

Real Property Actions & Proceedings

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Proposed Legislation

McKinney's Consolidated Laws of New York Annotated

Real Property Actions and Proceedings Law (Refs & Annos)

Chapter 81. Of the Consolidated Laws (Refs & Annos)

Article 7. Summary Proceeding to Recover Possession of Real Property (Refs & Annos)

McKinney's RPAPL § 711

§ 711. Grounds where landlord-tenant relationship exists

Currentness

A tenant shall include an occupant of one or more rooms in a rooming house or a resident, not including a transient occupant, of one or more rooms in a hotel who has been in possession for thirty consecutive days or longer; he shall not be removed from possession except in a special proceeding. A special proceeding may be maintained under this article upon the following grounds:

1. The tenant continues in possession of any portion of the premises after the expiration of his term, without the permission of the landlord or, in a case where a new lessee is entitled to possession, without the permission of the new lessee. Acceptance of rent after commencement of the special proceeding upon this ground shall not terminate such proceeding nor effect any award of possession to the landlord or to the new lessee, as the case may be. A proceeding seeking to recover possession of real property by reason of the termination of the term fixed in the lease pursuant to a provision contained therein giving the landlord the right to terminate the time fixed for occupancy under such agreement if he deem the tenant objectionable, shall not be maintainable unless the landlord shall by competent evidence establish to the satisfaction of the court that the tenant is objectionable.
2. The tenant has defaulted in the payment of rent, pursuant to the agreement under which the premises are held, and a demand of the rent has been made, or at least three days' notice in writing requiring, in the alternative, the payment of the rent, or the possession of the premises, has been served upon him as prescribed in section 735. The landlord may waive his right to proceed upon this ground only by an express consent in writing to permit the tenant to continue in possession, which consent shall be revocable at will, in which event the landlord shall be deemed to have waived his right to summary dispossession for nonpayment of rent accruing during the time said consent remains unrevoked. Any person succeeding to the landlord's interest in the premises may proceed under this subdivision for rent due his predecessor in interest if he has a right thereto. Where a tenant dies during the term of the lease and rent due has not been paid and no representative or person has taken possession of the premises and no administrator or executor has been appointed, the proceeding may be commenced after three months from the date of death of the tenant by joining the surviving spouse or if there is none, then one of the surviving issue or if there is none, then any one of the distributees.
3. The tenant, in a city defaults in the payment, for sixty days after the same shall be payable, of any taxes or assessments levied on the premises which he has agreed in writing to pay pursuant to the agreement under which the premises are held, and a demand for payment has been made, or at least three days' notice in writing, requiring in the alternative the payment thereof and of any interest and penalty thereon, or the possession of the premises, has been served upon him, as prescribed in

section 735. An acceptance of any rent shall not be construed as a waiver of the agreement to pay taxes or assessments.

4. The tenant, under a lease for a term of three years or less, has during the term taken the benefit of an insolvency statute or has been adjudicated a bankrupt.
5. The 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.
6. The tenant, in a city having a population of one million or more, removes the batteries or otherwise disconnects or makes inoperable an installed smoke or fire detector which the tenant has not requested be moved from its location so as not to interfere with the reasonable use of kitchen facilities provided that the court, upon complaint thereof, has previously issued an order of violation of the provisions heretofore stated and, subsequent to the thirtieth day after service of such order upon the tenant, an official inspection report by the appropriate department of housing preservation and development is presented, in writing, indicating non-compliance herewith; provided further, that the tenant shall have the additional ten day period to cure such violation in accordance with the provisions of subdivision four of section seven hundred fifty-three of this chapter.

Credits

(Added L.1962, c. 312, § 21. Amended L.1963, c. 305, § 1; L.1982, c. 739, § 1; L.1985, c. 699, § 1.)

Editors' Notes

SUPPLEMENTARY PRACTICE COMMENTARIES

by Dan M. Blumenthal

2016

Subd. 1

When presented with a payment after resolving to commence a holdover proceeding, a landlord must proceed with caution. By accepting funds after the tenancy has been declared terminated but before a holdover proceeding under this section is commenced might be interpreted by a tenant to be "inconsistent with the alleged 'termination' [and] a reaffirmation of the lease." *Atkinson v. Trehan*, 70 Misc.2d 614, 334 N.Y.S.2d 293 (Civ. Ct. NY County 1972).

