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Supreme Court, Appellate Term, New York,
 Second and Eleventh Judicial Districts.
 Jan BAGINSKI, Elizabeita Baginski,
 Landlords-Appellants,
 v.
 Beata LYSIAK, Tenant-Respondent.

Nov. 19, 1992.

Landlords brought action to recover possession of rent-stabilized apartment. The Civil Court, Kings County, Friedman, J., granted tenant's motion to dismiss, and landlords appealed. The Supreme Court, Appellate Term, held that: (1) acceptance of rent following expiration of lease could not, in and of itself, be deemed automatic renewal of lease; (2) acceptance of rent did not vitiate notice of intention not to renew lease; and (3) fact that two owners brought action did not require dismissal.

Reversed and remanded.

West Headnotes

[1] Landlord and Tenant ¶115(1)

233k115(1) Most Cited Cases

Rule that landlord's acceptance of rent after expiration of lease creates month-to-month tenancy applies when lease is for apartment that is subject to rent stabilization. McKinney's Real Property Law § 232-c.

[2] Landlord and Tenant ¶278.4(4)

233k278.4(4) Most Cited Cases

If landlord accepts rent after expiration of lease for apartment subject to rent stabilization, tenant may be entitled to renewal lease and may maintain proceeding to compel landlord to issue one; even absent such proceeding, tenant cannot be evicted solely upon ground of landlord's failure to offer such lease.

[3] Landlord and Tenant ¶278.4(4)

233k278.4(4) Most Cited Cases

Mere acceptance of rent after expiration of lease for

rent-stabilized apartment cannot, in and of itself, be deemed automatic renewal of lease.

[4] Landlord and Tenant ¶297(1)

233k297(1) Most Cited Cases

[4] Landlord and Tenant ¶297(2)

233k297(2) Most Cited Cases

No notice is needed to terminate lease for rent-stabilized apartment upon its expiration; rather, what is required is notice to tenant of intention of landlord not to renew lease. Rent Stabilization Code, § 2524.2, McK.Unconsol.Laws.

[5] Landlord and Tenant ¶297(4)

233k297(4) Most Cited Cases

Landlord's acceptance of rent after expiration of lease for rent-stabilized apartment does not vitiate landlord's notice to tenant of intention not to renew lease.

[6] Landlord and Tenant ¶301(1)

233k301(1) Most Cited Cases

Fact that action to recover possession of rent-stabilized apartment was brought by two owners did not require dismissal of proceeding, even though, under Rent Stabilization Code, only one owner of building may recover possession of apartment for personal use; it was not alleged that either owner previously sought another apartment for his or her own use. Rent Stabilization Code, § 2524.4(a)(3), McK.Unconsol.Laws.

****100*276 Ira Greene**, Brooklyn, for landlords-appellants.

Brooklyn Legal Services Corp., Brooklyn (Martin S. Needelman and David Pieragostini of counsel), for tenant-respondent.

Before KASSOFF, P.J., and MONTELEONE and SCHOLNICK, JJ.

MEMORANDUM.

Order unanimously reversed without costs, motion denied, and matter remanded to the court below for

further proceedings.

In this holdover proceeding to recover possession of an apartment for landlords' own use and occupancy, tenant moved to dismiss on two grounds. First, tenant asserted that landlords had vitiated the notice of intention not to renew the lease by accepting rent for several months after the expiration of the lease. Second, tenant argued that the proceeding had been brought by two owners and was thus not in compliance with the Rent Stabilization Code's requirement that only one owner may recover possession of an apartment for personal use and occupancy (9 NYCRR § 2524.4[a][3]). The court below granted the motion substantially on the first ground. The learned judge reasoned that upon the expiration of a lease for a rent-stabilized apartment a landlord must either immediately commence an eviction proceeding or offer a renewal lease and that there is no third option of creating a month-to-month tenancy. Accordingly, the court concluded that upon landlords' acceptance of rent, the lease was automatically renewed. 152 Misc.2d 525, 577 N.Y.S.2d 356.

[1][2][3] We reject this concept of the automatic renewal of a lease in the context of rent stabilization. When a landlord accepts rent after the expiration of a lease a month-to-month tenancy is created (RPL 232-c). The rule is not different when the lease is for an apartment that is subject to rent stabilization. It is true that the tenant may be entitled to a renewal lease and may maintain a proceeding to compel the landlord to issue one. It is also true that even absent such a proceeding, the tenant can not be evicted solely upon the ground of landlord's failure to offer such a lease (*see, Friedman v. Babic*, 118 Misc.2d 565, 463 N.Y.S.2d 136). But the mere acceptance of rent after the expiration of the lease can not in and of itself be deemed an automatic renewal of the lease.

**101 [4][5] We also can not agree with the proposition that the acceptance of rent after expiration of the lease vitiates the *277 notice of intention not to renew the lease. Although denominated a "termination notice" by the Rent Stabilization Code (§ 2524.2), the notice of intention not to renew is not truly in the nature of a termination notice. No notice is needed to

terminate a lease upon its expiration. What the code requires is notice to the tenant of the intention of the landlord not to renew the lease. The acceptance of rent after service of such a notice is not so inconsistent with the continuation of an intention on the part of landlord not to renew the lease as to require that it be deemed a waiver of the notice of that intention (*cf.*, RPL 232-c). There may well be circumstances in which a landlord can not, for good reason, immediately commence an eviction proceeding (*cf.*, *Matter of Shubert v. New York City Conciliation and Appeals Board*, 127 Misc.2d 494, 486 N.Y.S.2d 589). While a tenant can not be required to surrender possession until he has had an opportunity to challenge landlord's claim in court, neither can a landlord be denied the right to collect rent prior to the commencement of the proceeding.

[6] We also reject tenant's contention that the proceeding must be dismissed because it was brought by two owners. It is true that under section 2524.4(a)(3) of the Rent Stabilization Code only one owner of a building may recover possession of an apartment for personal use. But this defect does not require dismissal of the proceeding. It is not alleged that either of the petitioners has previously sought another apartment for his or her own use. Under these circumstances, we see no prejudice to tenant in allowing the defect to be cured and the proceeding to be maintained. Upon remand, landlords shall, if they be so advised, designate which of them shall continue the proceeding and which shall withdraw and the petition shall be amended accordingly.

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