

Ninth St. LLC v Breil

2025 NY Slip Op 34080(U)

October 10, 2025

Civil Court of the City of New York, New York County

Docket Number: Index No. L&T 321443/23

Judge: Clinton J. Guthrie

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This opinion is uncorrected and not selected for official publication.

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

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NINTH STREET LLC,

Petitioner,

Index No. L&T 321443/23

-against-

DECISION/ORDER

RUTH BREIL, WEIHAN FANG, "JOHN DOE,"
"JANE DOE,"

Respondents.

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Present:

Hon. CLINTON J. GUTHRIE
Judge, Housing Court

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of petitioner’s motion for discovery of respondent Ruth Breil and third parties JP Morgan Chase and the New York City Department of Finance, and respondent Ruth Breil’s cross motion to dismiss:

Papers	Numbered
Notice of Motion & All Documents Annexed.....	<u>1 (NYSCEF #33-45)</u>
Notice of Cross Motion & All Documents Annexed.....	<u>2 (NYSCEF #47-50)</u>
Affirmations in Reply & Opposition.....	<u>3 (NYSCEF #51-53)</u>
Reply Affirmation (for Cross Motion).....	<u>4 (NYSCEF #54)</u>

Upon the foregoing cited papers, the decision and order on petitioner’s motion and respondent’s cross motion, consolidated for determination herein, is as follows.

PROCEDURAL HISTORY

This summary holdover proceeding based upon a notice of termination dated October 19, 2023 was filed in November 2023. Respondent Ruth Breil (hereinafter “respondent”) appeared through counsel on January 11, 2024. By Decision/Order dated November 21, 2024, Judge Joan Rubel quashed certain subpoenas served by petitioner and denied petitioner’s motion for use and

occupancy as premature.

Subsequently, petitioner moved for discovery, both from respondent and third parties JP Morgan Chase and the NYC Department of Finance, in December 2024. Respondent opposed the discovery motion and cross-moved to dismiss. After briefing was complete on both motions, this court heard argument on March 11, 2025.

DISCUSSION/CONCLUSION

Inasmuch as respondent’s cross motion seeks dismissal for failure to state a cause of action, the court will address it first, as it may render petitioner’s motion for discovery moot (*see Datta v Terrapin Indus., LLC*, 2011 NY Slip Op 33562[U] [Civ Ct, Queens County 2011]).

While respondent seeks dismissal pursuant to CPLR §§ 3211(a)(2) and 3211(a)(7), the court does not find there to be any viable challenge to this court’s jurisdiction over this proceeding’s subject matter. Thus, the motion is denied to the extent that it seeks relief pursuant to CPLR § 3211(a)(2) (*see 170 West 85th Street Tenants Assn. v Cruz*, 173 AD2d 338, 339 [1st Dept 1991] [Housing Court is “vested with subject matter jurisdiction over housing matters by statute.”]; *433 West Assocs. v Murdock*, 276 AD2d 360, 360-361 [1st Dept 2000]; *Williamsbridge-3067 Realty LLC v Ramos*, 86 Misc 3d 130[A], 2025 NY Slip Op 50975[U] [App Term, 1st Dept 2025]).

As for the motion pursuant to CPLR § 3211(a)(7), respondent argues that petitioner failed to state a cause of action in the notice of termination or petition under any cited ground of the Rent Stabilization Code (RSC). Petitioner opposes the request for dismissal in all respects.

The notice of termination alleges that respondent violated several sections of the Rent Stabilization Code, namely sections 2524.3(c), (d), and (h), and 2525.1, 2525.4, 2525.6, and

2525.7. The notice alleges that respondent illegally sublet her apartment, and profited and commercially exploited her sublessees, who were college students, by purportedly charging them rents in excess of the amounts permitted under the law.

The court notes that the outset that RSC Sections 2525.1, 2525.4, 2525.6, and 2525.7 are under the “Prohibitions” heading in the Code. However, they are not grounds for eviction. The permissible grounds for eviction are included in Section 2524.3 of the Rent Stabilization Code. A rent stabilized tenant “can be evicted only upon one of the grounds set forth in Rent Stabilization Code (9 NYCRR) § 2524.3 and only after being served with the notices required under section 2524.2 of the Code.” (*Beverly Holding NY, LLC v Blackwood*, 63 Misc 3d 160[A], 2019 NY Slip Op 50877[U], *2 [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2019] [internal citation omitted]).

To the extent that the notice of termination references three (3) subsections of RSC § 2524.3, the court will address them in turn. First, RSC § 2524.3(c) applies where “[o]ccupancy of the housing accommodation is illegal because of the requirements of law and the owner is subject to civil or criminal penalties therefor, or such occupancy is in violation of contracts with governmental agencies.” (9 NYCRR § 2524.3(c)). While the notice conclusorily states that petitioner is subject to civil and criminal penalties, no specific penalty is described. Nor does the notice specifically state that the purported occupancy is in violation of contracts with government agencies or identify any such contracts. The Appellate Term, First Department has repeatedly held that in the absence of a relevant violation or showing that the owner is actually subject to civil or criminal penalties for illegal occupancy, no claim under RSC § 2524.3(c) lies (*see JMW 75 LLC v Wielaard*, 47 Misc 3d 133[A], 2015 NY Slip Op 50473[U] [App Term, 1st

Dept 2015]; *210 W. 94 LLC v Concepcion*, 2003 NY Slip Op 50612[U] [App Term, 1st Dept 2003]; *625 West End, Inc. v Howard*, 2001 NY Slip Op 40496[U] [App Term, 1st Dept 2001]).

