	almID/1549642918NYLT057819/	New York	Smith, R.	U	0	T	1	0	0	nonpayment
12/11/2018	Anderson Ave. Assocs. v. Diarra	Habitat Group LVT	LVT Number: #29883; NYLJ No. 1545297624	Bronx	Garland,	U	0	T	1	0	0	illegal sublet
12/13/2018	B&K 236 LLC v. DiPremzio	NYLJ	almID/1546004784NY04231217/	Bronx	Black, B.	U	0	T	1	0	0	nuisance
12/14/2018	DLMC Inc. v. Helmholtz	NYLJ	almID/1546757551NY6699218/	New York	Schneider, J.	B	1	T	1	0	0	nonpayment
12/14/2018	Par Caton Ave. LLC v. Rollocks	NYLJ	almID/1546679354NY607812018/	Kings	Sikowitz, M.	B	1	T	1	0	0	nonpayment
12/14/2018	Sam & Joseph Sasson LLC v. Guy	NYLJ	almID/1545896152NY775162016/	NY	Stoller, J.	U	0	D	0	0	1	illegal alterations
12/20/2018	Lin v. Weiss	NYLJ	almID/1546760684NY856402018/	Kings	Scheckowitz, B.	B	1	T	1	0	0	owner's use
12/27/2018	280 E. Burnside Assoc. v. James	NYLJ	almID/1547461235NY332932018/	Bronx	Lutwak, D.	B	1	T	1	0	0	pets
12/27/2018	191 Realty Assocs. v. Tejada	NYLJ	almID/1548749636NY8207617	New York	Thermos, K.	B	1	T	1	0	0	regulatory status
12/28/2018	535-539 W. 162nd St. v. Capellan	NYLJ	almID/1549173362NY6044717/	New York	Schneider, J.	B	1	T	1	0	0	succession
12/31/2018	40/42 Mkt. St. Assoc. v. O'Donnell	NYLJ	almID/1547805166NY7478216/	New York	Schneider, J.	B	1	T	1	0	0	non-prime
1/4/2019	Nilou And Assocs. Realty v. Patton	NYLJ	almID/1549590558NY6313718/	New York	Nembhard, C.	B	0	T	1	0	0	nuisance
1/14/2019	Avenue D Properties LLC v. Springer	Habitat Group LVT	LVT Number: #29966; 62 Misc.3d 1207(A), 2019 NY Slip Op 50025(U)	New York	Sikowitz, M.	U	0	T	1	0	0	nonpayment
1/14/2019	509 Amsterdam Associates LP v. Romero	NYLJ	almID/1552316747NY690312017/	New York	Stoller, J.	U	0	T	1	0	0	nuisance

