CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART D
---------- X
MATTHEW WEISSMAN and SETH WEISSMAN,
As Tenants In Common,

Petitioner/Landlord, Index No. 52116/2012

- against -

DECISION/ORDER

KEVIN PATTON,
Respondent/Tenant.
---------- X
Present:
Hon. Jack Stoller
Judge, Housing Court

Recitation, as required by CPLR §2219(a), of the papers considered in the review of this motion.

Papers	**Numbered**
Notice of Motion and Supplemental Affidavits Annexed.....	1
Affirmation In Opposition	2
Reply Affirmation	3

Upon the foregoing cited papers, the Decision and Order on this Motion are as follows:

Matthew Weissman and Seth Weissman, as tenants in common, the petitioner in this proceeding (collectively, "Petitioners") commenced this holdover proceeding against Kevin Patton, the respondent in this proceeding ("Respondent"), seeking possession of 354 West 20th Street, Room 1, New York, New York ("the subject premises") on the ground that Petitioners seek to occupy the subject premises for the personal use of, *inter alia*, Petitioner Matthew Weissman.

As a predicate to such a proceeding against a rent-stabilized tenant, an owner must serve such a tenant with a notice indicating the owner's intention not to renew an extant lease in

between one hundred fifty and ninety days prior to the expiration of such a lease ("Golub notice"). 9 N.Y.C.R.R. §2524.2(c)(3). While the petition alleges that a notice was sent within that time frame, the notice does not allege that Petitioners are declining to renew Respondent's lease, as the petition alleges that the subject premises are subject to the hotel provisions of the Rent Stabilization Law. Owners of housing accommodations subject to the hotel provisions of the Rent Stabilization Code do not have to comply with lease renewal procedures. 9 N.Y.C.R.R. §2523.5(a). Accordingly, the predicate notice such owners serve need not be a Golub notice. 1234 Broadway LLC v. Jing Yong Xu, 10 Misc. 3d 655, 656-657 (Civ. Ct. N.Y. Co. 2005).

Respondent's answer ("the Answer") alleges, *inter alia*, that the subject premises are not subject to hotel provisions of the Rent Stabilization Law but rather, merely the Rent Stabilization Law. The Answer further alleges that Respondent has not been in receipt of renewal leases, as would otherwise be required by the Rent Stabilization Code, and that Petitioners' failure to offer prior renewal leases to Respondent renders the timing of their predicate notice defective. See Nussbaum Res. I LLC v. Gilmartin, 4 Misc. 3d 80, 81 (App. Term 1st Dept. 2004) (a landlord is required to first renew a tenant's lease in order to properly commence an eviction proceeding when the predicate for such proceeding is a Golub notice).

Subsequent to the commencement of this proceeding, Respondent commenced an administrative proceeding at the Division of Housing and Community Renewal ("DHCR") seeking a determination as to the status of the subject premises, to wit, whether the subject premises were subject merely to the Rent Stabilization Code or the hotel provisions of the Rent Stabilization Code.

Respondent now moves to stay this proceeding pending the outcome of the administrative proceeding at DHCR. A stay is normally only justified where the decision in one action will determine all the questions in the other action, and the judgment on one trial will dispose of the controversy in both, requiring complete identity of the parties, the causes of action and the judgment sought. 952 Assoc., LLC v. Palmer, 52 A.D.3d 236, 236-37 (1st Dept. 2008). However, overlapping issues and common questions of law and fact are factors favoring a stay, particularly when the determination of the other action may dispose of or limit issues which are involved in the subsequent action, Belopolsky v. Renew Data Corp., 41 A.D.3d 322, 322-323 (1st Dept. 2007), even though there was not a complete identity of parties. Cf. Oxbow Calcining USA Inc. v. American Indus. Partners, 2012 NY Slip Op 5114 (App. Div. 1st Dept. June 26, 2012) (a pending arbitration proceeding justifies a stay under such circumstances).

