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P A C E U N I V E R S I T Y

LANDLORD TENANT LAW AND PRACTICE

DECEMBER 4, 2013

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--from a Declaration of Principles, jointly adopted by the American Bar Association and the Committee of Publisher and Associations.

LANDLORD TENANT LAW AND PRACTICE

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A

SUMMARY OF RELEVANT STATUTES

Real Property Actions and Proceedings Law (RPAPL)

711(1) Holdover summary proceedings: the tenant continues in possession without the permission of the landlord (tenant "holding over") after the tenancy has been terminated. The notice to terminate is the condition precedent to the commencement of a holdover proceeding. Acceptance of rent after commencement of the proceeding does not terminate the proceeding. The opposite is also true: acceptance of rent after the date to vacate set forth in the notice to terminate and before service of the notice of petition and petition does vitiate the notice and reinstate the tenancy.

711(2) Nonpayment summary proceeding: the tenant has defaulted in the payment of rent and after a demand for rent - either an oral demand or a 3 day written demand served upon the tenant as prescribed in RPAPL §735. The demand for rent is the condition precedent to the commencement of a nonpayment proceeding. (By law, rent demand going back more than 4-6 months is deemed stale and petitioner can obtain only a judgment for possession for nonpayment of those months; the balance of the rent arrears is entered as a money judgment but the tenant cannot be evicted for nonpayment of that amount.)

701 Jurisdiction of summary proceedings (special proceedings - see CPLR Article 4) in city and justice courts. See also Justice Court Act and Uniform Civil Rules for the Courts Outside the City of New York (22 NYCRR Part 210). See also Judiciary Court Acts.

713 Grounds where no landlord tenant relationship exists: squatter, licensee (roommate of lessee), superintendent etc. Ten day notice to quit is required.

715 Illegal use or occupancy: bawdy house, two or more convictions within one year of offenses of penal laws

721 Persons who may maintain proceeding: landlord or lessor, receiver, tenant who has been forcibly (illegally) locked out or evicted, tenant (lessee) to evict a licensee (roommate), etc.

731 Commencement of proceeding by notice of petition by: attorney, judge or clerk of the court - not by a party (landlord pro se). The notice must state the time and date and place of the hearing.

732 Statute applies to New York City, not Westchester courts.

733 Time of service: not less than 5 and not more than 12 days before the hearing date. The date of service is not counted but weekends are included. Service is complete upon the last act of service (mailing if service by substitute service or "affixing").

734 The notice of petition must be served upon Westchester County Department of Social Services but failure to do so is not a jurisdictional defect nor a defense to the proceeding.

735(1) Manner of service of the petition and notice of petition (different from CPLR 308):

*personal service upon the respondent (tenant) (at least two attempts during the time when tenant is reasonably expected to be home),

or

*person of suitable age & discretion + within 1 day mailing by both regular & certified mail,

or

*affixed to apartment door or placed under the door + mailing my certified and regular mail. This is commonly known as "nail and mail."

735(2) The original notice of petition and petition plus proof of service are filed with the court clerk before the return date (hearing date) so that the matter will be on the calendar. Based on case law, no longer is the time of service computed from the date the affidavit of service is filed with the court in order to determine if the service was properly made 5-12 days before the hearing date.

741 Contents of petition:

* Verified by a person authorized by RPAPL § 721 to maintain the proceeding or by an attorney, legal representative or agent (see CPLR 3020)

(1) The petitioner must state his/her interest in the premises: landlord, receiver, etc.

(2) State the respondent's interest in the premises and relationship to petitioner

(3) Describe the premises from which removal is sought

(4) State the facts upon which proceeding is based: ETPA, Section 8 tenant, federal public housing, etc.

(5) State relief sought:

(a) judgment for rent due (nonpayment proceeding). If there was a default judgment where the tenant did not appear, then the petitioner is entitled only to a judgment of possession, not a money judgment for rent arrears, unless there was personal service.

(b) possession of the apartment (holdover proceeding) and use and occupancy (equivalent to rent) from the time the tenancy was terminated - if the notice of petition contains a notice that a demand for such a judgment was made.

