

<b>559 Apts. LLC v Caver</b>
2015 NY Slip Op 32125(U)
November 13, 2015
Civil Court of the City of New York, New York County
Docket Number: L&T 65827/15
Judge: Sabrina B. Kraus
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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK: HOUSING PART R  
\_\_\_\_\_  
559 APARTMENTS LLC, X

HON. SABRINA B. KRAUS

Petitioner-Landlord

**DECISION & ORDER**  
**Index No.: L&T 65827/15**

-against-

RICKEY CAVER  
559 West 140<sup>th</sup> Street, Apt. 53  
New York, New York 10031

Respondent-Tenant

“JANE DOE”

Respondent-Occupant  
\_\_\_\_\_  
X

**BACKGROUND**

This holdover proceeding was commenced by **559 APARTMENTS LLC** (Petitioner) seeking to recover possession of 559 West 140<sup>th</sup> Street, Apt. 53, New York, New York 10031 (Subject Premises) based on the allegation that **RICKEY CAVER** (Respondent) the rent-stabilized tenant of record has created a nuisance by intentionally chronically failing to pay rent in a timely manner to harass the owner in violation of Section 2524.3(b) of the Rent Stabilization Code.

**PROCEDURAL HISTORY**

Petitioner issued a notice of termination dated April 17, 2015, terminating Respondent’s tenancy. The notice asserted that it is believed that Respondent was the successor tenant of the Subject Premises as of May 2007, and that since that date the rent has been paid late or not at all.

The notice asserts that the landlord has brought eight nonpayment proceedings against Respondent since 2007, and that Respondent only paid the rent at the conclusion of the proceedings. The petition issued May 27, 2015, and the proceeding was initially returnable June 11, 2015.

Respondent failed to appear on the initial court date, and the proceeding was adjourned to July 15, 2015 for inquest. The court (Black, J) conducted an inquest on July 15, 2015, and awarded Petitioner a final judgment of possession. The warrant of eviction issued on September 10, 2015.

On October 7, 2015, Respondent moved to vacate the default judgment. Respondent asserted that he had been improperly served, and that he had not received the court papers because he had been evicted on July 15, 2015 pursuant to a nonpayment proceeding under index Number 81289/14. Respondent further asserted that he was not aware this proceeding was also pending at the same time, that he sent Petitioner checks which Petitioner held and did not cash, and that he has lived in the Subject Premises for forty years.

Pursuant to a decision and order dated October 22, 2015, the court (Black, J) granted Respondent's motion. The court found that although Respondent had failed to establish an excusable default the judgment and warrant should be vacated "in the interests of justice" based on Respondent's long term occupancy.

On November 9, 2015, the proceeding was assigned to Part R for trial. Prior to the commencement of the trial, Respondent orally asserted his answer on the record as: a general denial; that payments had been offered and refused; that he suffered from addiction to alcohol; and that Petitioner had offered him a renewal and accepted rent while seeking to terminate his

tenancy in this proceeding.

The trial took place and the court reserved decision.

### **FINDINGS OF FACT**

Petitioner is the owner of the Subject Building, pursuant to a deed dated March 6, 2000 (Ex 1). There is a valid MDR for the building through August 2016 (Ex 2).

Petitioner has registered the rent for the subject premises as \$728.39 (Ex 3).

Respondent is the current rent stabilized tenant of record for the Subject Premises. Respondent succeeded to the tenancy of the prior tenant of record, who he testified died in November 2006. Respondent's succession was first acknowledged by Petitioner in the form of a Renewal in late 2009. On October 21, 2010, Respondent executed a lease renewal for the Subject Premises (Ex 4). The renewal was dated December 1, 2009, and was for a one year term through March 31, 2011, at a monthly rent of \$634.82.

The rent registration shows that Petitioner took two rent increases in between Caver's death and the renewal executed by Respondent. No evidence was offered to explain the basis for these increases, no executed renewal leases were offered into evidence for this period.