The Court in *92 Bergenbrooklyn, LLC v. Cisarano*, 50 Misc.3d 21, 21 N.Y.S.3d 810 (App. Term 2d Dept. 2015) found that even waiting until after statutory commencement might not be enough. A summary proceeding is

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Chapter 81. Of the Consolidated Laws (Refs & Annos)

Article 7. Summary Proceeding to Recover Possession of Real Property (Refs & Annos)

McKinney's RPAPL § 713

§ 713. Grounds where no landlord-tenant relationship exists

Effective: January 14, 2010

Currentness

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:

1. The property has been sold by virtue of an execution against him or a person under whom he claims and a title under the sale has been perfected.
2. He occupies or holds the property under an agreement with the owner to occupy and cultivate it upon shares or for a share of the crops and the time fixed in the agreement for his occupancy has expired.
3. He or the person to whom he has succeeded has intruded into or squatted upon the property without the permission of the person entitled to possession and the occupancy has continued without permission or permission has been revoked and notice of the revocation given to the person to be removed.
4. The property has been sold for unpaid taxes and a tax deed has been executed and delivered to the purchaser and he or any subsequent grantee, distributee or devisee claiming title through such purchaser has complied with all provisions of law precedent to the right to possession and the time of redemption by the former owner or occupant has expired.
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.
6. He is the tenant of a life tenant of the property, holding over and continuing in possession of the property after the termination of the estate of such life tenant without the permission of the person entitled to possession of the property upon

termination of the life estate.

7. He is a licensee of the person entitled to possession of the property at the time of the license, and (a) his license has expired, or (b) his license has been revoked by the licensor, or (c) the licensor is no longer entitled to possession of the property; provided, however, that a mortgagee or vendee in possession shall not be deemed to be a licensee within the meaning of this subdivision.

8. The owner of real property, being in possession of all or a part thereof, and having voluntarily conveyed title to the same to a purchaser for value, remains in possession without permission of the purchaser.

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.

10. The person in possession has entered the property or remains in possession by force or unlawful means and he or his predecessor in interest was not in quiet possession for three years before the time of the forcible or unlawful entry or detainer and the petitioner was peaceably in actual possession at the time of the forcible or unlawful entry or in constructive possession at the time of the forcible or unlawful detainer; no notice to quit shall be required in order to maintain a proceeding under this subdivision.

11. The person in possession entered into possession as an incident to employment by petitioner, and the time agreed upon for such possession has expired or, if no such time was agreed upon, the employment has been terminated; no notice to quit shall be required in order to maintain the proceeding under this subdivision.

Credits

(Added L.1962, c. 312, § 21. Amended L.1963, c. 384, § 1; L.1976, c. 642, § 1; L.1981, c. 467, § 1; L.2009, c. 507, § 8, eff. Jan. 14, 2010.)

Editors' Notes

SUPPLEMENTARY PRACTICE COMMENTARIES

by Dan M. Blumenthal

2016

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McKinney's Consolidated Laws of New York Annotated

Real Property Law (Refs & Annos)

Chapter 50. Of the Consolidated Laws

Article 7. Landlord and Tenant (Refs & Annos)

McKinney's Real Property Law § 235-b

§ 235-b. Warranty of habitability

Currentness

1. In every written or oral lease or rental agreement for residential premises the landlord or lessor shall be deemed to covenant and warrant that the premises so leased or rented and all areas used in connection therewith in common with other tenants or residents are fit for human habitation and for the uses reasonably intended by the parties and that the occupants of such premises shall not be subjected to any¹ conditions which would be dangerous, hazardous or detrimental to their life, health or safety. When any such condition has been caused by the misconduct of the tenant or lessee or persons under his direction or control, it shall not constitute a breach of such covenants and warranties.

2. Any agreement by a lessee or tenant of a dwelling waiving or modifying his rights as set forth in this section shall be void as contrary to public policy.