743 Answer: the tenant may interpose either an oral or written answer on the return date of the petition. The answer may contain any legal or equitable defense or counterclaim. The counterclaim can be for more money than the sum sought in the petition. The court may sever the counterclaim and try it separately. The tenant may also move to dismiss the petition pursuant to CPLR §404(a) by raising objections in point of law. The motion to dismiss can be returnable on the same date as set forth in the notice of petition and served and filed on that date. If the motion is denied, the court may permit the tenant to answer within 5

days after the petitioner serves notice of entry of the court decision denying the respondent's motion. While this is discretionary with the court, an answer provides an appellate court with a more complete record to review.

745 Trial: where there are triable issues of fact, they are tried by the court unless a party demands a trial by jury. However, many leases waive a tenant's right to a jury trial.

747 Judgment: On the return date of the petition, the judge may render a decision from the bench. But the actual judgment is usually prepared and submitted to the court for signature by the landlord's attorney. The judgment is entered by the clerk of the court. No copy is sent to the tenant. The rights of the parties are set forth: amount payable by the tenant to the landlord, possession of the premises, amount of attorney fees, if any (see Real Property Law §234) and costs to the successful party.

749 Warrant of Eviction

(1) the judgment also provides that a warrant of eviction shall issue, usually with a stay of the actual execution of the warrant (eviction of the tenant) to a stated date. Courts in Westchester routinely grant stays of 5-10 days or longer depending on the circumstances.

(2) 72 Hour Notice: The city marshal, town or village constable, or county sheriff give the tenant at least 72 hours (3 days) notice in writing of the actual eviction. This is called a "72 Hour Notice" and is to be served in the same manner as a notice of petition. See RPAPL § 735.

(3) The issuance of the warrant (this occurs when it is given by the court to the marshal, constable or sheriff) cancels the landlord tenant relationship. Therefore the eviction will proceed unless the landlord agrees to accept rent, continue the tenancy etc.. However, the court still has the power to vacate the warrant for good cause shown prior to the execution (actual eviction). The court also has the power to reinstate a tenant even after the eviction. The tenant must obtain an Order to Show Cause setting forth why the judgment and warrant should be vacated. If the proceeding is procedurally defective, the court should dismiss the proceeding. If the tenant sets forth a meritorious defense, the court may vacate the warrant and, for example, permit the tenant to pay the rent arrears and thus preserve the tenancy.

751(1) Stay upon paying rent before the warrant is issued by the tenant depositing the amount of the judgment with the court. This provision is seldom used.

755 Stay of the proceeding or action for rent where the landlord failed to make repairs: Where there are violations issued by a municipal department (building department), the tenant must deposit with the court clerk all the rent due in order for the court to stay the judgment and warrant. During the stay, the court may use the rent money to pay repairmen to make the necessary repairs in the apartment. This statute is almost never used.

853 Action for forcible or unlawful entry and treble damages where the tenant has been illegally evicted (no summary proceeding or judgment of possession in favor of the landlord). In order to obtain

repossession, the tenant must obtain an order to show cause and an order directing the landlord to provide the tenant access and serve the papers upon the landlord. These illegal lockouts occur all too frequently. A pro se Order to Show Cause is annexed to this packet. There is no corresponding criminal penalty as there is in New York City, where an illegal lock-out is by statute a misdemeanor.

Real Property Law (RPL)

223-b Retaliation: No landlord shall retaliate against a tenant by service of a notice to quit or commence a summary proceeding to evict a tenant where (1) a tenant has made a good faith complaint to a governmental authority about a landlord's violation of health or safety laws; (2) a tenant has acted in good faith to enforce rights under the warranty of habitability law (RPL § 235-b); (3) the tenant has participated in a tenant's organization. There is a rebuttable presumption that the landlord is acting in retaliation if the tenant establishes that the landlord served a notice to quit within 6 months after a complaint or action to enforce right to a habitable apartment. This statute does not apply to owner occupied dwellings with less than 4 units.

226-b (1) A tenant may not assign the lease without the written consent of the owner. If the landlord unconditionally withholds consent without cause, the landlord must release the tenant from the lease. However, this request cannot be unreasonably withheld.

(2) A tenant has the right to sublet the premises subject to the written consent of the landlord in advance of the subletting.

230 Tenants have a right to join a tenant organization. The meeting may be held on the premises.

232-b Termination notice for a month-to-month tenant where the tenant lives in unprotected housing: 2 or 3 rental units, no rent regulations such as the Emergency Tenant Protection Act (ETPA), no Section 8 federal housing assistance payments, not public housing. The notice must be timely, definite and unequivocal. The tenant must be given a month's notice (not 30 days as in NYC) inclusive of the term of the tenancy.