Respondent never executed another renewal lease for the Subject Premises. Petitioner never the less took annual increases from 2011 through 2015, which they registered were pursuant to renewal leases and on April 24, 2015 registered the rent at \$728.39 (Ex 3).

Petitioner deemed five renewals as executed during this period (Ex 5A -5E). Petitioner's agent testified as to her general practice of sending out the renewals by regular mail, but otherwise offered no documentation to substantiate when the renewals were actually mailed.

Letters related to the renewals were also offered into evidence.

There is no basis in the record to support that the renewal dated December 1, 2014 ,for a rent of \$728.39, was properly deemed renewed. It was offered for a period after which deemed renewals were no longer permitted under the Rent Stabilization Code, and Petitioner sent Respondent written notice that absent said renewal being executed and returned, which Petitioner admitted at trial never happened, Respondent's tenancy would be deemed terminated (Ex A). Notwithstanding this, Petitioner billed Respondent for the increased amount as of April 1, 2015(Ex 7), registered the increased amount in the legal regulated rent and had the court include the increased amount in orders leading to Respondent's eviction in July of 2015 (*see discussion of 81289/2014 below*).

The court took judicial notice of six previous nonpayment proceedings instituted by Petitioner against Respondent between 2009 and 2014, and these files and their contents are considered part of the underlying record at trial.

***Index Number 60680/2009***

Petitioner asserted the rent had been demanded from Respondent personally, and that Respondent was the tenant of record pursuant to a written lease agreement for a term from April 1, 2008 through March 31, 2009, wherein he had agreed to pay a monthly rent of \$559.82. The arrears sought in that proceeding included an opening balance as of January 1, 2008 of \$2355.56, which was not further broken down and comprised most of the \$3970.30 sought in the petition. The amount sued for also included charges of an additional \$2353.75 for legal fees and

late fees (*see Petition and breakdown annexed thereto*).

Respondent failed to answer and Petitioner obtained a default judgment of possession on May 29, 2009. The warrant of eviction issued on June 2, 2009. On July 14, 2009, Respondent moved to vacate the default judgment. Respondent asserted that he had paid all rent due through May 2009, and that he had not been served with the papers prior to the Marshal's notice of eviction. The motion was granted pursuant to a stipulation which provided that execution of the warrant was stayed through August 14, 2009 for Respondent to pay \$3466 due through July 2009. The stipulation further stated "Petitioner will send copy of lease to respondent by 7/21/09." The stipulation was so-ordered by the court (Hahn, J).

On September 22, 2009, Respondent moved by order to show cause for a stay of eviction asserting that he had been suspended from work without pay for a period of 40 days, that he had paid \$2000 towards the arrears and needed time to pay the balance. On the return date, Respondent did not appear. Precious Moore ( Moore) appeared and the motion was adjourned to October 2, 2009, pursuant to a notation on the file which indicated that Respondent was out of state. Moore is Respondent's former girlfriend.

On October 2, 2009, Moore and Petitioner entered into a stipulation resolving the motion. The stipulation acknowledged payment in court of \$3000 by bank check, but never the less provided for the judgment and warrant to remain for payment of an additional \$270.64 alleged due through October 2009, even though it was only October 2 and a portion of October's rent had already been paid. The stipulation provided :

This payment is accepted on behalf of Ricky Caver only. After payment respondent owes \$270.64 through 10/31/09 & the execution of the warrant is stayed to 10/15/09 for payment of b \$270.64. Upon default warrant to execute. Precious Moore appears on the respondent's behalf due to a death in respondent's family & she is authorized to sign this agreement on his behalf.

The stipulation was so ordered by the court (Kaplan, J). The stipulation contained no current rent provision.

On November 17, 2009, Moore moved for a stay of eviction asserting that the amount due had been paid. Petitioner cross-moved for an order vacating the October 2, 2009 stipulation and "restoring the matter to the Trial Calendar." Petitioner's cross-motion alleged that the amount alleged due in the October 2009 stipulation was wrong and that Respondent owed more money through October 2009.