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1/22/2019	1656 Dekalb Ave. LLC v. Unapanta	NYLJ	almID/1549182393NY08800118/	Kings	Barany, K	B	1	T	1	0	0	illegal sublet
1/22/2019	Cliffside Props. LLC v. Ortiz	NYLJ	almID/1549191625NY2507518/	Bronx	Ibrahim, S.	B	1	T	1	0	0	nonpayment
1/25/2019	3424 Dekalb Assocs. v. Pabon	NYLJ	almID/1549192793NY4156018/	Bronx	Baum, H	B	1	T	1	0	0	chronic nonpay
1/28/2019	Hilltop 161 LLC v. Philbert	Habitat Group LVT	LVT Number: #29965; 62 Misc.3d 1212(A), 2019 NY Slip Op 50121(U)	New York	Kraus, S.	U	0	T	1	0	0	nonpayment
1/29/2019	Time Equities Associates LLC v. McKenith	Westlaw	2019 WL 348070	New York	Capell, H.	B	0	L	0	1	0	chronic nonpay
2/1/2019	CHV 1247 Flatbush Ltd. Partners v. Leath	NYLJ	almID/1552273484NY9603917/	Kings	Sikowitz, M.	B	1	T	1	0	0	nuisance
2/4/2019	Park Central I LLC v. Williams	Westlaw	62 Misc.3d 1225(A), 2019 N.Y. Slip Op. 50254(U)	Bronx	Weissman, S.	B	1	T	1	0	0	succession
2/4/2019	Graham Ct. Owners v. Thomas	NYLJ	almID/1551094265NY557442014/	New York	Stoller, J.	U	0	T	1	0	0	nonpayment
2/5/2019	Westman Realty Co. v. Cookson	NYLJ	almID/1552817073NY5398617/	New York	Kraus, S.	B	0	T	1	0	0	succession
2/6/2019	155 W. 81st St. Assocs. v. Waldman	NYLJ	almID/1551699055NY5905518/	New York	Thermos, K.	B	1	T	1	0	0	nuisance
2/6/2019	156 East 37th Steret LLC v. Eichner	Westlaw	62 Misc.3d 1216(A)	New York	Stoller, J.	U	0	D	0	0	1	nonpayment
2/12/2019	Patterson v. Patterson	NYLJ	almID/1552213554NY2918718/	Bronx	Baum, H	B	1	T	1	0	0	end of lease non-regulated
2/13/2019	125 Court St. LLC v. Badash	NYLJ	almID/1552267889NY8447218/	Kings	McClanahan, K.	B	0	T	1	0	0	failure to renew Rent Stabilized lease or to complete income
2/20/2019	2301 7 Ave. HDFC v. Byerson	NYLJ	1550219704NY7392627/	New York	Kraus, S.	B	1	L	0	1	0	nonpayment
2/20/2019	Ankamah v. Abusi	NYLJ	almID/1552697421NY814892018/	Kings	Sikowitz, M.	B	1	T	1	0	0	nuisance
2/20/2019	Tri-Bel, L.P. v. Everett	Westlaw	2019 WL 1007505	Bronx	Lutwak, D.	U	0	L	0	1	0	succession
2/21/2019	Renewal Realty Corp. v. Almonte	NYLJ & westlaw	almID/1550999474NY197522018/; 62 Misc.3d 1220(A)	Bronx	Lutwak, D.	B	1	T	1	0	0	nuisance
2/25/2019	Lincoln 64 Flats LLC v. Stranahan	NYLJ	almID/1552820688NY7177918/	Kings	Finkelstein, M.	B	1	T	1	0	0	chronic nonpay

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2/25/2019	Auburn Leasing v. Harvey	NYLJ	almID/1552700370NY5371318/	Queens	Lansden, J.	B	1	T	1	0	0	succession
2/26/2019	2720 LLC v. Suarez	NYLJ	almID/1554175351NY5437817/	Bronx	Garland, C.	B	1	T	1	0	0	chronic nonpay
2/26/2019	River Park Residences L.P. v. Carter	Westlaw	2019 WL 1030337; also almID/1553597408NY348292201/	Bronx	Lutwak, D.	U	0	T	1	0	0	succession
2/28/2019	Kuper v. Bravo	NYLJ	almID/1553666100NY6812317/	Queens	Lansden, J.	B	1	T	1	0	0	owner's use
3/4/2019	1500 Grand Concourse Owners v. Martinez	NYLJ	almID/1554177586NY725952017/	Bronx	Lach, K	B	1	T	1	0	0	non-prime
3/4/2019	New River Realty Corp. v. Morgan	NYLJ	almID/1553161651NY07446018/	Kings	Smith, R.	B	1	T	1	0	0	regulatory status
3/5/2019	Westchester Gardens LP v. Vargas	Habitat Group LVT	Index No. 007454/18	Bronx	Weissman, S.	U	0	T	1	0	0	pets
3/6/2019	711 Seagirt Ave. Holdings v. Harris	NYLJ	almID/1552822969NY6014418/	Queens	Kullas, J.	B	1	T	1	0	0	nuisance
3/8/2019	Remeeder Houses LP v. Myrick	NYLJ	almID/1555319165NY072387201/	Kings	Sikowitz, M.	B	1	T	1	0	0	nonpayment
3/11/2019	Jasper L.P. v. Davis	NYLJ	almID/1553761964NY2319618/	Bronx	Ibrahim, S.	U	0	T	1	0	0	licencee holdover
3/12/2019	Westside Partners v. Ross	NYLJ	almID/1554451180NY6261318/	Kings	Nembhard, C.	B	1	T	1	0	0	nonpayment
3/14/2019	Bedford Oak, LLC v. Hernandez	Westlaw	2019 WL 1234003; almID/1554275942NY03468118/	Bronx	Weissman, S.	B	0	T	1	0	0	non-prime
3/16/2019	Graham Court Owners Corp. v. Thomas	Habitat Group LVT	LVT Number: #29974; Index No. 55744/2014, 2019 NY Slip Op 29030 (Cit. Ct. NY: 2/4/19)	New York	Stoller, J.	U	0	T	1	0	0	nonpayment
3/17/2019	The Beuhler 1992 Family Trust v. Longo	Habitat Group LVT	LVT Number: #29981; Index No. L&T99395/17, 2019 NY Slip Op 29049 (Civ. Ct. Kings: 2/15/19)	Kings	Ortiz	U	0	L	0	1	0	nuisance
3/21/2019	Rochdale Village Inc. v. Sterling	NYLJ	almID/1554116600NYLT501371/	Queens	Guthrie, C.	B	1	T	1	0	0	nonpayment
3/22/2019	504 W. 143rd St. Assocs. v. Gahui	NYLJ	almID/1555313653NY5250218/	New York	Nembhard, C.	B	1	T	1	0	0	regulatory status
3/25/2019	ACE 2181 Barnes LLC v. Khan	NYLJ	almID/1555319020NY3960218/	Bronx	Garland, C.	B	1	T	1	0	0	nuisance
3/26/2019	GVS Properties IV, LLC v. Marte	Habitat Group LVT	LVT Number: #30067; Index No. 62014/18 (Civ. Ct.)	New York	Thermos, K.	U	0	L	0	1	0	succession