232-c When a lease expires where there is no right to renew, no notice to quit is required before the commencement of a summary proceeding. If a landlord accepts rent after the expiration of the lease, a tenancy is created from month-to-month.

234 Attorneys' Fees: Tenant's right to recover attorneys' fees in summary proceedings arise out of a lease provision authorizing an award of fees. Where a lease provides that a landlord may recover attorneys' fees as the result of the tenant's failure to perform an agreement under the lease (payment of rent, etc.), there is implied in the lease that the tenant may also recover attorneys' fees and costs because of the landlord's failure to perform any covenant or agreement, for example failure to repair (violation of RPL 235-b, breach of the warranty of habitability).

235 Withholding of Services: Any lessor, agent, manager, superintendent or janitor of any building who

wilfully or intentionally fails to furnish water, heat, etc or intentionally interferes with the quiet enjoyment of the leased premises by the occupant is guilty of a violation.

235-a A tenant can offset payments made on behalf of a landlord to Con Edison, oil company or water company for services the landlord is obligated to provide: for lights, gas, oil or water, in order to prevent discontinuation of services. These payment can be deducted from any future payment of rent.

235-b Warranty of habitability: in every written or oral lease, the landlord or lessor is deemed to warrant that the leased premises are "fit for human habitation and for the uses reasonably intended by the parties and the occupants of such premises shall not be subjected to any conditions which would be dangerous, hazardous or detrimental to their life health or safety." The tenant can be awarded damages (off set or abatement of rent due or for an amount greater than the amount due) as a result of the landlord's breach of the warranty of habitability. Expert testimony is not required but certified copies of building department violations and photographs are helpful in establishing damage.

235-c Unconscionable Lease or Clause: A court may refuse to enforce a lease if it finds that any clause of the lease is unconscionable at the time it was made.

235-d Harassment: Applicable only to New York City.

235-e Duty of Landlord to Provide Written Receipt: When a tenant pays rent in cash or by any means other than personal check, a landlord has a duty to provide the payor with a written receipt.

235-f Unlawful Restrictions on Occupancy: Tenants have a right to have a roommate and the roommate's dependent children, provided that this does not cause overcrowding. The "occupant" does not acquire any rights to the apartment and the tenant must live there as the prime tenant. When the prime tenant leaves, the occupant loses a right of possession. The tenant shall inform the landlord of the name of the occupant within 30 days of occupancy or within 30 days following a request by the landlord. Any lease provision restricting occupancy to the tenant and immediate family is void as against public policy.

236 A landlord shall not discriminate against children by refusing to rent an apartment to a family with children. This does not apply to senior citizen housing or owner occupied one or two family dwelling..

237 It is discriminatory to have a lease provision that a tenant cannot bear children.

Tenant Protection Regulations (TPR) for the Emergency Tenant Protections Act of 1974 (ETPA)

Unconsol. Laws §§8621 (McKinney's Vol. §§8581 to 8700): The statutes for regulation of rent, maintenance of services, right to sublease etc. The regulations (TPR) follow after the statute or can be found at 9 NYCRR § 2500 et seq. The local rent office administering the ETPA is the NYS Division of Housing and Community Renewal at 75 S. Broadway, White Plains, NY. Forms can be obtained there for complaints regarding overcharge of rent, reduction in services (and corresponding reduction in rent), improper eviction and harassment.

B

**LANDLORD-TENANT SUMMARY PROCEEDINGS
LEGAL SERVICES OF THE HUDSON VALLEY
JUDITH B. STUDEBAKER, ESQ.**

Types of Summary Proceedings:

- NONPAYMENT** - for rent arrears
- HOLDOVER** - for possession of tenant's apartment for any reason other than non-payment of rent
- LOCKOUT** - brought by the tenant to recover possession and to gain access after an illegal lockout by the landlord

NONPAYMENT PROCEEDING

Demand for rent

- * 3-day written demand or oral demand for rent. Required by State Law RPAPL 711(2).
- * If the tenant does not pay, landlord may proceed to the next step (begin a court proceeding).