As the notice at issue here makes no such allegations of a violation or actual civil or criminal penalties being imposed, petitioner has failed to state a cause of action under RSC § 2524.3(c).

The next relevant ground is RSC § 2524.3(d), which is applicable where “[t]he tenant is using or permitting such housing accommodation to be used for immoral or illegal purpose.”

While the ground is not oft-cited in the reported caselaw, in the instances where it has, it is most frequently discussed in the context of habitual criminal (often drug-related) activity being conducted in an apartment, and considered in conjunction with RPAPL §§ 711(5) and 715 (so-called bawdy-house statutes) (*see New York City Housing Authority v Harvell*, 189 Misc 2d 295 [App Term, 1st Dept 2001]; *Hunts Point Housing Development Fund Corporation v Padilla*, 67 Misc 3d 1233[A], 2020 NY Slip Op 50708[U] [Civ Ct, Bronx County 2020]; *Normandy Realty Inc. v Boyer*, 2 Misc 3d 407 [Civ Ct, Bronx County 1996]; *2312-2316 Realty Corp. v Font*, 140 Misc 2d 901 [Civ Ct, Bronx County 1988]; *see also 855-79 LLC v Salas*, 40 AD3d 553, 555 [1st Dept 2007] [“To warrant eviction based on use of premises for illegal activity, use ‘implies doing of something customarily or habitually upon the premises.’” [Quoting *1021 Ave. St. John Hous. Dev. Fund Corp. v Hernandez*, 154 Misc 2d 141, 145 [Civ Ct, Bronx County 1992]). Even assuming the truth of the allegations in the notice of termination here, the court does not find them to constitute conduct that is within the ambit of RSC § 2524.3(d) (*see 128 Second Realty LLC v Dobrowolski*, 51 Misc 3d 147[A], 2016 NY Slip Op 50772[U] [App Term, 1st Dept 2016]).

The third and final ground cited is RSC § 2524.3(h), which provides that “[i]n the event

of a sublet, an owner may terminate the tenancy of the tenant if the tenant is found to have violated the provisions of section 2525.6 of this Title.” Rent Stabilization Code Section 2525.6 governs a tenant’s right to sublet and includes restrictions on what can be charged to a sublessee (“no more than a 10 percent surcharge” if the premises is fully furnished) and limiting subletting to no more than two (2) years in a four-year period. The notice asserts that respondent has illegally partitioned her apartment, sublet her apartment to a series of college students, who are identified by name, without petitioner’s permission, placed advertisements in a Columbia University off-campus housing website, and overcharged her subtenants.

Assuming arguendo petitioner has stated a sufficient cause of action under RSC § 2524.3(h), there is no dispute that it did not serve a notice to cure before serving the notice of termination. An unlawful sublet constitutes a breach of a substantial obligation of the tenancy, which requires service of a 10-day notice to cure under the Rent Stabilization Code (*see Graham Ct. Owners Corp. v Taylor*, 49 Misc 3d 7, 8 [App Term, 1st Dept 2015]). Only where the sublet is undertaken to “realize substantial profits not lawfully available to the landlord . . . systematically, and for a substantial length of time” is the right to cure foreclosed (*Goldstein v Lipetz*, 150 AD3d 562, 563 [1st Dept 2017]; *see also 220 West 93rd St., LLC v Stavrolakes*, 33 AD 491 [1st Dept 2006]).

While the notice is replete with references to “commercial exploitation” and “illegal profiteering,” the court does not find that the conduct alleged constitutes the type of systematic commercial subletting to procure substantial profits described in *Goldstein v Lipetz*. The first sublessee, a Mollye Liu, is alleged to have been in possession for 3 months in 2023 and paid, on a per-month basis, less than the legal regulated rent and even less than respondent’s SCRIE

(Senior Citizen Rent Increase Exemption)-frozen rental amount. Another sublessee, Weihan Fang, is alleged to be residing in the apartment at the time of the notice, but no allegation is made about how much she was paying to respondent. Additional sublessees, Zhoufan Ying (December 2022-June 2023) and Alyssa Belgay (December 2021 to March 2022) are alleged to have resided in the premises, but there is no allegation about what they were charged. As petitioner does not sufficiently allege facts constituting actual profiteering, the court finds that a notice to cure was required to be served before petitioner could proceed pursuant to RSC § 2524.3(h) (*see Taylor*, 49 Misc 3d at 8).

Accordingly, in the absence of any notice to cure, petitioner lacks a cause of action to proceed herein. Respondent's cross motion to dismiss pursuant to CPLR § 3211(a)(7) is granted as a result. Upon the granting of respondent's cross motion, petitioner's motion for discovery is denied as moot. The clerk shall issue a judgment dismissing the petition (*see* CPLR § 411).

This Decision/Order will be filed to NYSCEF.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated: New York, New York
October 10, 2025



HON. CLINTON J. GUTHRIE
J.H.C.

