

46 Misc.3d 30
Supreme Court, Appellate Term,
First Department, New York.

1700 FIRST AVENUE LLC,
Petitioner–Landlord Respondent,

v.

Marushka PARSONS–NOVAK, and Robert
Novak, Respondent–Undertenant–Appellant.

Oct. 22, 2014.

Synopsis

Background: Landlord brought holdover action against tenant. Tenant moved to dismiss. The Civil Court, City of New York, New York County, [Brenda S. Spears, J.](#), denied motion. Tenant appealed.

Holdings: The Supreme Court, Appellate Term held that:

[1] landlord was not required to add husband's name to renewal leases, and

[2] landlord did not waive right to prosecute possessory claim.

Affirmed.

West Headnotes (4)

[1] Landlord and Tenant

🔑 Sufficiency of notice

An occupant who is not a party to a lease agreement need not be served with the prescribed notices for eviction, and this rule obtains even where the occupant is the spouse of the record tenant. [9 NYCRR 2524.2\(c\)\(2\)](#).

[1 Cases that cite this headnote](#)

[2] Landlord and Tenant

🔑 Renewal Leases

Landlord was not required to add tenant's husband's name to renewal leases, where tenant ratified renewal leases and eschewed all other available remedies after landlord allegedly failed to make the additions. [9 NYCRR 2522.5\(g\), 2524.2\(c\)\(2\)](#).

[Cases that cite this headnote](#)

[3] Landlord and Tenant

🔑 Service of notice

Rent-stabilized tenant failed to allege any specific facts sufficient to overcome presumption of valid service created by landlord's process server's affidavit in holdover summary proceeding.

[Cases that cite this headnote](#)

[4] Landlord and Tenant

🔑 Acceptance of rent

Prior to holdover proceeding landlord returned rent payments to tenant without prejudicial delay, and thus did not waive right to prosecute possessory claim by retaining such payments after terminating the tenancy.

[Cases that cite this headnote](#)

Attorneys and Law Firms

****758** [Jerald D. Kreppel](#), New York City, for appellants.

[Jeffrey M. Goldman](#) and [Judith M. Brener](#), New York City, for respondent.

PRESENT: [SCHOENFELD, J.P.](#), [SHULMAN, HUNTER, JR., JJ.](#)

Opinion

PER CURIAM.

***31** Order ([Brenda S. Spears, J.](#)), entered August 20, 2013, affirmed, with \$10 costs.

[1] [2] We reject, as did Civil Court, the technical arguments advanced by tenant-appellant in support of her

cross motion to dismiss the within nonprimary residence holdover summary proceeding. Neither the record tenant nor her husband, respondent Novak, may now be heard to argue that the combined notice of lease nonrenewal and termination timely served upon tenant was not a proper predicate for landlord's eviction claim. The relevant notice provisions of the Rent Stabilization Code (*see* 9 NYCRR §§ 2524.2[c][2], 2524.4[c]) are expressly made applicable only to a tenant. An occupant who is not a party to a lease agreement need not be served with the prescribed notices (*see generally* 170 W. 85th St. Tenants Assoc. v. Cruz, 173 A.D.2d 338, 339–340, 569 N.Y.S.2d 705 [1991]), and this rule obtains even where the occupant is the spouse of the record tenant (*see Katz Park Ave. Corp. v. Olden*, 158 Misc.2d 541, 546, 601 N.Y.S.2d 757 [1993]). Tenant's contention that landlord improperly denied her (vaguely described) requests to add her husband's name to one or more prior renewal leases (*see Rent Stabilization Code* [9 NYCRR] § 2522.5[g]) is stated in the most conclusory of terms and, in any event, tenant, so far as appears, executed and ratified each of the prior lease renewals and eschewed whatever remedy may have been available to her in another forum, at another time. To the extent that *Chudnoff v. Collura*, 36 Misc.3d 1223[A], 2012 N.Y. Slip Op. 51432[U], 2012 WL 3139546 (Civ.Ct., N.Y. County 2012) can be read to support a contrary result, it should not be followed.

[3] [4] *32 We need not tarry long in disposing of tenant's remaining points. Tenant failed to come forward with any factually specific, detailed evidence to rebut the

presumption of valid service created by the landlord's process server's affidavit (*see Madison Acquisition Group, LLC v. 7614 Fourth Real Estate Dev., LLC*, 111 A.D.3d 800, 800, 975 N.Y.S.2d 349 [2013]). No violation of any local law or administrative rules regulating the licensure or conduct of process servers (*see* Administrative Code of City of N.Y. § 20–410; 6 RCNY § 2–233[b]) was shown on this record, and certainly none that would serve to invalidate the landlord's otherwise valid service of process (*see Feierstein v. Mullan*, 120 Misc.2d 574, 574, 467 N.Y.S.2d 478 [1983]). **759 Nor does any purported failure on the landlord's part to comply with the publishing requirements of Limited Liability Law § 206 constitute a jurisdictional defect requiring dismissal (*see Acquisition Am. VI, LLC v. Lamadore*, 5 Misc.3d 461, 463, 784 N.Y.S.2d 329 [2004]). Finally, tenant failed to raise a triable issue with respect to her (unpleaded) defense that landlord waived its right to prosecute its possessory claim by “ retaining ” tenant's rent payments after terminating the tenancy but before commencing the proceeding, where the record shows that the landlord returned the payments to tenant without prejudicial delay (*see ABN Assocs., LLC v. Citizens Advice Bureau, Inc.*, 27 Misc.3d 143[A], 2010 N.Y. Slip Op. 51075, 2010 WL 2473144 [App.Term, 1st Dept.2010]).

All Citations

46 Misc.3d 30, 998 N.Y.S.2d 757, 2014 N.Y. Slip Op. 24314