Notice of Petition

- * Served with the Petition upon the tenant usually by a process server, or a Marshal, Constable or Westchester County Sheriff.
- * States time and date to appear in court and the court's address.
- * The name, address and telephone number of the landlord's attorney, if there is one, will appear at the bottom.

Petition

* In the petition, the landlord pleads facts about the tenant and the tenancy, which may or may not be accurate. The tenant can admit or deny any of the landlord's statements in the petition. The tenant can also raise defenses to the landlord's claim for rent. (e.g. rent was paid, rent amount is incorrect, the landlord breached the warranty of habitability by not repairing conditions in the apartment so **the tenant denies that there is any rent due and owing**) The tenant can sue the landlord in the proceeding by asserting counterclaims. The tenant can also ask the court to dismiss the petition. The tenant can answer orally by telling the judge defenses and counterclaims to the petition, or in writing.

The Petition states the following: (not always in the same order)

¶1 The name of the person, partnership or corporation bringing the proceeding and their relationship to the building.

¶2 Information about the tenant: the name of the prime tenant and the type of lease

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agreement (written or oral month-to-month) initial date of the tenancy, the monthly rent, the date rent is to be paid (usually the 1st).

¶3 If the tenant is now in possession.

¶4 The address of the premises, including the apartment number.

¶5 The amount of rent claimed owing, listed by month, and the total amount due. (This and #6 relate to a non-payment proceeding. In a holdover these paragraphs would state the basis for the hold-over and that a notice of termination was sent to the tenant on a certain date, to vacate on a certain date.

¶6 Whether or not the landlord made a demand for payment of rent. (3 day written demand or oral demand).

¶7 If the tenant is continuing to live in the apartment but has not paid the rent. Statements as to regulations governing the tenancy (rent control. ETPA, Section 8).

Relief Requested: final judgment of possession, warrant to evict, judgment for rent arrears, court costs, (about \$45) attorney's fees if there is a written lease agreement providing for attorney fees to either party (usually \$75-\$250).

Affidavit of Service

* Prepared by the process server and filed with the court.

* The tenant must receive notice of the court proceeding not less than 5 days and not more than 12 days before the day to appear in court.

* There are 3 ways to serve the Notice of Petition and Petition:

1. Personal Service - handed directly to the tenant.

2. Substituted service upon a person residing in the apartment of suitable age and discretion. Additional copies must also be mailed by both certified & regular mail.

3. Conspicuous place service - service by affixing a copy to the apartment door or placing a copy under the door. Additional copies must be mailed by both certified & regular mail.

Judgment

* This document states the relief awarded by the judge: the amount of rent the tenant owes, the amount of costs and attorney fees if any.

* If the tenant does not appear, (and the case is not adjourned) the court will grant the landlord a judgment of possession only. This is called a "default judgment." If the tenant was personally served, the court will enter a judgment against the tenant for the amount of rent demanded in the nonpayment petition, and award the landlord possession of the apartment. If the tenant pays before the judgment is signed, tenant stays. In addition the court will award the landlord court costs of \$35 - \$45. If there is a written lease agreement providing for attorney fees, the tenant will have to pay to the landlord the fees awarded by the court, anywhere from \$75 - \$250. **However, a tenant cannot be evicted for nonpayment of attorney fees and costs.** But to keep the landlord happy, the tenant should make arrangements to pay off the fees in installments.

* The court may grant a judgment to the landlord for additional rent not sought in the petition, if the landlord asks to amend the petition to include the current month's rent.

* At the bottom of the judgment, it states that a warrant of eviction of the tenant shall be issued by the court and the number of days the warrant is stayed before the tenant gets a 72 hour notice. **The tenant should try to satisfy the judgment and pay all that is due during the stay. The landlord must accept payment if the warrant has not yet been issued.**

Warrant for Eviction

* The judge, who signs the judgment also signs the warrant. The warrant is then given to the marshal, constable or sheriff to execute by evicting the tenant upon 3 days notice to the tenant ("72 hour notice of eviction").

* Once the warrant is issued, the landlord-tenant relationship is ended. A landlord can reject rent and evict the tenant. Only an Order to Show Cause, signed by the court and served on the marshal, constable or sheriff, and landlord or landlord's attorney, will legally temporarily stop an eviction until the court hears the case, and makes a decision if other relief should be granted, for example if the tenant needs some time to pay. However, sometimes a landlord will agree to delay the actual eviction for a few days. Make certain that the marshal/constable/sheriff received notice of this extension.