Moore's order to show cause was granted by the court (Wendt, J) pursuant to an order that provided that the judgment had been satisfied as acknowledged by Petitioner, and that the warrant was vacated. The court also granted Petitioner's cross-motion pursuant to an order which provided "Motion granted on consent only to extent that all stipulations under this index number are vacated. This is without prejudice to both parties claims to date and defenses thereto."<sup>1</sup>

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<sup>1</sup> There is no way to determine from the file whether Respondent appeared on the return date or whether the consent referred to in the court order was Moore's consent.

***Index Number 97690/2009***

This petition is dated December 4, 2009. The petition asserted a personal rent demand from Respondent and sought \$2374.64 in arrears for September 2009 through December 2009. The petition asserted that Respondent was the tenant of record pursuant to a written lease agreement, wherein he had agreed to pay \$604.82 per month.

Moore filed an answer on December 28, 2009, asserting that no rent demand had been made, all rent due through December 2009 had been paid, detailing necessary repairs in the Subject Premises and asserting that there was no lease agreement upon which to sue Respondent. The proceeding was initially returnable on January 5, 2010, and was adjourned to January 28, 2010, when it was discontinued without prejudice pursuant to a so-ordered stipulation.

No further proceedings were commenced for the next two and a half years.

***Index Number 69347/2012***

The petition is dated June 13, 2012, and asserts rent had been personally demanded. The petition asserted Respondent was the tenant of record, pursuant to a written lease agreement wherein Respondent agreed to pay \$673.44 per month. The arrears sought were \$3185.46 for a period covering February through June 2012.

Respondent appeared *pro se* and filed an answer on July 3, 2012. The answer asserted a portion of the rent sued for had already been paid, breach of warranty of habitability, and that Respondent was dependent on someone in the military service.

The proceeding was initially returnable on July 12, 2012, and was assigned to the Military Part. The parties entered into a stipulation, which was not so-ordered and provided that Respondent consented to the jurisdiction of the court, amendment of the petition through July 2012, and adjourning the proceeding to August 15, 2012 for Respondent to seek counsel and apply for assistance in paying the arrears with DSS. Additionally, Respondent agreed to pay \$673.44 by 7/19/12.

On August 15, 2012, Respondent failed to appear and the court (Stanley, J) awarded Petitioner a final judgment in the amount of \$3503.90 on default for all rent due through July 2012. Issuance of the warrant was stayed five days for payment.

On August 16, 2012, Jazmin Allen (Allen) Respondent's daughter moved by order to show cause to vacate the default judgment. Allen alleged that Respondent had defaulted because he was ill and out of town, and that Respondent had made a partial payment and was willing to pay the balance. The order to show cause was denied on August 27, 2012. Petitioner had failed to appear and Respondent appeared but had failed to provide proof of service.

Respondent renewed the application to vacate the default pursuant to a second order to show cause on August 27, 2015, wherein Respondent asserted he had defaulted on August 15, 2012, because he had been hospitalized, and that he had made partial payments towards the arrears and needed time to pay the balance. That motion was returnable on September 6, 2012.

On September 6, 2012, the court (Stanley, J) granted the motion pursuant to an order

which provided:

Issuance of the warrant forthwith. \$4850.78 is owed in arrears through Sept at \$673.44 monthly. Execution of the warrant is stayed to 9/28/12 for payment of \$4,850.78. Petitioner may pre-serve Notice of Eviction by mail only on 9/20/12. Given the history of this case no more time will be granted without proof of funds.

The warrant of eviction issued on October 17, 2012.

On December 11, 2012, Respondent moved for a stay of eviction by order to show cause. Respondent stated all arrears had been paid with assistance from welfare, and that he had been in the hospital as an in patient for a one month period. Respondent annexed a letter confirming that he had been in a medical facility for the period between October 4 and October 26, 2012 for treatment of alcoholism and chemical dependency. Respondent also annexed copies of checks issued by DSS to Petitioner dated November 1, 2012, showing the full judgment amount pursuant to Judge Stanley's order had been issued to Petitioner. Respondent failed to appear on the return date, the motion was denied on default, and the court directed that the eviction could proceed on re-mailing of Marshall's notice.