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3/28/2019	Lewin v. Breazil	NYLJ	almID/1554620565NY9711718/	Kings	Finkelstein, M.	B	1	T	1	0	0	end of lease non-regulated
3/28/2019	ML 1188 Grand Concourse LLC v. Sha	NYLJ	1566919028NY6900117/	Bronx	Spears, B.	B	1	T	1	0	0	nonpayment
4/4/2019	Redlisky v. Boyko	NYLJ	almID/1555893371NY687452018/	Queens	Lai, L.	B	1	T	1	0	0	nonpayment
4/9/2019	LS Realty (II) Ltd. P'ship v. Truick	NYLJ	1556528299NY08556718/	Kings	Finkelstein, M.	U	0	T	1	0	0	nuisance
4/11/2019	Westchester Gardens LP v. Vargas	Westlaw	2019 WL 1087844; /almID/1554785288NY00745418/	Bronx	Weissman, S.	B	1	T	1	0	0	pets
4/15/2019	561 W 144 Realty LLC v. Laing	NYLJ	1558424134NYLT060157/	New York	Chinea, D.	U	0	T	1	0	0	regulatory status
4/16/2019	2600 Creston Ave. Owner LLC v. Minena	NYLJ	almID/1555832967NY6070218/	Bronx	Ibrahim, S.	B	1	T	1	0	0	licencee holdover
4/17/2019	Tanya Towers, Inc v. Garcia Hurtado	Westlaw	63 Misc.3d 1218(A)	New York	Kraus, S.	B	0	T	1	0	0	hoarding
4/18/2019	Grace Towers Apts v. McCrae	NYLJ	1558683337NY6686416	Kings	Gonzalez, C.	U	0	T	1	0	0	Illegal activity - drugs
4/19/2019	13 East 9th Street LLC v. Seelig	Westlaw	63 Misc.3d 1218(A), 2019 N.Y. Slip Op. 50582(U)	New York	Stoller, J.	B	0	L	0	1	0	nonpayment
4/19/2019	295 W. 150 LLC v. Kolaitos	NYLJ	1556616955NY7921118/	New York	Thermos, K.	B	1	L	0	1	0	end of lease non-regulated
4/26/2019	Grand Concourse 8 Assoc. v. Samuels	NYLJ	1558282304NY1955118/	Bronx	Spears, B.	B	1	T	1	0	0	nonpayment
4/26/2019	1834 Caton Partners v. Edwards	NYLJ	1558290865NY8215418/	Kings	Sikowitz, M.	B	1	T	1	0	0	non-prime
4/26/2019	Harway Terrace Inc. v. Petropiento	Habitat Group LVT	LVT Number: #30188	Kings	Gonzalez, C.	U	0	T	1	0	0	regulatory status
4/29/2019	EQR-41 West 86th, LLC v. Adler,	Westlaw	2019 WL 1960960 (2019)	New York	Kraus, S.	B	0	D	0	0	1	nonpayment
4/30/2019	207-209 W. 107th St. LLC v. Doe	NYLJ	1558682732NY5681318/	New York	Elsner, T.	B	0	T	1	0	0	airbnb
5/2/2019	2704 Univ. Ave. Realty v. Thompson	NYLJ	1558682887NY5284518/	Bronx	Ibrahim, S.	B	1	T	1	0	0	illegal sublet
5/2/2019	2704 University Ave. Realty Corp. v. Thompson	Westlaw	2019 WL 1967713	Bronx	Ibrahim, S.	B	1	T	1	0	0	illegal sublet