72 Hour Notice of Eviction

* Before the tenant is actually evicted, the marshal/constable/sheriff must give the tenant a notice of the pending eviction which will occur in no less than 72 hours. The notice must contain the marshal's name, address and phone number and the proposed date for the eviction. However, this date is not always the actual date on which the eviction is scheduled. Call the marshal/constable/sheriff to learn the exact date.

HOLDOVER PROCEEDINGS

Termination Notice for Month-to-Month Tenant

* If a tenant lives in unprotected housing (not ETPA, no Section 8, no lease) a landlord does not have to

state any reason for terminating the tenancy.

* However, the notice must be timely, definite and unequivocal. The tenant must be given a full calendar month's notice of the date to vacate.

Termination Notice for ETPA Tenant

* If the town in which the tenant lives has adopted the ETPA (Emergency Tenant Protection Act) and the building contains 6 or more apartments (16 in Mt. Kisco and 12 in Port Chester), the landlord must give the tenant 7 days notice of termination of tenancy and state in the notice the specific grounds for eviction as listed in the rent regulations (nuisance, violation of a substantial obligation for the tenancy, illegal use, failure to renew lease, failure to let landlord in to make repairs).

* Also, the tenant must be given 10 days to cure the violation if it is curable. The 10 day cure period can be combined with the 7 days notice to terminate. A copy of the notice must be sent to the Division of Housing and Community Renewal (DHCR), 75 S. Broadway, White Plains, New York 10601, 948-4434.

Holdover Notice of Petition and Petition

* The landlord must serve upon the tenant a Holdover Petition as well as a Notice of Petition in the same manner as set forth above for Nonpayment Proceedings.

* A Holdover Petition should state the basis for the proceeding: that a notice to terminate was served, the date served, the date to vacate, or attach to the petition a copy of the notice and affidavit of service of notice on the tenant.

ORDER TO SHOW CAUSE (O/S/C to STOP EVICTION and O/S/C for Reinstatement)

Order to Show Cause to Stay Issuance of Judgment & Warrant or Alternatively to Vacate Judgment and Warrant and Tenant's Affidavit with instructions for completing the forms and how to serve copies upon the marshal/constable/sheriff and landlord.

Order to Show Cause for Reinstatement After Execution of the Warrant. Courts have jurisdiction to reinstate a tenant for good cause who has already been evicted.

LOCKOUT ORDER TO SHOW CAUSE

Order to Show Cause for Access Re-Entry and Possession of Real Property and for Damages for Wrongful Eviction and Tenant's Affidavit with instructions for completing and serving these forms.

* Order to Show Cause forms are included in this packet. Please duplicate & use freely.

* These forms are available from the clerk of the court in Mt. Vernon, New Rochelle & White Plains.

OTHER DOCUMENTS

Building Department Complaint: Tenant can make an oral complaint or file a written complaint with the City, Town or Village Building Department.

* The tenant should complain to the Building Department and request an inspection of the apartment. If there are violations of the Building Code, a violation will be issued to the landlord. The tenant should tell the Building Department if repairs are not completed. The tenant can introduce a certified copy of the violation at trial in a nonpayment proceeding where the tenant seeks an abatement of rent because of the landlord's breach of the warranty of habitability

Rent Administration Complaint An ETPA (Emergency Tenancy Protection Act of 1974) tenant can file a complaint with the Division of Housing and Community Renewal (DHCR), 75 S. Broadway, White Plains, New York 10601, tel. 948-4434 for copies of forms for various complaints:

* Decrease in Service Complaint to obtain a decrease in rent. Include copies of City/Village Building Department violation, if any. A tenant can obtain a copy of the violations to send to DHCR (if the apartment is regulated by the ETPA) together with a complaint for a reduction in rent because of a lack of services. The tenant must first write a letter to the landlord listing the conditions and requesting repair. A copy of that letter must be included with the DHCR complaint.

* Overcharge complaint to determine if current rent is the legal regulated rent and if the tenant has overpaid any rent (attach copies of lease, rent receipts).

* Failure of landlord to offer lease and/or renewal lease.

* Improper Eviction (attach copy of termination notice).

* Harassment (conferences conducted by the Enforcement Bureau of DHCR).

