

LANDLORD-TENANT LAW

Notice Requirement(s) for An ‘Owner’s Use’ Proceeding?



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Section 2524.4(a)(1) of the Rent Stabilization Code (RSC) allows a property owner to commence a proceeding to recover possession of a rent stabilized apartment upon the expiration of the existing lease term, on the ground that the owner, or a member of the owner’s immediate family, seeks to use and occupy the apartment as his or her primary residence. This is commonly known as an “owner’s use” holdover proceeding.

A question that was just recently at issue before Judge Lydia C. Lai of Civil Court, Queens County, in *Manda v. Badinsky*, NYLJ 1202789583670 (Civ. Ct. Queens Co. May 31, 2017) (*Manda*), was whether in an owner’s use proceeding, the landlord is required to serve both a “notice of intent not to renew” (commonly

referred to as a ‘Golub’ notice), and a notice of termination, as predicate notices for the commencement of an eviction proceeding. While the court’s answer to that question in *Manda* was in the affirmative, there is authority to the contrary which creates some confusion on this issue.

‘Manda’

In *Manda*, the landlord served a notice of “owner’s intention not to renew lease for personal use and occupancy,” dated Sept. 14, 2015, stating, among other things, that the landlord was “hereby notifying you that your lease which will expire on Jan. 31, 2016 will not be renewed because such owners desire to occupy apartment #2-L as their primary residence....” The notice further stated that the tenant was “obligated to vacate and surrender the premises on Jan. 31, 2016.”

The landlord commenced a summary holdover proceeding based on the notice, and the tenant

thereafter moved for summary judgment dismissing the petition. The tenant asserted, inter alia, that the petition should be dismissed because the landlord was required to serve both a notice of intention not to renew the lease and a notice of termination.

The court granted the tenant’s motion and dismissed the petition. Citing a 2006 decision of the Civil Court, New York County in *Malta v. Brown*, 12 Misc.3d 1164(A) (Civ. Ct. N.Y. Co. 2006), the court held that both “[a] notice of termination and notice of non-renewal is a required prerequisite pursuant to Rent Stabilization Code §§2524.4(a)(1) and 2524.4(a)(4) in owners’ use proceedings.” The court further found that an “insufficient or defective notice is an incurable fatal defect” which warrants dismissal of the proceeding. The court found that because the landlord’s notice to the tenant did not “unequivocally terminate the tenancy nor inform respondent that if he failed

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to vacate the premises by Jan. 31, 2016, petitioner will commence court proceedings to evict respondent,” the notice was insufficient.

Divergent Precedent

Malta, upon which *Manda* relied, involved four owners’ use holdover proceedings. The court (Gerald Lebovits, J.) in that case found that RSC 2524.4(a) requires the owner to serve the tenant with both a notice of non-renewal of the lease and a termination notice. Citing a 2005 decision of the Civil Court, Kings County (Heymann, J.), in *Trojan v. Wisniewska*, 8 Misc. 3d 382 (Civ. Ct. Kings Co. 2005), Judge Lebovits found that an owner seeking to commence an owner’s use proceeding is permitted to send the tenant “a combined termination and non-renewal notice” in order to satisfy the notice requirements. The court’s decision in *Trojan*, however, did not support Lebovits’ decision that both a notice of non-renewal and notice of termination is required as a predicate to an owner’s use proceeding.

In *Trojan*, the court specifically found that in owner’s use proceedings, a notice of non-renewal is the only required predicate notice and that an owner is not required to also serve a notice of termination. The court stated in *Trojan*:

The court concludes that no 30-day notice of termination is required in end-of-lease proceedings on the ground of

personal use by the owner or members of his or her family. Had the Legislature intended that such an additional notice be required it would have specifically provided for such notice as it did regarding non-primary residence holdovers. As previously stated, Part 2524 of the RSC [evictions] is a circular, self-contained statute that

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keeps cross-referencing itself to its own provisions regarding the when and how to evict regulated tenants from their housing accommodations. No reference whatsoever is made to any additional 30-day notice of termination as is set forth in §2524.4(c) of the RSC.

Similarly, the decision of the Civil Court, Kings County in *Malafis v. Rosario*, 18 Misc.3d 1106(A) (Civ. Ct. Kings Co. 2007), following *Trojan*, held that only a notice of nonrenewal was required as a predicate to an owner’s use proceeding. The court held: as a matter of law,... the predicate ‘Golub’ notice was more than sufficient to apprise the

respondents of the petitioner’s desire not to renew their lease, the basis for the non-renewal and that if the respondents do not vacate by a date certain, the petitioners will commence a formal eviction proceeding. Moreover, as the court stated in *Trojan v. Wisniewska*, 8 Misc.3d 382, 389, ‘contrary to conventional wisdom,’ 30-day termination notices are not required in personal use holdover proceedings.

Conclusion

As explained above, there appears to be some divergence of opinion in the courts as to whether an owner seeking to commence an owner’s use holdover proceeding must serve both a notice of non-renewal of the lease *and* a notice of termination of the lease. Needless to say, until this issue is finally settled by the appellate courts, any owner seeking to commence an owner’s use proceeding is well advised to serve both a notice of non-renewal and a notice of termination.