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5/2/2019	GNPZ 17E17 LLC v. Simms	NYLJ	1558684775NY5173018/	Kings	Sikowitz, M.	B	1	T	1	0	0	illegal sublet
5/3/2019	Washington Realty LLC v. Soto	NYLJ	1557743277NY10224216/	Kings	Cohen, H.	B	1	T	1	0	0	succession
5/3/2019	Inwood Ventura II LLC v. Jackson	Westlaw	63 Misc.3d 1223(A)	New York	Kraus, S.	L	0	D	0	0	1	nonpayment
5/9/2019	Wallace 18 LLC v. Arce	NYLJ	1557718630NY6598818/	Bronx	Ibrahim, S.	B	1	T	1	0	0	substantial obligation
5/10/2019	Chica LP v. Williams	NYLJ	1560757272NY2574218/	Bronx	Jennings, N.	B	1	T	1	0	0	chronic nonpay
5/14/2019	SEBCO IV Associates LP, Petitioner-Landlord, v. Lytza Colon	Westlaw	2019 WL 2128189	Bronx	Bacdayan, K	B	1	T	1	0	0	nonpayment
5/15/2019	Sudimac v. Beck	NYLJ	1558429729NY7133318/	Queens	Jimenez, S.	B	0	T	1	0	0	illegal alterations
5/15/2019	Ryer 26 LLC v. Acosta	NYLJ	1559553044NY4684318/	Bronx	Garland, C.	B	1	T	1	0	0	nonpayment
5/22/2019	Jarvis Realty v. Smith	NYLJ	1561362401NY5068718/	New York	Garland, C.	B	1	T	1	0	0	failure to renew Rent Stabilized lease or to complete income
5/24/2019	425 W. 153rd St. HDFC v. Brown	NYLJ	1559554364NY04524818/	Bronx	Weissman, S.	B	1	T	1	0	0	end of lease non- regulated
5/30/2019	Scott v. Vega	NYLJ	1561925942NY013646201/	Bronx	Lach, K.	B	1	T	1	0	0	end of lease non- regulated
5/31/2019	Apple Estates LLC v. Santiago	NYLJ	1561364385NY627752018/	Bronx	Lach, K.	B	1	T	1	0	0	nonpayment
6/6/2019	Daly 180 HDFC v. Diaz	NYLJ	1560149128NY07169216/	Bronx	Weissman, S.	B	1	L	0	1	0	substantial obligation
6/12/2019	Kings Thorn LLC v. Walters	Westlaw	2019 WL 3048619	Bronx	Ibrahim, S.	B	1	T	1	0	0	nonpayment
6/13/2019	400 E58 Owner LLC v Herrnson	Westlaw	64 Misc.3d 1202(A)	New York	Ortiz	L	0	L	0	1	0	regulatory status
6/17/2019	205 W. 147 St. LLC v. Daub	NYLJ	1559551401NY8179417/	New York	Thermos, K.	B	1	T	1	0	0	nonpayment
6/25/2019	Palmer Ave. Estates v. Brown	NYLJ	1561928081NY25692019/	Bronx	Lutwak, D.	B	1	T	1	0	0	nonpayment
6/25/2019	Diego Beekman MHA HDFC v. McNeil	Westlaw	64 Misc.3d 1206(A)	Bronx	Lutwak, D.	B	1	T	1	0	0	substantial obligation