3. In determining the amount of damages sustained by a tenant as a result of a breach of the warranty set forth in the section, the court:¹

(a) need not require any expert testimony; and

(b) shall, to the extent the warranty is breached or cannot be cured by reason of a strike or other labor dispute which is not caused primarily by the individual landlord or lessor and such damages are attributable to such strike, exclude recovery to such extent, except to the extent of the net savings, if any, to the landlord or lessor by reason of such strike or labor dispute allocable to the tenant's premises, provided, however, that the landlord or lesser² has made a good faith attempt, where practicable, to cure the breach.

(c) where the premises is subject to regulation pursuant to the local emergency housing rent control law,³ the emergency tenant protection act of nineteen seventy-four,⁴ the rent stabilization law of nineteen hundred sixty-nine⁵ or the city rent and rehabilitation law,⁶ reduce the amount awarded hereunder by the total amount of any rent reduction ordered by the state division of housing and community renewal pursuant to such laws or act, awarded to the tenant, from the effective date of such rent reduction order, that relates to one or more matters for which relief is awarded hereunder.

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McKinney's Consolidated Laws of New York Annotated
Real Property Law (Refs & Annos)
Chapter 50. Of the Consolidated Laws
Article 7. Landlord and Tenant (Refs & Annos)

McKinney's Real Property Law § 223-b

§ 223-b. Retaliation by landlord against tenant

Effective: September 1, 2005

Currentness

1. No landlord of premises or units to which this section is applicable shall serve a notice to quit upon any tenant or commence any action to recover real property or summary proceeding to recover possession of real property in retaliation for:

a. A good faith complaint, by or in behalf of the tenant, to a governmental authority of the landlord's alleged violation of any health or safety law, regulation, code, or ordinance, or any law or regulation which has as its objective the regulation of premises used for dwelling purposes or which pertains to the offense of rent gouging in the third, second or first degree; or

b. Actions taken in good faith, by or in behalf of the tenant, to secure or enforce any rights under the lease or rental agreement, under section two hundred thirty-five-b of this chapter, or under any other law of the state of New York, or of its governmental subdivisions, or of the United States which has as its objective the regulation of premises used for dwelling purposes or which pertains to the offense of rent gouging in the third, second or first degree; or

c. The tenant's participation in the activities of a tenant's organization.

2. No landlord or premises or units to which this section is applicable shall substantially alter the terms of the tenancy in retaliation for any actions set forth in paragraphs a, b, and c of subdivision one of this section. Substantial alteration shall include, but is not limited to, the refusal to continue a tenancy of the tenant or, upon expiration of the tenant's lease, to renew the lease or offer a new lease; provided, however, that a landlord shall not be required under this section to offer a new lease or a lease renewal for a term greater than one year and after such extension of a tenancy for one year shall not be required to further extend or continue such tenancy.

3. A landlord shall be subject to a civil action for damages and other appropriate relief, including injunctive and other equitable remedies, as may be determined by a court of competent jurisdiction in any case in which the landlord has violated

the provisions of this section.

4. In any action to recover real property or summary proceeding to recover possession of real property, judgment shall be entered for the tenant if the court finds that the landlord is acting in retaliation for any action set forth in paragraphs a, b, and c of subdivision one of this section and further finds that the landlord would not otherwise have commenced such action or proceeding. Retaliation shall be asserted as an affirmative defense in such action or proceeding. The tenant shall not be relieved of the obligation to pay any rent for which he is otherwise liable.

5. In an action or proceeding instituted against a tenant of premises or a unit to which this section is applicable, a rebuttable presumption that the landlord is acting in retaliation shall be created if the tenant establishes that the landlord served a notice to quit, or instituted an action or proceeding to recover possession, or attempted to substantially alter the terms of the tenancy, within six months after:

a. A good faith complaint was made, by or in behalf of the tenant, to a governmental authority of the landlord's violation of any health or safety law, regulation, code, or ordinance, or any law or regulation which has as its objective the regulation of premises used for dwelling purposes or which pertains to the offense of rent gouging in the third, second or first degree; or

b. The tenant in good faith commenced an action or proceeding in a court or administrative body of competent jurisdiction to secure or enforce against the landlord or his agents any rights under the lease or rental agreement, under section two hundred thirty-five-b of this chapter, or under any other law of the state of New York, or of its governmental subdivisions, or of the United States which has as its objective the regulation of premises used for dwelling purposes or which pertains to the offense of rent gouging in the third, second or first degree.

c. Judgment under subdivision three or four of this section was entered for the tenant in a previous action between the parties; or an inspection was made, an order was entered, or other action was taken as a result of a complaint or act described in paragraph a or b of this subdivision.