On December 21, 2012, Respondent again moved by order to show cause for a stay of eviction. Respondent stated all rent except that of December 2012 had been paid and that he had not appeared on the prior court date because he understood said payment ended the proceeding. The motion was granted by the court (Kraus, J) pursuant to an order which found that \$2020.32 in arrears remained due through December 2012 and stayed execution for payment of same.

The amount was paid by January 15, 2013 (Ex 7) and the proceeding was concluded.

*Index Number 63957/2013*

The petition is dated April 2013, and asserted that the rent had been personally demanded from Respondent. The petition sought rent for a period of January through March 2013, at a monthly rent of \$693.44. The petition alleged Respondent was in possession pursuant to a written lease agreement, wherein he had agreed to pay said rent.

Petitioner obtained a default judgment and the warrant of eviction issued on June 4, 2013. On July 2, 2013, Respondent moved by order to show cause to vacate the default judgment. Respondent alleged that he had not been properly served, that repairs were badly needed in the Subject Premises, and that he was willing and able to pay the arrears. The motion was granted by the court (Kraus, J) on the return date, pursuant to an order which noted that the parties agreed that there was \$4124.40 in arrears due through July 2013, and granted Respondent's request to stay execution through 7/31/15 for payment of same.

On August 30, 2013, Moore moved for a further stay of the eviction asserting that Respondent had been injured, was hospitalized and was seeking a loan from his pension to pay the arrears. That motion was granted by the court (Kaplan, J) pursuant to an order which stayed execution of the warrant through September 16, 2013 for payment of \$4817.84 in arrears due through August 2013. The court incorporated a current rent provision into its order.

On October 8, 2013, Respondent moved for a further stay, asserting he had to reapply for the pension loan and had made partial payments. The motion was denied by the court (Kraus, J)

without prejudice to renewal on proof of certified funds for the \$6204.72 agreed due through October 2013.

On October 23, 2013, Respondent again moved for a stay of eviction, attaching proof of two bank checks totaling \$6200.00. Respondent failed to appear on the return date of November 4, 2013, and the motion was denied. The bank checks were made payable to Petitioner, but the remitter was listed as Hashim Johnson on one, and Nicholas J Uddo on the other.

Petitioner acknowledged receipt of \$6210.00 on November 5, 2013 (Ex 7).

***Index Number 54973/2014***

The petition is dated February 11, 2014, and asserted a personal rent demand. The arrears sought were \$3143.48 for a period covering November 2013 through January 2014, at a monthly rent of \$693.44. Petitioner obtained a default judgment on June 9, 2014.

Respondent moved for an order vacating the default judgment on July 18, 2014. Respondent asserted he had not been properly served, that he had money to pay towards the arrears and that he had a pending application for a one shot deal with DSS. The motion to vacate the default was denied by the court (Stoller, J) pursuant to a decision and order which found that through July there were arrears totaling \$6,346.74, and staying execution through August 2014 for payment. The order further directed Petitioner to make repairs and provided:

Respondent alleges that the subject premises has not been painted in more than three years, the window springs in the front room do not work, that plaster has fallen from the

hallway ceiling, leaks in the back room and kitchen, the lock to the front door does not work. Petitioner is to inspect and repair as legally required, access August 4, 2014, August 5, 2014, and August 6, 2014, 9 am to 5 pm, workers to arrive by 11:30 am.

On July 28, 2014, Respondent moved for a stay of the eviction asserting that Petitioner has prematurely served a Marshall's Notice. The motion was denied by the court (Katz, J) on the return date, based on the court's finding that the service of the notice had not been premature.