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6/27/2019	570 W 204 LLC v. Aybar	NYLJ	1564906158NY6759618/	New York	Nembhard, C.	B	1	T	1	0	0	non-prime
6/28/2019	Edelstein LLC v. Connelly	NYLJ	1563778361NY6306213/	New York	Schneider, J.	B	0	T	1	0	0	succession
6/28/2019	Wells Fargo Bank, N.A. v. Mekamkwe	Westlaw	64 Misc.3d 1208(A)	Bronx	Garland, C.	B	1	T	1	0	0	post-foreclosure
7/2/2019	56-11 94th St. Co. v. Jara	NYLJ	1563169096NY5399119/	Queens	Guthrie, C.	B	1	T	1	0	0	nonpayment
7/8/2019	Duncan v. Caldwell	NYLJ	1566200475NY1323518/	Bronx	Garland, C.	B	1	T	1	0	0	regulatory status
7/11/2019	Mayflower Props. v. Pacheco	NYLJ	1564951031NY29012019/	New York	Black, B.	L	0	D	0	0	1	nonpayment
7/12/2019	Horatio St. Partners LLC v. Bowe	NYLJ	1565738200NY7867518/	New York	Nembhard, C.	B	0	T	1	0	0	airbnb
7/12/2019	Horatio St. Partners LLC v. Bowe	NYLJ	1565738200NY7867518/	New York	Nembhard, C.	B	0	T	1	0	0	airbnb
7/12/2019	Timston Corp v. Kienzle	NYLJ	1564201492NYLT552611/	New York	Katz, A.	B	1	T	1	0	0	nuisance
7/15/2019	T & G Realty Co.v. Anne Hawthorn	Westlaw	2019 WL 3070982	New York	Stoller, J.	U	0	D	0	0	1	nonpayment
7/23/2019	120 Beach 26th St. LLC v. Cannon	NYLJ	1564911726NY5047019/	Queens	Ressos, M.	B	1	T	1	0	0	failure to renew Rent Stabilized lease or to complete income
7/31/2019	Fried v. Lopez	Habitat Group LVT	Index No. 66333/18, 2019 NY Slip Op 29237; LVT Number: #30273; 64 Misc.3d 1025	New York	Harris	B	0	T	1	0	0	owner's use
7/31/2019	Fried v. Galindo	NYLJ	1564952675NY6633418/	Kings	Harris, D.	B	1	T	1	0	0	owner's use
7/31/2019	258 E. 4th St. LLP v. Gibbs	NYLJ	1566761881NY5364417/	New York	Elsner, T.	U	0	L	0	1	0	illegal activity - drugs and guns
8/1/2019	First Hous. Co v. Orozco	NYLJ	1566889092NY5120319/	Queens	Guthrie, C.	B	0	T	1	0	0	illegal sublet
8/6/2019	2166 Dean LLC v. Asim	NYLJ	1567117300NY806492017/	Kings	Weisberg, M.	U	0	T	1	0	0	regulatory status
8/7/2019	A&J Estates Inc. v. Grindley	NYLJ	1565501330NY53125119/	Queens	Guthrie, C.	B	1	T	1	0	0	end of lease non-regulated
8/13/2019	Dani Lake LLC v Torres	Habitat Group LVT	64 Misc.3d 1231(A)	Bronx	Lutwak, D.	B	0	T	1	0	0	nonpayment

