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RENT STABILIZATION

Evicting Corporate Tenants


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Many rent stabilized apartments are leased to corporations or other non-corporeal entities. There is nothing inherently wrong with renting to a corporation; certainly, the Rent Stabilization Law (RSL) contains no prohibition against doing so.

The RSL, however, does state that an owner need not *renew* the lease of a tenant who does not primarily reside in an apartment. A corporation cannot primarily reside anywhere, at least not in the sense that a tenant actually lives in an apartment. But this does not necessarily mean that such entities are easy prey for non-renewal.

Over the years, a rule has evolved as to when a corporate tenant can be evicted based on non-primary residence. This article will examine the rule, as well as more recent corporate tenancy case law.

Manocherian

In the early 1980s, Lenox Hill Hospital rented 54 rent stabilized apartments in Manhattan in its own name. The hospital, in turn, sublet those apartments to its nurses. The leases did not set forth specific, named occupants for the apartments; instead, when one nurse moved out, another moved in. When Lenox Hill's landlord sought to recover the apartments on grounds of non-primary residence, the hospital convinced the New York State Legislature to enact a law (L. 1984, ch. 940) to exempt not-for-profit hospitals from the primary residence requirements of the RSL.

The Court of Appeals, however, declared Chapter 940 to be unconstitutional. *See Manocherian v. Lenox Hill Hosp.*, 84 NY2d 385 (1994).

Following the Court of Appeals ruling, the non-primary litigation continued. In *Manocherian v. Lenox Hill Hosp.*, 229 AD2d 197 (1st Dept. 1997), the First Department established the rule for determining whether a corporate tenant could be evicted based on non-primary residence:

> A corporation is entitled to a renewal lease where the lease specifies a particular individual as the occupant *and* no perpetual tenancy is possible.

An example will illustrate how the rule works. Where a stabilized lease is given to XYZ Corp, the owner need not renew the lease *unless* the (1) the lease names a particular XYZ Corp. affiliate as

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the intended occupant; and (2) that intended occupant primarily resides in the apartment. Such a lease would recite, for example, that the tenant is XYZ Corp., for the intended occupancy of its president, John Smith. As long as John Smith primarily resides in the apartment, XYZ Corp. is entitled to a renewal lease.

What if, for example, the lease is given to XYZ Corp., for the occupancy of its (unnamed) "president." In that circumstance, the owner would be entitled to refuse to renew the lease. A "president" is not a named individual, and a corporation could have a string of successive "presidents" stretching into the 22nd Century. Such arrangement would violate the *Manocherian* prescription against perpetual tenancies.

Recent Case Law

The *Manocherian* rule remains good law. In *Fox v. 12 East 88th LLC*, 160 AD3d 401 (1st Dept. 2018), Barry Fox rented in his own name a putatively deregulated apartment in 1996 at a rent of $9,500 per month. In 2008, Fox requested that the tenant under the lease be changed to "MBE," which he described as his "personal company." Several years later, after it was discovered that the apartment was in fact stabilized based on the receipt of J-51 benefits, the owner sought to evict MBE based on non-primary residence.

The First Department ruled in the owner's favor. The majority wrote:

> Here, Fox is neither a party to nor identified as a tenant in the 2008 lease, and thus ceased to be a tenant under rent stabilization code… Section 2520.6(d) at that time. Further, he was not identified as an individual occupant in the 2010 or 2012 lease, as required under *Manocherian*, and is therefore barred from the rent stabilization protection under their terms, as well.

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Justice Ellen Gesmer dissented. She wrote that had Fox known that his apartment was rent stabilized, he might have realized that his request to change the tenant to "MBE"—an innocuous change if the apartment were indeed deregulated—would have disastrous results. The dissent wrote:

> In my view, Fox's landlords having withheld the crucial information from him that could have put him on notice that he was entitled to rent stabilization coverage at least raises a question of fact as to whether the landlord effectively initiated the lease change in this case.

In *Capital 155 East 55th, LLC v. Garden House School of New York*, 60 Misc3d 41 (App. Term 1st Dept. 2018), the lease named the corporate entity as a tenant, but specified that the apartment was for the intended use of Heather Rodts. Although the lease named a specific individual, Rodts had long since vacated the unit by the time the landlord's holdover proceeding commenced. The Appellate Term wrote:

> Here, since it is undisputed that the only individual identified in the lease as the intended occupant (Rodts) has vacated the premises, the corporate tenant is not entitled to a renewal lease. Contrary to appellants' contention, the listing of the apartment's present occupants on

the DHCR RA-23.5 forms submitted with certain renewal leases, does not satisfy the *Manocherian* requirement that the lease designate an individual who is to occupy the premises.

Implications for Scattered-Site Housing

Scattered-site housing is a part of New York City's Supportive Housing program, which is intended to combat homelessness. In scattered-site housing, units in apartment buildings spread throughout a particular neighborhood are designated for specific populations, accompanied by supportive services. For example, a not-for-profit organization will rent several units in a building as housing for the particular population it serves, such as the homeless, or persons with mental health issues. The not-for-profit is named as the tenant in the stabilized lease; the actual occupants, like the nurses in *Manocherian*, rotate in and out of the units.

In such situations, the not-for-profit is subject to eviction under the *Manocherian* rule. That is what happened in *One Arden Partners, L.P. v. Unique People Services, Inc.*, 29 Misc3d 135(A) (App. Term 1st Dept. 2010) and *562 Assocs., LP v. Unique People Services, Inc.*, 25 Misc3d 131(A) (App. Term 1st Dept. 2009). There, the tenant was a scattered-site housing provider which in turn sublet apartments to individuals with special needs. The lease was in the name of Unique People Services Inc., and did not name a particular intended occupant. The landlord prevailed in both cases.

The recent case of *Nappi v. Community Access, Inc.*, decided by the First Department on Feb. 19, 2019, presents a unique twist on the *Manocherian* rule. In *Nappi*, the rent stabilized tenant of record was a not-for-profit organization that leases apartments from private landlords and in turn sublets those apartments to people with health concerns, here, Michele Nappi. At some point, the landlord became disenchanted with Nappi's occupancy, and declined to renew the lease of Community Access. When Community Access discharged Nappi from its program, Nappi sought a declaration that she was the rightful tenant of the apartment.

The First Department, citing *Manocherian*, found for Community Access, holding that the lease between that entity and the landlord did not name Nappi, or "or specify that she, or any particular individual or group of individuals was intended to live in the subject apartment."

Thus, ironically, the *Manocherian* rule allowed Community Access to prevail over Nappi, but may prove its undoing should the landlord seek to evict Community Access.