* Decrease in Building-Wide Services. (Applies to areas outside of individual apartments or to services common to all apartments).

Health Department Complaint: The tenant can file a complaint with the Westchester County Department of Health at 145 Huguenot Street, New Rochelle, NY 10801, 813-5000, for severe rodent problems, sewage & sanitary problems, lead poisoning, and other health problems.

Fire Department Complaint: The Fire Department will investigate electrical problems caused by faulty wiring or leaking ceiling as well as rubbish accumulation and other fire hazards.

Section 8 Complaint: If the apartment fails to meet federal Housing Quality Standards, Section 8 will investigate and may suspend its portion of the rent until repairs are completed.

Department of Social Services Spiegel Action If the Building Department determines that violations exist, Social Services can withhold the shelter portion of a recipient's grant until repairs are made.

C

NOTICE TO TENANT
Aviso al Inquilino

February 27, , 2007

TO: STEPHANIE MACK
7 Bush Avenue, 2nd Floor
Port Chester, NY 10573

The sum of *La suma de* \$2600.00*
for rent from *para renta de* Dec 1, 2006
to a March 31, 2007

*See attached schedule

Tenant of the above premises:

TAKE NOTICE That you are justly indebted to the Landlord of the above described premises as set forth above, which you are required to pay on or before the expiration of three days from the day of the service of this Notice, or surrender up the possession of said premises to the Landlord, in default of which the Landlord will commence summary proceedings under the Statue to recover the possession thereof.

Inquilino del local arriba mencionado:

TOMEAVISO: Que usted adeuda al casero de la propiedad arriba mencionada segun lo arriba expuesto que usted debe pagar en o antes del termino de tres dias a partir del dia que usted reciba este aviso o entregar posesion de decho local al casero. En caso de incumplimiento el casero comenzara un juicio sumario de acuerdo a la ley para recovrar su propiedad.

..... Landlord, Casero
..... Agent, Agente

Immediately, if you are currently receiving public assistance, bring this three-day notice for rent to the worker who handles your case. Your worker will consider this notice on an emergency basis and may be able to provide funds to avoid the possible loss of your apartment. If you are not currently receiving public assistance and require financial help, you should apply immediately at your local Income Maintenance Center. If you show this notice to the receptionist, you may also be entitled to assistance on an emergency basis.

Inmediatamente, se esta recibiendo asistencia publica al presente, traiga este aviso para pagar renta dentro de tres dias al trabajador que maneja su caso. Su trabajador considerara este aviso con caracter de emergencia posiblemente podra proveerle fondos para evitar que usted pierda su apartamento. Si no recibe asistencia publica al presente y necesita ayuda financiera, usted debe solicitarla inmediatamente en su centro local de mantenimiento de ingreso. Si muestra este aviso a la recepcionista, usted posiblemente podra tener derecho a recibir ayuda con caracter de emergencia

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CITY COURT: CITY OF MOUNT VERNON
COUNTY OF WESTCHESTER

-----X
LARRY LANDLORD

Petitioner (Landlord)

- against -

TINA TENANT
Any Street, Apt. 1A
Mount Vernon, NY 10550

Respondent (Tenant)
-----X

INDEX NUMBER: _____

NOTICE OF PETITION

Non-Payment

IMPORTANT TO TENANT: IF YOU ARE DEPENDENT UPON A PERSON IN THE MILITARY SERVICE OF THE UNITED STATES OR THE STATE OF NEW YORK ADVISE THE CLERK IMMEDIATELY, IN ORDER TO PROTECT YOUR RIGHTS.

To the above named respondent in possession described in the attached petition or claiming possession of the premises: Any Street, Apt. 1A, Mount Vernon, New York 10550.

PLEASE TAKE NOTICE that a hearing at which you must appear will be held at the City Court, Second Floor, Roosevelt Square, Mount Vernon, New York 10550 in the County of Westchester on March 26, 2013, at 9:00 a.m. on the annexed petition of LARRY LANDLORD which seeks a final judgment of eviction, awarding to the petitioner the possession of the following premises: Any Street, Apt. 1A, Mount Vernon, New York 10550 in the County of Westchester and granting to the petitioner LARRY LANDLORD such other and further relief as is demanded in the petition.