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8/13/2019	Gold Rivka 2 LLC v. Rodriguez	Habitat Group LVT	64 Misc.3d 1228(A)	Bronx	Bacdayan, K	B	1	T	1	0	0	regulatory status
8/16/2019	Rochdale Village Inc. v. Blackman	Westlaw	64 Misc.3d 1235(A)	Queens	Guthrie, C.	B	1	T	1	0	0	nonpayment
8/16/2019	Steele v. King	NYLJ	1567117018NY676822019/	Kings	Cohen, H.	B	1	T	1	0	0	regulatory status
8/23/2019	Ketchakeu v. Secka	Westlaw	65 Misc.3d 603	New York	Lutwak, D.	B	1	D	0	0	1	nonpayment
8/27/2019	Hudsonview Co. v. Marquette	NYLJ	1568047686NY5824619/	New York	Thermos, K.	B	1	T	1	0	0	nuisance
9/6/2019	People's Home Improvement LLC v. Kindig	NYLJ	1572250769NY6542119/	Kings	Barany, K	B	0	T	1	0	0	nonpayment
9/6/2019	Che v. Sun	NYLJ	1569655770NY5746819/	Queens	Poley, J.	B	1	T	1	0	0	regulatory status
9/9/2019	Marcus Garvey Pres. LLC v. Rodriguez	NYLJ	1570221630NY5535919/	Kings	Barany, K	B	1	T	1	0	0	pets
9/10/2019	NYSANDY12 CBP7 LLC v. Negrón	NYLJ	1568399555NY14602019/	Bronx	Lutwak, D.	L	0	L	0	1	0	nonpayment
9/11/2019	Sheridan 1511 LLC v. Fofana	NYLJ	1569655987NY321762018/	Bronx	Lutwak, D.	B	1	D	0	0	1	nonpayment
9/12/2019	Skyview Towers Holding v. Acerno	NYLJ	1569656047NY5612619/	Queens	Guthrie, C.	B	0	T	1	0	0	nonpayment
9/12/2019	Triumph Baptist Church Inc. v. Anderson	NYLJ	1568399502NY773012018/	New York	Stoller, J.	U	0	T	1	0	0	nonpayment
9/13/2019	NSA 2015 Owner LLC v. Brown	Habitat Group LVT	LVT Number: #30434; 65 Misc.3d 1204(A), 2019 NY Slip Op 51499(U)	Bronx	Tovar,	U	0	D	0	0	1	failure to renew Rent Stabilized lease or to complete income
9/13/2019	1165 Fultin Ave. HFDC v. Goings	Habitat Group LVT	LVT Number: 30427	Bronx	Tovar,	U	0	T	1	0	0	Illegal Unit
9/16/2019	1253 Estates LLC v. Capers	NYLJ	1570345696NY926018/	Bronx	Hahn, A.	B	1	T	1	0	0	nonpayment
9/20/2019	24-14 Steinway St. Realty Corp. v. Doe	NYLJ	1571654644NY642642018/	Queens	Scott-McLaughlin, M.	B	1	T	1	0	0	Illegal Unit
9/25/2019	E & V Acquisition, LLC v. Margaret H.	Westlaw	65 Misc.3d 944	New York	Wan, L.	B	0	D	0	0	1	hoarding
10/1/2019	Meserole A-B 81-93 Equities Co. v. Lewis	NYLJ	1572249867NY06769819/	Kings	Wang, Z.	B	0	T	1	0	0	non-prime

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10/3/2019	DelGrosso v. Sciannamea-Conklin	NYLJ	1571654218NY5695518/	Bronx	Jennings, N.	B	1	T	1	0	0	end of lease non-regulated
10/3/2019	217 East 88th Street & 212-234 East 89th Street LLC v. Levine	Westlaw	65 Misc.3d 1214(A)	New York	Stoller, J.	B	1	T	1	0	0	non-prime
10/3/2019	eofilo Diaz Inc. v. De Los Santos	NYLJ	1571654395NYLT900863/	Bronx	Soto, M.	L	0	T	1	0	0	nonpayment
10/3/2019	James v. Young	NYLJ	1572250652NY713172019/	Kings	Scheckowitz, B.	T	1	T	1	0	0	nonpayment
10/15/2019	Dexter 345 Inc. v. Cruz	NYLJ	1572246306NY738842016/	New York	Stoller, J.	U	0	T	1	0	0	non-prime
10/16/2019	Clay2 Ventures v. Vasquez	NYLJ	1572864390NY03124518/	Bronx	Weissman, S.	B	1	T	1	0	0	nonpayment
10/18/2019	Rochdale Village Inc. v. Chadwick	Westlaw	65 Misc.3d 1039	Queens	Guthrie, C.	B	1	T	1	0	0	nonpayment
10/21/2019	SF 878 E. 176th, LLC v. Molina	Westlaw	65 Misc.3d 1216(A)	Bronx	Lutwak, D.	B	0	T	1	0	0	succession
10/21/2019	Zagorski v. Makarewicz	NYLJ	1574078830NY582682019/	Kings	Wang, Z.	B	1	T	1	0	0	owner's use
10/23/2019	OLR ECW LP v. Soto	NYLJ	1574688305NY685752018/	Bronx	Lutwak, D.	B	1	D	0	0	1	nonpayment
10/24/2019	GL Botanical LLC v. Forde Jr.	NYLJ	1572864329NY2380619/	Bronx	Garland, C.	B	1	T	1	0	0	nonpayment
10/25/2019	West 152 Associates, LP v. Gassama	Westlaw	65 Misc.3d 1218(A)	New York	Capell, H.	B	1	T	1	0	0	nonpayment
10/28/2019	Bronx Park Phase III Preservation, LLC v. Tunkara	Westlaw	65 Misc.3d 1223(A)	Bronx	Bacdayan, K	B	1	D	0	0	1	failure to renew Rent Stabilized lease or to complete income
10/28/2019	Moses v. O'Bryant	NYLJ	1573554149NY62711119/	Kings	Harris, D.	B	1	T	1	0	0	end of lease non-regulated
10/29/2019	BSREP UA 3333 Broadway LLC v. Honario	NYLJ	1573197023NY6064018/	Queens	Nembhard, C.	B	1	T	1	0	0	licencee holdover
10/31/2019	Usherenko v. Khusainova	NYLJ	1575020311NY541102019/	Kings	Wang, Z.	U	0	T	1	0	0	regulatory status
11/1/2019	Liang v. Tarantola	NYLJ	1574077904NY633602019/	Queens	Jimenez, S.	B	1	T	1	0	0	end of lease non-regulated
11/1/2019	JP 603 Linden Blvd. LLC v. Whiteman	NYLJ	1574921548NY717162019/	Kings	Scheckowitz, B.	U	0	T	1	0	0	end of lease non-regulated