Respondent was evicted in August 2014, and on August 13, 2014 moved for an order to be restored to possession. Respondent asserted that there had been a death in his family, that he had been pre-occupied with other matters and that he had funds to pay towards the arrears, in addition to a pending application for assistance with Catholic Charities. The motion was granted by the court (Katz, J) to the extent of staying reletting through August 27, 2014, for Respondent to pay \$8742.92 in arrears and legal fees and be restored to possession. The court further held " Petitioner argues against the stay saying that resp succeeded to his grandmother's tenancy & has been in Court ever since. Resp does not pay his rent according to petr w/o a one shot deal. In the interest of justice resp is being given this final opportunity. If Resp doesn't pay his rent petr's remedy is a chronic nonpay holdover."

Respondent moved a second time for an order to be restored to possession on August 29, 2014. Respondent attached documentation that showed that DSS had issued checks for rent arrears totaling \$6492.90 on August 23, 2014, and stated there had been a delay in the delivery of the checks to Petitioner. The motion was granted by the court (Kaplan, J) to the extent of

directing Petitioner to accept \$8892.92 tendered in court, and directing that Respondent be restored to possession forthwith, finding that said payment represented all arrears and legal fees due through August 2014.

***Index Number 81289/2014***

The petition sought \$1442.16 in arrears for September and October 2014 in addition to fees and costs. The petition alleged Respondent was in possession pursuant to a written lease agreement, wherein he agreed to pay \$721.18 per month, and that rent had been personally demanded from Respondent prior to the petition.

Petitioner applied for and received a default judgment from the court, and the warrant of eviction issued on February 19, 2015.

On March 20, 2015, Respondent moved to vacate the default. Respondent asserted that he had sent personal checks to Petitioner that Petitioner had not cashed, that he replaced these with a bank check that Petitioner also did not cash, and that he had not been properly served with the papers. On the return date, the parties entered into a stipulation wherein the motion was adjourned to April 17, 2015, for Respondent to have reissued a money order for \$4000 that he alleged having mailed to Petitioner in early February 2015, and which Petitioner denied receiving. On April 17, 2015, Respondent failed to appear and the motion was denied.

Later that day, Respondent came to court and again moved by order to show cause to vacate the default. Respondent stated he had been involved in an accident at work that resulted in his missing the court date. Respondent attached a cashiers check payable to Petitioner in the amount of \$4000 that had been issued February 2, 2015, as well as two money orders dated April

17, 2015, totaling \$1700.00. The motion was granted on the return date of April 28, 2015, by the court (Stoller, J) pursuant to a decision and order that stayed execution through May 8, 2015 for payment of \$5776.65 in arrears, plus May rent.

On June 8, 2015, Respondent again moved for a stay of eviction. Respondent asserted that he had attempted to tender payment to Petitioner and that Petitioner had refused to accept said payment. Annexed to the motion was a cashier's check payable to Petitioner for \$5000 issued on May 13, 2015 and two money orders dated May 28, 2015 totaling \$400.00. Respondent failed to appear and the return date and the motion was denied.

Later in the day on June 8, 2015, Respondent again moved for a stay of eviction. Respondent asserted he had missed his court appearance earlier that day because he had a concussion and that he had been hospitalized earlier in the day. The motion was denied by the court (Stoller, J) on the return date of June 17, pursuant to a decision and order that provided:

Respondent defaulted in appearing on his prior order to show cause. This was his second default on this matter. Accordingly, the Court only stayed an eviction another time because respondent appeared with documentation from a hospital showing that he was hospitalized and because Respondent showed money orders covering all of the rent owed to date. However, Respondent appeared on the return date and represented to the Court that he does not have the money. The Court did not deny the order at that point, but afforded Respondent an opportunity to obtain the funds and bring them to Court. After a passage of an hour and a half, Respondent has still not returned to Court.

The totality of Respondent's conduct in this matter amounts to a showing that there is no more good cause to stay the execution of the warrant in this matter. The Court denies the motion and vacates all stays.

Respondent returned to court later that same day and yet again moved for an order staying the eviction to which he attached money orders issued on various dated that had not been made payable to any payee and totaled \$6100.00. The court (Stoller, J) declined to sign the

order to show cause, finding that the credibility of Respondent's representations had been compromised by his conduct.

