

**Alice Formey Irrevocable Trust v Spooner**

2025 NY Slip Op 32644(U)

May 9, 2025

Civil Court of the City of New York, Kings County

Docket Number: Index No. LT-331320-23/K1

Judge: Sulay K. Grant

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CIVIL COURT OF THE CITY OF NEW YORK  
 COUNTY OF KINGS: HOUSING PART D

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 ALICE FORMEY IRREVOCABLE TRUST  
 BY WILLIAM ROZIER, TRUSTEE,

Petitioner,

Index No. LT-331320-23/KI

- against -

**DECISION/ORDER**

CYNTHIA SPOONER,

Respondent (Tenant)

“JOHN DOE,”

Respondent (Undertenant).

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 Present:

Hon. Sulay K. Grant  
 Judge, Housing Court

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of Respondent’s motion (seq. 3) seeking an order granting summary judgment in Respondent’s favor and dismissing the petition, and for any other relief as the court may find appropriate:

<b>Papers</b>	<b>Numbered</b>
Notice of Motion with affidavits and exhibits	NYSCEF Doc. Nos. 35-41
Affirmation in opposition to motion with affidavit and exhibits	NYSCEF Doc. Nos. 42-47
Reply Affirmation in support of motion	NYSCEF Doc. Nos. 48

**Factual & Procedural History**

Alice Formey Irrevocable Trust by William Rozier, Trustee (“Petitioner”) commenced this nonpayment proceeding against Respondents Cynthia Spooner and “John Doe” by service of a notice of petition and petition on or about December 1, 2023, after service of a rent demand seeking rental arrears for the period of August 2022 through September 2023. Respondent Cynthia Spooner (“Respondent”) filed a *pro se* answer to the petition on December 4, 2023. Thereafter, Respondent retained The Legal Aid Society and filed a motion (seq. 1) seeking leave to amend her answer and dismiss the proceeding. Petitioner filed a cross motion (seq. 2) for leave to file late opposition to Respondent’s motion. The court issued a Decision/Order on January 14, 2025 granting Respondent’s motion to the extent that Respondent’s amended answer was deemed served and filed and denying dismissal of the proceeding. Thereafter, Respondent filed the instant motion for summary judgment (seq. 3). Petitioner filed opposition and Respondent a reply. After argument, the court reserved decision.

### Summary Judgment Standard

Summary judgment is “a drastic remedy that deprives a litigant of his or her day in court, and it should only be employed when there is no doubt as to the absence of triable issues” (*Castlepoint Ins. Co. v Command Sec. Corp.*, 144 AD3d 731, 733, 42 NYS3d 30, 32 [2d Dept 2016], quoting *Kolivas v Kirchoff*, 14 AD3d 493, 493, 787 NYS2d 392, 392 [2d Dept 2005] (internal quotations omitted)). “Issue finding, rather than issue determination is the court’s function. If there is any doubt about the existence of a triable issue of fact or if a material issue of fact is arguable, summary judgment should be denied” (*Celardo v Bell*, 222 AD2d 547, 548, 635 NYS2d 85, 86 [2nd Dept 1995]). A party moving for summary judgment must make prima facie showing of entitlement to judgment as a matter of law, offering sufficient evidence to demonstrate the absence of any material issues of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]; *Napolitano v Suffolk County Dep’t of Pub. Works*, 65 AD3d 676, 884 NYS2d 484 [2nd Dept 2009]). If a *prima facie* showing has been made, the burden shifts to the opposing party to produce evidentiary proof sufficient to establish the existence of material issues of fact (*Alvarez*, 68 NY2d 320, 324, 508 NYS2d 923, 926).