DATE OF CASE	CASE NAME	SOURCE	CITATION OR ID INFO	COUNTY	JUDGE	REPRESENTATION L, T, B = both, N = neither, U =	tenant free legal	OUTCOME = T, L, or D (Draw)	T	L	DRAW	TYPE OF CASE = see list
11/6/2019	92nd St Venture v. Corbett	Westlaw	65 Misc.3d 1221(A)	New York	Stoller, J.	U	0	L	0	1	0	succession
11/8/2019	2522 Newkirk Owners LLC v. Pierre	NYLJ	1576498428NY693572019/	Kings	McClanahan, K.	U	0	T	1	0	0	failure to renew Rent Stabilized lease or to complete income
11/12/2019	Home St. Mgmt. LLC v. Merino	NYLJ	1575544380NY194842/	Bronx	Spears, B.	B	1	T	1	0	0	substantial obligation
11/14/2019	Hunts Point Housing Development Fund Corporation v. Ferebee	Westlaw	65 Misc.3d 1223(A)	Bronx	Lutwack, D.	B	1	D	0	0	1	illegal alterations
11/15/2019	2198 Cruger Assocs. v. Xhurreta	NYLJ	1575538750NY005187201/	Bronx	Lach, K.	B	1	T	1	0	0	licensee holdover
11/18/2019	CRP 88 EAST 111th Street LLC v. Guamarrigra	Westlaw	2019 N.Y. Slip Op. 29347	New York	Stoller, J.	U	0	T	1	0	0	failure to renew Rent Stabilized lease or to complete income
11/18/2019	Wells Fargo Bank NA v. Ogando	NYLJ	1575079081NY1305119/	Bronx	Jennings, N.	U	0	T	1	0	0	post-foreclosure
11/19/2019	M. 1695 G.C. LLC v. Perez	NYLJ	1574685480NY664322018/	Bronx	Bacdayan, K	B	1	T	1	0	0	nuisance
11/20/2019	Karpen v. Castro	Westlaw	2019 N.Y. Slip Op. 29365	Kings	McClanahan, K.	B	1	T	1	0	0	owner's use
11/22/2019	6211 Broadway Realty v. O'Neill	Westlaw	65 Misc.3d 1231(A)	Bronx	Black, B.	B	1	D	0	0	1	nonpayment
11/26/2019	140 West End Avenue Owners Corp. v. Dinah L.	Westlaw	2019 N.Y. Slip Op. 29388	New York	Wan, L.	B	1	D	0	0	1	hoarding
11/26/2019	Bhatti v. Goings	Westlaw	65 Misc.3d 1231(A)	Kings	Wang, Z.	B	1	T	1	0	0	end of lease non-regulated
12/3/2019	Carlhart Realty Corp. v. Parks	Westlaw	65 Misc.3d 1231(A)	Queens	Guthrie, C.	B	0	T	1	0	0	non-prime
12/4/2019	4960 Broadway LLC v. Molina	NYLJ	1576493344NY8222015/	New York	Katz, A.	B	1	T	1	0	0	non-prime
12/6/2019	Sassouni v. Adams	Westlaw	65 Misc.3d 1231(A)	Kings	Ortiz	B	0	T	1	0	0	owner's use
12/6/2019	266 Washington Avenue Investor LLC v. Davis	NYLJ	1576778893NY6653519/	Kings	Harris, D.	B	1	T	1	0	0	profiteering - not airbnb
12/12/2019	Denis v. Fisher	Westlaw	2019 WL 6885114	Queens	Jimenez, S.	L	0	T	1	0	0	end of lease non-regulated
12/12/2019	Shalom Aleichem LLC v. Borenstein	Westlaw	2019 WL 6973897	Bronx	Black, B.	L	0	T	1	0	0	licensee holdover