TAKE NOTICE also that demand is made in the petition for a judgment against you, the respondent, for the sum of \$2,300.00 PLUS LEGAL FEES, COSTS and DISBURSEMENTS.

TAKE NOTICE that your answer may set forth any defense or counterclaim you may have against the petitioner.

TAKE NOTICE also that if you shall fail at such time to interpose and establish any defense that you may have to the allegations of the petition, you may be precluded from asserting such defense or the claim on which it is based in any other proceeding or action.

TAKE NOTICE also that your answer may be made at the time of hearing specified above unless this NOTICE OF PETITION is served upon you on or before eight (8) days before the return date in which event you must answer at least three (3) days before the petition is noticed to be heard, either orally before the court at or in writing by serving a copy thereof upon the undersigned attorney for the petitioner, and by filing the original of such written answer with proof of service in the office of the clerk at least three (3) days before the time the petition is noticed to be heard; in addition thereto, you must appear before the court at the time and place set forth for the hearing.

TAKE NOTICE that your failure to appear and answer may result in final judgment by default for the petitioner LARRY LANDLORD in the amount demanded in the petition.

Dated: March 13, 2013

WILLIAM M. PERMUTT
Attorney for Petitioner (Landlord)
571 White Plains Road
Eastchester, NY 10709
Telephone: 914-268-0606

Clerk

CITY COURT: CITY OF MOUNT VERNON
COUNTY OF WESTCHESTER

-----X
LARRY LANDLORD

Petitioner (Landlord)

- against -

TINA TENANT
Any Street, Apt. 1A
Mount Vernon, NY 10550

Respondent (Tenant)
-----X

INDEX NUMBER: _____

**PETITION TO RECOVER
POSSESSION OF REAL PROPERTY
Non-Payment**

THE PETITION OF LARRY LANDLORD owner and landlord of the premises shows that:

1. The undersigned is the Petitioner.
2. The respondent TINA TENANT is the tenant in the above-captioned premises who entered in possession under a written rental agreement made on or about November 1, 2012, between the respondent TINA TENANT and the landlord LARRY LANDLORD. Respondent agreed pursuant to that lease agreement to pay rent to the landlord in the amount of \$950.00 in advance, on the first day of each month.
3. Respondent is currently in possession of the premises.
4. The premises from which removal is sought are described as follows:
Any Street, Apt. 1A, Mount Vernon, New York 10550 which is within the territorial jurisdiction of this court.
5. Pursuant to said agreement there is due to landlord from respondent tenant the following rent:

January 2013 Arrears	\$400.00
February 2013 Rent	\$950.00
March 2013 Rent	\$950.00

Respondent tenant has defaulted in the payments and the total rent in arrears is \$2,300.00
6. The rent has been duly demanded personally from the tenant since it became due as required by law.
7. The premises are not subject to rent control: vacancy decontrol, not subject to the E.T.P.A. - NOT A MULTIPLE DWELLING.

Petitioner requests final judgment: awarding possession of the premises to the petitioner-landlord; issuance of a warrant to remove respondent TINA TENANT from possession thereof; judgment for rent in arrears against respondent tenant for \$2,300.00, fair value of use and occupancy, costs, disbursements and legal fees pursuant to the lease agreement.

Dated: March 13, 2013

LARRY LANDLORD, Petitioner

STATE OF NEW YORK, COUNTY OF WESTCHESTER)ss: The undersigned Petitioner, LARRY LANDLORD, being duly sworn states that deponent has read the petition and that the contents of the petition are true to deponent's own knowledge except as to those matters which are alleged on information and belief. As to those matters the deponent believes them to be true.

Sworn to before me on March 13, 2013

LARRY LANDLORD, Petitioner

WILLIAM M. PERMUTT
Attorney for Petitioner (Landlord)
571 White Plains Road
Eastchester, New York 10709
Telephone: 914-268-0606

STATE OF NEW YORK
COUNTY OF WESTCHESTER

Petitioner/Landlord: LARRY LANDLORD against Respondent TINA TENANT, Any Street, Apt. 1A, Mount Vernon, New York 10550.

AFFIDAVIT OF SERVICE

I, Michael Marshal being duly sworn deposes and says that deponent is not a party to this proceeding is over 18 years of age and resides in Mount Vernon, New York.