But the presumption shall not apply in an action or proceeding based on the violation by the tenant of the terms and conditions of the lease or rental agreement, including nonpayment of the agreed-upon rent.

The effect of the presumption shall be to require the landlord to provide a credible explanation of a non-retaliatory motive for his acts. Such an explanation shall overcome and remove the presumption unless the tenant disproves it by a preponderance of the evidence.

5-a. Any lease provision which seeks to assess a fee, penalty or dollar charge, in addition to the stated rent, against a tenant because such tenant files a bona fide complaint with a building code officer regarding the condition of such tenant's leased premises shall be null and void as being against public policy. A landlord who seeks to enforce such a fee, penalty or charge shall be liable to the tenant for triple the amount of such fee, penalty or charge.

6. This section shall apply to all rental residential premises except owner-occupied dwellings with less than four units. However, its provisions shall not be given effect in any case in which it is established that the condition from which the complaint or action arose was caused by the tenant, a member of the tenant's household, or a guest of the tenant. Nor shall it apply in a case where a tenancy was terminated pursuant to the terms of a lease as a result of a bona fide transfer of ownership.

Credits

(Added L.1979, c. 693, § 1. Amended L.1991, c. 584, § 5; L.2005, c. 466, § 1, eff. Sept. 1, 2005.)

Editors' Notes

SUPPLEMENTARY PRACTICE COMMENTARIES

by Dan M. Blumenthal

2016

Where a tenant has made complaints against a landlord, the landlord should be prepared to show a non-retaliatory motive for eviction. In the unreported *Orange Falls, LLC v. Forrest*, 51 Misc.3d 1213(A) (Glens Falls City Ct. 2016), the court parsed this section and determined that the respondent-tenant had "proven a *prima facie* case for retaliatory eviction" hereunder. The tenant had filed a valid complaint (for a non-working stove) against her landlord with the local code enforcement agency and, within six months thereafter, the petitioner-landlord had served notice to terminate the tenant's month-to-month tenancy. The landlord was able to rebut the presumption of retaliation by demonstrating an "independent and non-retaliatory basis" for the holdover by producing credible testimony and evidence of repeated complaints and offensive conditions (described only as "clutter") in the respondent's apartment. A notice to terminate a month-to-month tenancy under this section is adequate where the notice "inform[s] tenant [] that landlord elects to terminate the tenancy and that refusal to vacate will lead to summary proceedings." *Park Summit Realty Corp. v. Frank*, 107 Misc.2d 318, 434 N.Y.S.2d 73 (App. Term 1st Dept. 1980), *aff'd*, 84 A.D.2d 700, 84 A.D.2d 700, 448 N.Y.S.2d 414 (1981), *aff'd*, 56 N.Y.2d 1025, 453 N.Y.S.2d 643 (1982).

2014

In *Barr v. Huggins*, 41 Misc.3d 605, 971 N.Y.S.2d 397 (Civ. Ct., 2013), the Civil Court permitted an affirmative defense of retaliatory eviction from an apartment in a two-family dwelling as the statute is applicable to such a dwelling were it is not owner-occupied.

SUPPLEMENTARY PRACTICE COMMENTARIES

by Rudolph de Winter

2012

In its reversal of a summary dismissal of a holdover proceeding, ostensibly based upon the expiration of the tenant's most recent unregulated lease, the Appellate Term, First Department, in *339-347 E. 12th St. LLC v. Ling*, 2012, 35 Misc.3d 30, 942 N.Y.S.2d 862, held that the pre-answer record failed to resolve several material triable issues. Noting that it is the proponent's burden to establish the defense of retaliatory eviction, which, in essence, requires proof of the landlord's state of mind as to its motives for seeking the eviction, i.e., whether they were in retaliation for any good faith action previously taken by the tenant, such determination, the court said, could rarely be made "on papers alone."