DATE OF CASE	CASE NAME	SOURCE	CITATION OR ID INFO	COUNTY	JUDGE	REPRESENTATION L, T, B = both, N = neither, U =	tenant free legal	OUTCOME = T, L, or D (Draw)	T	L	DRAW	TYPE OF CASE = see list
							96		134	12	16	162
							72%		83%	7%	10%	100%
							tenant free legal		T	L	D	total

ABOUT THE AUTHOR

Michelle Maratto Itkowitz is the owner and founder of Itkowitz PLLC and has been practicing landlord and tenant litigation (both complex-residential and commercial) in the City of New York for over twenty years. Michelle represents BOTH tenants and landlords and her core competencies include: Rent Stabilization and DHCR Matters; Rent Stabilization and Regulatory Due Diligence for Multifamily Properties; Rent Stabilization Coverage Analysis for Tenants; Sublet, Assignment, and Short-Term Leasing Cases (like Airbnb!); all kinds of Residential Tenant Representation; Good Guy Guaranty Litigation; Co-op Landlord and Tenant Matters; Loft Law Matters; De-Leasing Buildings for Major Construction Projects; Emotional Support Animals in No-Pets Buildings; and Co-Living.

Michelle publishes and speaks frequently on landlord and tenant law. The groups that Michelle has written for and/or presented to include: Lawline.com, Lorman Education Services, Rosedale CLE, The New York State Bar Association, Real Property Section, The Women Attorneys in Real Estate, The National Law Institute, The Long Island Chapter of the National Appraisal Institute, The Columbia Society of Real Estate Appraisers, The NYS Society of Certified Public Accountants, LandlordsNY, The Association of the Bar of the City of New York, Thompson Reuters, The Cooperator, and Argo U.

Michelle regularly creates and shares original and useful content on landlord and tenant law, including via booklets, blogs, videos, and live presentations. Michelle developed and regularly updates a seven-part continuing legal education curriculum for Lawline.com entitled "New York Landlord and Tenant Litigation". Over 20,000 lawyers have purchased Michelle's CLE classes on Lawline.com (a labor of love for which Michelle gets not a dime) and the programs have met with the highest reviews. Michelle co-authors a chapter on lease remedy clauses and guaranties for the New York State Bar Association, Real Property Section, Commercial Leasing Committee's treatise. As the "Legal Expert" for LandlordsNY.com, the first social platform exclusively for landlords and property managers, Michelle answers member's questions, guest blogs, and teaches. Michelle is the "Tenant's Right's Advisor" for Bushwick Daily. Michelle has recently been quoted in a bunch of articles in Brick Underground and she has appeared on Brick's podcast episode on co-living. Michelle is also an instructor and blogger on the Tenant Learning Platform, www.tenantlearningplatform.com.

Michelle is currently serving on the New York State Bar Association Real Property Sections' Task Force on the Housing Stability and Tenant Protection Act of 2019.

Michelle is immensely proud that Itkowitz PLLC was awarded its NYS Women Business Enterprise Certification by the Empire State Development Corp. Michelle's eponymous law firm is one of the largest women-owned law firms, by revenue, in the State.

Michelle is admitted to practice in New York State and the United States District Court for the Southern District of New York. She received a Bachelor of Arts in Political Science in 1989 from Union College and a Juris Doctor in 1992 from Brooklyn Law School. She began her legal career at Cullen & Dykman.



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