However, later that same evening, Respondent renewed his application before a different Judge (Gonzales, J) who signed the order to show cause which was returnable on June 26, 2015. On the return date, the motion was granted by the court (Stoller, J) pursuant to an order which found that after payment in court of \$6700 which "Petitioner accepts without prejudice to its claims and/or causes of action including but not limited to its holdover proceeding against Respondent now returnable in Housing court on July 15, 2015 pursuant to RPAPL §711(1)) ..." there remained \$553.43 due in arrears through June. The court stayed execution of the warrant through July 7, 2015 for payment of same plus July rent. The order allowed for pre-service of the Marshal's notice. Petitioner's records (Ex 7) reflect an additional \$435 was acknowledged received by Petitioner on June 30, 2015.

On July 21, 2015, Respondent again moved for a stay of the eviction. Respondent stated he had complied with the court's order by delivering the payment in person to Petitioner's office on June 30, 2015, and that Petitioner had proceeded to serve a notice of eviction anyway. Respondent argued that the judgment had been satisfied and the proceeding should be dismissed. However, the motion was denied on the return date, based on Respondent's failure to appear.

On July 22, 2015, an unidentified individual other than Respondent sought to have the court sign an order to show cause staying the eviction. The movant asserted that Respondent was out of town and the eviction had been scheduled. The court (Stoller, J) declined to sign the order to show cause absent proof of payment in full given Respondent's history of defaults and

misrepresentations to the court.

Respondent was evicted and on July 24, 2015 moved for an order to be restored to possession of the Subject Premises. Respondent asserted all rent due through June 2015 had been paid. The motion as granted by the court (Stoller, J) pursuant to an order which stayed reletting through July 31, 2015 for payment of \$826.82 in arrears plus \$2665.00 in legal and Marshal fees, and directed that Respondent be restored upon payment. Respondent made the payment and was restored to possession. Respondent paid \$3500 to Petitioner on July 31, 2015 (Ex B).

This proceeding followed.

Argentina Liranzo (AL) testified for Petitioner at trial. AL has been an office manager for Petitioner for 12 years, and her responsibilities include lease renewals and rent collection. AL testified that Respondent only paid rent in response to the commencement of eviction proceedings, and that Respondent had never offered an explanation for his payment history. AL had only spoken with Respondent on one occasion since she had been a manager. AL did not know the reason for Respondent's sporadic payments.

Petitioner also called Respondent as a witness. Respondent testified that he lives in the Subject Premises with his two daughters Jasmine Allen, who is 24, and Ambermae Williams, who is 12. Respondent testified that in late 2013 and 2014, he had submitted payments to Petitioner which were not cashed. Respondent acknowledged as of the time of the trial that rent for August through November 2015 had not been paid.

Respondent testified he has only signed once lease renewal, but that Petitioner continued to raise the rent every year, Respondent believed that he was obligated to pay all increases sought

by Petitioner. Respondent testified that: he had some problems paying rent on time; that he has a lot on his plate as a single parent; that his daughter suffers from sickle cell anemia and has been hospitalized for most of the past two years; that he is a recovering alcoholic, who had been an inpatient for one month in 2012 at a facility for recovery during a prior nonpayment proceeding; and that as of the time of the trial he had been sober for 16 months.

Respondent testified that he has the current ability to pay his rent, that he has been employed as a Sanitation Worker and that since 2010 or 2011 his weekly salary is \$1300.

### **DISCUSSION**

Petitioner maintains this proceeding pursuant to §2524.3(b) of the Rent Stabilization Code. That section permits an eviction where:

The tenant is committing or permitting a nuisance in such housing accommodation or the building containing such housing accommodation, or is maliciously, or by reason of gross negligence, substantially damaging the housing accommodation; or the tenant engages in a persistent and continuing course of conduct evidencing an unwarrantable, unreasonable or unlawful use of the property to the annoyance, inconvenience, discomfort or damage of others, the primary purpose of which is intended to harass the owner or other tenants or occupants of the same or an adjacent building or structure by interfering substantially with their comfort or safety. The lawful exercise by a tenant of any rights pursuant to any law or regulation relating to occupancy of a housing accommodation, including the RSL or this Code, shall not be deemed an act of harassment or other ground for eviction pursuant to this subdivision (b);