Certainly, if DHCR determines that the subject premises is not subject to the hotel provisions of the Rent Stabilization Code, then Petitioner's failure to offer a prior renewal lease to Respondent would render its predicate notice defective. Nussbaum Res. I LLC, supra, 4 Misc.3d at 81. Thus, the outcome of the proceding at DHCR could be determinative of the instant proceeding. Respondent annexes an affidavit to his motion alleging that there is no maid service, linen service at the subject premises, nor twenty-four-hour staffing of the lobby, demonstrating at least a *prima facie* showing of likelihood of success on merits. 9 N.Y.C.R.R. §2521.3(a) (such services must be provided in order for an owner to retain or continue a building's status as a hotel).

That does not end the inquiry, however. Civil Court is the preferred forum for landlord-

tenant disputes. Langotsky v. 537 Greenwich LLC, 45 A.D.3d 405 (1st Dept. 2007). Only where Civil Court is without authority to grant the relief sought should the prosecution of a summary proceeding be stayed. Scheff v. 230 E. 73rd Owners Corp., 203 A.D.2d 151, 152 (1st Dept. 1994). Respondent cites authority standing for the proposition that DHCR is vested with the exclusive jurisdiction to classify buildings as hotels or apartment houses. Cambridge Development LLC v. McCarthy, 2003 N.Y. Slip Op. 51433U (Civ. Ct. N.Y. Co.), Benjamin Shapiro Realty Co. v. Henson, 162 Misc. 2d 1, 7 (Civ. Ct. N.Y. Co. 1994).

Both Cambridge Development LLC, supra, and Benjamin Shapiro Realty Co., supra, rely upon the construction of the language of the Rent Stabilization Code used in the holding of Sohn v. Calderon, 78 N.Y.2d 755 (1991), that DHCR has exclusive jurisdiction to hear applications by property owners seeking to withdraw housing units from the market for purposes of demolition. The Court therein found it significant that both the Rent Stabilization Law and the Rent Stabilization Code identified DHCR as the body to make such determinations. Id. at 765. 9 N.Y.C.R.R. §2521.3(a) uses the same language, denoting DHCR as the body that is to classify a building as a hotel or as an apartment building. Based upon that construction, the Court finds the reasoning of Cambridge Development LLC, supra, and Benjamin Shapiro Realty Co., supra to be persuasive.

Although Respondent's commencement of the proceeding at DHCR subsequent to the commencement of this proceeding militates against a stay, the Court finds that this infirmity is outweighed by the factors in favor of a stay, to wit, DHCR's exclusive jurisdiction to determine an issue that would be dispositive of the resolution of this proceeding. The Court further notes

that Petitioners' affidavit in opposition to the motion does not challenge Respondent's sworn statement that twenty-four-hour lobby staffing, linen services, and maid services are not supplied at the subject premises. The only prejudice this affidavit alleges with regard to a stay is an allegation that Respondent does not physically occupy the subject premises, but uses it as a "storage facility creating an extreme hazard."

Accordingly, the Court grants Respondent's motion for a stay of this proceeding, pending the outcome of the complaint at DHCR docketed at #AO410010 AD. See Reynolds v. Division of Hous. & Community Renewal, 199 A.D.2d 15, 16 (1st Dept. 1993) (a stay was appropriate to enable DHCR to render a decision prior to the forfeiture of a tenant's possessory interest). The stay is conditioned upon Respondent keeping current with use and occupancy obligations at the rate Respondent paid prior to the commencement of this proceeding. To mitigate prejudice that may accrue to Petitioner as a result of this stay, Petitioner may pursue appropriate remedies to the extent Petitioner has a cause of action sounding in nuisance against Respondent without prejudice to Petitioner's cause of action in the instant proceeding herein.

This constitutes the decision and order of this Court.

Dated: New York, New York
August 3, 2012

_____
HON. JACK STOLLER
J.H.C.