### Discussion

In the instant case, Respondent seeks summary judgment and dismissal asserting that there was no lease between the parties in effect at the commencement of this proceeding (NYSCEF Doc. No. 36). As this is a nonpayment proceeding, the petition must be based upon a rental agreement that is in effect at its commencement (*Fairfield Beach 9th, LLC v Shepard-Neely*, 77 Misc 3d 136(A), 182 NYS3d 486 [App Term 2d Dept 2022]) (“[A] nonpayment proceeding lies only where a ‘tenant has defaulted in the payment of rent, pursuant to the agreement under which the premises are held’ (RPAPL 711[2]) ....”); *265 Realty, LLC v Trec*, 39 Misc 3d 150(A), 975 NYS2d 370, 370 [App Term 2d Dept 2013] (“Because a nonpayment proceeding must be predicated on a rental agreement that is in effect at the time the proceeding is commenced and no rental agreement was in effect, the petition must be dismissed”). “The relation of landlord and tenant is always created by contract, express or implied, and will not be implied where the acts and conduct of the parties negative its existence” (*Scarborough Manor Owners Corp. v Robson*, 57 Misc 3d 24, 28, 59 NYS3d 877, 880 [2d Dept 2017], quoting *Stern v Equitable Trust Co. of N.Y.*, 238 NY 267, 269, 144 NE 578, 578 [1924]).

Respondent asserts that she never signed a lease or entered into a rental agreement with Petitioner for the herein unregulated subject premises; however, she does acknowledge that she continued to pay the former owner, Alice Formey, rent each month for an unspecified period of time (NYSCEF Doc. No. 37). Respondent asserts that she never agreed to pay rent in the amount of \$1,000.00 as alleged in the Petition (NYSCEF Doc. No. 1). Respondent has established *prima facie* entitlement to a judgment as a matter of law as to her defense that there was no lease in effect at the commencement of this proceeding, and the burden now shifts to Petitioner to establish a triable issue of fact.

In opposition Petitioner, through its trustee William Rozier, asserts that Respondent agreed to a rental increase at the monthly rent of \$1,000.00 and paid such rent to Mr. Rozier in his capacity as guardian for Alice Formey in July 2021 and continued to pay the \$1,000.00 monthly to Petitioner’s trust through approximately July 2022 (NYSCEF Doc. No. 43). Thus, Petitioner asserts that this oral agreement creates a triable issue of fact as to whether there was an oral month-to-month agreement between the parties.

However, the question before the court is whether there was an agreement between the parties *at the time the proceeding was commenced*. The court answers this question in the negative. Petitioner makes no allegation of any express act from the Respondent showing the existence of an oral agreement or an implied agreement to pay rent after July 2022 outside of the filing a breach of contract complaint in Kings County Civil Court in August 2022, which Petitioner attaches as Exhibit C (NYSCEF Doc. No. 46). However, said breach of contract claim does not provide proof of a continuous agreement to pay rent at the time of commencement of the instant proceeding.

Further, Petitioner's attorney affirmation acknowledges that any agreement for rent for more than one year must be written pursuant to N.Y. General Obligations Law § 5-703(2) (NYSCEF Doc. No. 42, pp. 6) and notes that Petitioner refused to give a written lease agreement to Respondent. As Petitioner indicates that the oral agreement to pay rent commenced in July 2021, said agreement could not extend over two years to the time of commencement of the instant proceeding in 2023.

Accordingly, Respondent in reply argues that the court should grant summary judgment because any lease between the parties more than one year after the last month-to-month term must be in writing. The court agrees with Respondent, as it is uncontroverted that no rent was paid after July 2022, and Petitioner does not allege that Respondent at any point thereafter agreed to pay ongoing rent. Petitioner has thus not met its burden to establish a triable issue of fact and Respondent's motion for summary judgment must be granted.

### Conclusion

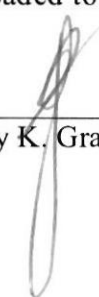
Accordingly, it is,

ORDERED, the Respondent's motion for summary judgment is granted and the proceeding is dismissed. It is also,

ORDERED, Respondent shall serve Petitioner with a notice of entry of this Decision/Order within 7 days of it being uploaded to NYSCEF.

This constitutes the Decision and Order of the court, which shall be uploaded to NYSCEF.

Dated: Brooklyn, NY  
May 9, 2025

  
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Sulay K. Grant, JHC