

### LANDLORD-TENANT LAW

# Does Accepting Rent After Lease Termination Reinstate Tenancy?



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Most seasoned landlord-tenant practitioners know to advise their landlord clients that once a lease is terminated, whether by service of a notice of termination or by virtue of the expiration of the lease by its terms, the landlord should not accept any rent from the tenant for any period after the termination of the lease and prior to the commencement of a holdover proceeding. The reason for this is simple: numerous cases have held that the acceptance of rent for any period after the termination of the lease, and prior to the commencement of a holdover proceeding, may serve to reinstate the tenancy.

The question of whether the landlord's acceptance of rent for a period after the termination of the lease will actually operate to reinstate the tenancy depends on the facts and circumstances presented. The recently

issued decision from the Appellate Term, Second Department in *Scarborough Manor Owners Corp. v. Robson*, NYLJ 1202797764350 (App. Term 2d Dept. Aug. 17, 2017) (*Robson*) explains the law in this area and provides an example of a case where the landlord's post-termination acceptance of rent did not result in the reinstatement of the tenancy.

### 'Robson'

In *Robson*, the landlord, a cooperative corporation, had served a termination notice upon the tenant Carol Robson, a proprietary lessee, based on the tenant's breach of the proprietary lease. After the lease expired pursuant to the notice, the landlord accepted rent checks from the tenant for a period after the termination date, and never returned the funds to the tenant. The landlord then commenced a summary holdover proceeding against the tenant (in the Justice Court of the Village of Ossining, Westchester County) based on the termination of the lease.

At trial, the tenant moved to dismiss the petition on the ground that the landlord had accepted rent for the month after the termination of the lease and prior to the commencement of the proceeding. The court denied the motion and, after the conclusion of trial, awarded the landlord a final judgment of possession against the tenant.

On appeal to the Appellate Term, the tenant contended that her motion to dismiss the petition should have been granted based on the landlord's acceptance of rent following the termination of the lease. The court disagreed with the tenant and affirmed the judgment of possession in favor of the landlord.

### Issues Presented

At the outset, the court observed that "[w]hen a payment of rent is made following the termination of a lease, two issues are presented for consideration: (1) whether the payment and acceptance of rent indicated an intent by the landlord to waive the violation at issue, and (2) if the

landlord did not intend to waive the violation, whether the payment and acceptance of the rent gave rise to a month-to-month tenancy requiring the service of a 30-day notice.”

With respect to the first issue, the Appellate Term, relying on the 2015 decision of the Appellate Division, Second Department in *Matter of Georgetown Unsold Shares v. Ledet*, 130 A.D.3d 99 (2d Dep’t 2015), found that the landlord, merely by accepting rent, did not intend to waive the termination notice delivered to the tenant. The Appellate Term observed that in *Matter of Georgetown*, the Appellate Division stated that a landlord’s receipt of unsolicited rent after the expiration of a rent-stabilized lease and prior to the commencement of a nonprimary-residence holdover proceeding “did not, ‘standing alone, amount to a voluntary relinquishment of the right to contest a tenant’s possession....” The Appellate Division in *Georgetown* further observed that “[s]ince the very essence of a waiver is the intentional relinquishment of a known right, a waiver cannot be created via negligence, oversight or thoughtlessness.” Thus, the court in *Georgetown* found that the landlord’s acceptance of rent checks did not operate as a waiver of the landlord’s rights to proceed on the nonrenewal notice to the tenant, in that there was “no evidence that the landlord had solicited rent from the tenant and where the landlord’s managing agent averred that the checks had been mistakenly deposited in

the belief they represented use and occupancy payments.”

The Appellate Term in *Robson*, in holding that there was no intention by the landlord to waive the termination notice as a result of the acceptance of post-termination rent, relied on the facts that “[t]he testimony at trial demonstrated that landlord’s board of directors had instructed its managing agent to terminate the tenancy and not to accept any rent payments from the tenant; that tenant

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had deposited her unsolicited check into a bank lock box; and that neither landlord nor its managing agent knew of the deposit.” The court found that “in these circumstances, there was no knowing waiver; landlord’s managing agent’s mere failure to return the rent check cannot, at least in the Second Department, be deemed to vitiate the notice of termination.”

As to the second issue—*i.e.*, whether there was an offer and acceptance of rent sufficient to give rise to an implied month-to-month tenancy requiring the service of a 30-day notice of termination—the court found that no such tenancy was created. It observed that while it “adheres to the general rule

that a knowing acceptance of rent following the termination of a lease gives rise to a month-to-month tenancy, the facts of this case do not support the application of that rule” (internal citation omitted). The court found that in the matter before it, there was “no knowing acceptance of rent and tenant could have had no legitimate expectation that her payment of rent would give rise to a month-to-month tenancy.” In reaching this conclusion, the court again relied on the facts that (1) the landlord’s board of directors had directed its managing agent to terminate the tenancy and not to accept rent payments from the tenant, (2) tenant had deposited the unsolicited check into a bank lock box, and (3) neither landlord nor its managing agent knew of the deposit.

### Conclusion

The Appellate Term’s decision in *Robson* makes clear that the landlord’s acceptance of rent for a period after the termination of the lease and prior to the commencement of a summary proceeding will not in all instances result in the reinstatement of the tenancy. Nevertheless, landlords are well advised *never* to accept rent for any period after the termination of the lease and prior to the commencement of summary proceedings, as the tenancy could be reinstated as a result thereof.