

### LANDLORD-TENANT

# Nonpayment Proceedings: The “Stale Rent” Defense



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In the context of a summary nonpayment proceeding seeking possession of the premises, one of the equitable defenses which a tenant may raise is that the landlord’s claim for rent was “stale” based on the landlord’s delay in enforcing the claim. Under the concept of “stale rent,” where a landlord fails for a significant period of time to bring a nonpayment proceeding with respect to unpaid rent, the landlord will lose the right to obtain possession of the premises based on the “stale” portion of the claim. However, where the landlord demands the issuance of a money judgment in the notice of petition and petition and only a portion of the amount demanded is “stale,” the landlord typically may pursue the stale portion of the rent claim as a plenary action, with the portion of the rent which is not stale being part of a judgment of possession.

### “Pough”

A recent illustration of this concept was the subject of an August 2018 decision by Housing Court Judge Krzysztof Lach of Civil Court, Bronx County in *Webster Ave. Holdings v. Pough*, Index No. L&T 052920/2017 (Civ. Ct. Bronx Co. 8/15/18).

In *Pough*, the landlord commenced a summary nonpayment proceeding against the rent stabilized tenant seeking \$10,395.04 in outstanding rent and other charges. The proceeding was commenced in September 2017, but sought rent which first became due starting in March 2015, approximately two and a half years earlier. The tenant submitted a *pro se* answer which asserted as a defense that “[t]he petitioner has harmed me by waiting too long to bring this case (latches)[sic].”

The tenant thereafter moved for summary judgment. The tenant claimed that based on the doctrine of laches, any rent arrears which accrued before September 2016 (one year prior to the commencement

of the nonpayment proceeding) was “stale,” should be severed for a plenary action, and could not be part of any possessory judgment granted to the landlord. The landlord opposed the motion, arguing that the tenant was on notice of the landlord’s claims based on the rent bills which were provided. The landlord also maintained that any delay in pursuing its rent claims was due to a change in staff at the landlord’s offices, which prevented it from complying with a certain consent decree which was a prerequisite to the commencement of the proceeding.

The court granted the tenant’s motion and awarded the tenant partial summary judgment on her affirmative defense that a portion of the rent claim was stale based on the doctrine of laches.

### Establishing Laches

At the outset, the court set forth the tenant’s burden in establishing a laches defense in a nonpayment proceeding. It explained that under settled appellate authority,

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“to establish laches, a party must show: (a) conduct by an offending party giving rise to the situation complained of; (b) delay by the complainant in asserting his or her claim for relief despite the opportunity to do so; (c) lack of knowledge or notice on the part of the offending party that the complainant would assert his or her claim for relief; and (d) injury or prejudice to the offending party in the event the relief is accorded the complainant.” The court further observed that “[a]ll four elements are necessary for the proper invocation of this equitable doctrine based upon fairness.”

The court then explained that the tenant had in fact established a defense of laches with respect to the landlord’s rent claims. It found that the first element, conduct giving rise to the situation, was satisfied because the parties agreed that the tenant had not paid rent since March 2015. It found that the second element, delay in asserting the claim, was satisfied because the landlord had delayed approximately two and a half years in commencing the proceeding. The third element, lack of notice, was satisfied by the fact that no rent was demanded prior to the predicate rent demand in the subject nonpayment proceeding and, contrary to the landlord’s contention, the sending of rent bills was not sufficient to satisfy the requirements of a rent demand. Finally, the court found that the fourth element, prejudice to the tenant, was satisfied because the tenant was a

recipient of public assistance and “lacked any significant resources to pay the rental arrears that have now accumulated.”

### Reasonable Excuse

After the tenant established a defense of laches, the court observed that the burden then shifted to the landlord to “establish a reasonable excuse for the delay or be barred from recovering a possessory judgment for arrears found to be stale.” In the matter before it, the court rejected the landlord’s “excuse”; namely, that a turnover

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in office staff prevented the landlord from complying with a consent decree which was a prerequisite to the commencement of the proceeding. In so holding, the court found it could not consider the excuse because it was contained solely in the affirmation of the landlord’s counsel, who did not have personal knowledge, and that it is well settled that “bald, unsupported statements are insufficient to create a material issue of fact to defeat [the tenant’s] summary judgment motion.”

As such, based upon the foregoing, the court held that the

landlord’s claim for rent arrears from March 2015 through August 2016 in the amount of \$6,385.30 was “stale,” and severed to a plenary action. It stated that the landlord could only pursue the rent accruing from September 2016 in the non-payment proceeding seeking a possessory judgment. This of course meant that assuming the landlord obtained a possessory judgment for the rent accrued from September 2016 (which was approximately \$4,000), the tenant would only have to pay that amount to prevent herself from being evicted. Needless to say, given the apparent precarious financial status of the tenant as stated by the court, the remaining \$6,385.30 in arrears to be pursued in a plenary action might very well be uncollectible.

### Conclusion

This case stands as a reminder that landlords must be diligent in enforcing their rights under the lease to collect rent arrears, and that delays in commencing a proceeding could provide the tenant with a “stale rent” defense. As explained by the court in *Pough*, any such stale rent would not be included within a possessory judgment, and landlord would be relegated to pursuing its claim for such stale rent in a plenary action.