2011

Retaliatory eviction as defined in RPL § 223-b[1](a),(b),(c) applicable to all rental residential premises, except owner-occupied dwellings with less than four units, was expanded in New York City by the enactment of Local Law 7 of 2008, that amended portions of the NYC Administrative Code (Title 27, chap. 2). Its provisions define the term "harassment" as "any act or omission by or on behalf of an owner that ... causes or is intended to cause any person lawfully entitled to occupancy of a dwelling unit to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy." Besides its broader application, the Local Law sets forth an expanded list of acts and omissions constituting harassment. In a challenge to the Law's constitutionality, owners of various residential buildings and organizations representing NYC landlords claimed that the Law impermissibly expanded the jurisdiction of the Housing Part of the NYC Civil Court. In rejecting these assertions and the plaintiffs' claims that the Law violated their substantive and procedural due process rights, the Appellate Division, First Department, in *Prometheus Realty Corp. v. City of New York*, 2010, 80 A.D.3d 206, 911 N.Y.S.2d 299, noted that the Housing Court had broad powers in landlord-tenant proceedings, citing NYC Civil Court Act § 110, and observed that its jurisdiction was not limited simply to standards of physical plant or condition of buildings, but had authority to adjudicate nuisance claims, claims under RPAPL § 235-b to determine whether tenants are being subjected to conditions endangering or detrimental to their life, health or safety, objectionable conduct under RPAPL § 711[1] and under the Rent Stabilization Code (9 NYCRR) § 2524.3(b). See also: *Santo v. Rose Associates, Inc.*, 2010, 28 Misc.3d 1225(A), 2010 N.Y. Slip Op. 51488(U), holding that bringing a single Housing Court proceeding was not actionable under Local Law 7, which was directed at "repeated" and "baseless or frivolous court proceedings."

PRACTICE COMMENTARIES

by Rudolph de Winter and Larry M. Loeb

RPL § 223-b is applicable to nonpayment proceedings when the claim of retaliation is asserted as a counterclaim (which is permissible under subdivision 3 of RPL § 223-b), rather than as a defense to a nonpayment proceeding which is barred by RPL § 223-b(4), (5)(c). In both the First and Second Departments, the statutory defense of retaliatory eviction cannot be imposed in nonpayment proceedings as a defense to nonpayment of rent and will not relieve tenants of the obligation to pay rent. *601 West 160 Realty Corp. v. Henry*, 2001, 189 Misc.2d 352, 731 N.Y.S.2d 581.

* * * *

RPL § 223-b(5) creates a rebuttable presumption that a landlord has acted in retaliation if a residential tenant establishes that the landlord served a notice to quit or commenced a summary proceeding to recover possession within 6 months after the tenant made a good faith complaint to a governmental authority respecting the landlord's alleged violation of law. Such presumption does not apply, however, if the action or proceeding is based on a violation by the tenant of the terms of its lease. Otherwise, "a landlord could always avert the statutory presumption simply by commencing a proceeding based on an allegation that the tenant violated the rental agreement." The presumption in RPL § 223-b(5) applies once a tenant establishes that the alleged violations of the rental agreement are without merit. *Mayfair York L.L.C. v. Zimmerman*, 1999, 183 Misc.2d 282, 702 N.Y.S.2d 494.

* * * *

Deprivation of use of a valuable parking space was held to be a substantial term of a tenancy and therefore within the ambit of the language of RPL § 223-b(2) which specifies that a landlord cannot "substantially alter the terms of the tenancy in retaliation for any actions set forth in paragraphs a, b and c of subdivision one of this section." *Raderman v. Talia Management Co.*, 1996, 170 Misc.2d 622, 651 N.Y.S.2d 850. In so doing, the court noted that it had found no cases interpreting the statutory term "substantially alter".

Notes of Decisions (48)

McKinney's Real Property Law § 223-b, NY REAL PROP § 223-b
Current through L.2017, chapters 1 to 331.

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