Holdover proceedings based on a chronic failure to pay rent on time are rarely brought under this section of the law, and are more typically brought as a breach of a substantial obligation of tenancy pursuant to §2524.3(a) of the Rent Stabilization Code. This is primarily based on the 1997 Court of Appeals decision in *Sharp v Norwood* (89 NY2d 1068) wherein the court affirmed dismissal of a holdover proceeding against a rent control tenant based on the claim

that the failure to pay rent on time constituted a nuisance. The court held:

We agree that petitioners failed to prove their claim of nuisance. The specific harm claimed to have suffered as a result of respondent's conduct was that they were repeatedly forced to institute nonpayment proceedings and to serve rent demands on respondent to collect chronically late rental payments. While these facts might have supported an eviction proceeding on the ground that respondent violated a "substantial obligation" of her tenancy, petitioners did not assert this ground in their holdover petition (*see*, 9 NYCRR 2204.2[a][1]; *Carol Mgt Corp v Mendoza* 197 AD2d 687). Having opted to pursue their remedy in the context of a nuisance case, petitioners were required to establish that respondent's conduct "interfere[d] with the use or enjoyment" of their property (*see e.g. Copart Indus. v. Consolidated Edison Co.* 41 NY 2d 564). Petitioners failed, however, to offer any evidence on this issue. Therefore, the holdover petition was properly dismissed on the merits for lack of proof.

We need not and do not decide whether chronic late payment or nonpayment of rent, when combined with aggravating circumstances, could ever support an eviction proceeding for a "nuisance" within the meaning of the New York City Rent and eviction Regulations.

(*Id* at 1069; *see also Century Apartments Associates v Postel* NYLJ 6/3/97, p.25, col 2 (AT 1<sup>st</sup>)(*nuisance is not established solely by allegations that the landlord was forced repeatedly to commence nonpayment proceedings*).

In this case Petitioner failed to present any evidence of aggravating circumstances or of any harm suffered by Petitioner, other than starting six cases. Additionally, there were several infirmities in Petitioner's case.

For example, out of the six prior nonpayment proceedings Petitioner relies upon, two were in 2009, prior to the time that the landlord had formally recognized Respondent's succession claim, and prior to the time that any lease agreement had been entered into between the parties regarding an agreement to pay rent. Respondent as a successor in interest to the last tenant of record was not a tenant until he became a party to the renewal lease, and was not properly sued by Petitioner for arrears in a summary nonpayment proceeding prior to the issuance and execution of

a lease (*East Harlem Pilot Block Building IV HDFC Inc. v Diaz* 46 Misc3d 150(A); *615 Nostrand Avenue Corp v Roach* 832 NYS 2d 379).

In fact, Petitioner registered Edna Carver as the tenant of record with DHCR through 2009, pursuant to a lease renewal they asserted ran for a period through and including March 31, 2010 (Ex 3). Petitioner also made false allegations in most of the proceedings, alleging that Respondent had executed a written lease agreement agreeing to pay the amounts sued for.

Moreover, the record does not reflect that Respondent's failure to pay rent was intentional. Respondent in fact suffered from addiction, acted as a single parent for two daughters, one of whom had a chronic debilitating disease, and often has to seek assistance from DSS, which he qualified for to pay the arrears.

Lastly of the four remaining nonpayment proceedings Petitioner's claim is based on, in two of them, in addition to paying all the rent sued for, Respondent also compensated Petitioner for legal fees and costs incurred in the proceedings, after being evicted, and as a condition of restoration to possession.

Based on the foregoing, the court finds that Petitioner failed to establish by a preponderance of credible evidence a cause of action for nuisance based on chronic nonpayment of rent and the petition is dismissed.

This constitutes the decision and order of this Court.

Dated: New York, New York  
November 13, 2015

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Sabrina B. Kraus, JHC