That on , March 15, 2013, at 11:50 a.m. at Any Street, Apartment 1A, Mount Vernon, New York 10550 deponent served the Notice of Petition and Petition on the party therein named TINA TENANT.

- by delivering a true copy thereof personally to said party; he knew the person so served to be the person described as said party therein. Apartment door 1A.
- by gaining admittance to said property and delivering to and leaving a true copy thereof personally with _____ a person of suitable age and Discretion who was willing to receive same and on _____, 2013 _____ a.m./p.m. by mailing a copy there of to the said party at the above address by certified mail and regular mail.
- by affixing a copy thereof upon a conspicuous part of the entrance door of said property.
- by placing a copy thereof under the entrance of said property having been unable to gain admittance there as or to find a person of suitable age and discretion willing to receive same.
- On March 15, 2013, mailing a copy there of to the party at the above address by certified mail and regular mail on Official Depository of the US Postal service Time 3:00 p.m. located in lobby of 9 West Prospect Avenue, Mount Vernon, New York.

Prior service attempts: _____ at _____ a.m./p.m. and _____ at _____ a.m./p.m.

A description of the person served is:

- | | | |
|---|---|--|
| <input type="checkbox"/> 18 - 25 years | <input type="checkbox"/> under 5' | <input type="checkbox"/> under 100 pounds |
| <input type="checkbox"/> 26 - 35 years | <input checked="" type="checkbox"/> 5' - 5'3" | <input checked="" type="checkbox"/> 100 - 130 pounds |
| <input checked="" type="checkbox"/> 36 - 50 years | <input type="checkbox"/> 5'4 - 5'8" | <input type="checkbox"/> 131 - 160 pounds |
| <input type="checkbox"/> 51 - 65 years | <input type="checkbox"/> 5'9 - 6' | <input type="checkbox"/> 161 - 200 pounds |
| <input type="checkbox"/> over 65 years | <input type="checkbox"/> over 6' | <input type="checkbox"/> over 200 pounds |

Sex:

- Male
- Female

Color of Skin:

White

Color of Hair:

Brown

Other identifying features: _____

Other comments: _____

Sworn to before me this
16th day of March, 2013

NOTARY PUBLIC

MICHAEL MARSHAL

E

CITY COURT : CITY OF MOUNT VERNON
COUNTY OF WESTCHESTER

LARRY LANDLORD,
Petitioner-Landlord,

-against-

TINA TENANT,
Respondent-Tenant.

NOTICE OF MOTION TO DISMISS
NONPAYMENT PROCEEDING

Index No. _____

PLEASE TAKE NOTICE that the respondent-tenant will make a motion to this court located at City Court, 2nd floor, Roosevelt Square, Mount Vernon, NY 10550 on March 26,, 2013 at 9:00 a.m. or as soon as counsel can be heard for an order dismissing the nonpayment petition on the grounds that (1) pursuant to CPLR §3211(a)(5) the petition fails to state a cause of action as to the demand for (2) pursuant to RPAPL §711(2) the demand for rent was not served as prescribed by §735, (3) pursuant to RPAPL §711(2) the demand for rent is untimely as to the March rent, and (4) the proceeding is maintained by an agent of the owner/landlord in violation of RPAPL §721, and if the motion is denied, permitting respondent to serve and file an answer within five days after service of the order with notice of entry pursuant to CPLR § 404(a), and granting any further relief as this court deems just.

Dated: March 26, 2013
White Plains, New York

WESTCHESTER/PUTNAM LEGAL SERVICES
JUDITH B. STUDEBAKER, Of Counsel
Office & P.O. Address
90 Maple Avenue
White Plains, New York 10601
Tel.: (914) 949-1305 ext 110

Attorney for Respondent

To: William Permutt, Esq.
571 White Plains Road
Eastchester, NY 10709
Attorney for Petitioner
Tel.: (914) 725-5005

CITY COURT: CITY OF MOUNT VERNON
COUNTY OF WESTCHESTER

LARRY LANDLORD,
Petitioner-Landlord,
-against-

AFFIDAVIT IN SUPPORT OF
MOTION TO DISMISS

TINA TENANT,
Respondent-Tenant.

Index No. _____

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:

TINA TENANT, being sworn, says:

1. I am the respondent-tenant in this nonpayment proceeding and I am fully familiar with the facts and circumstances of this matter.

2. This affidavit is made in support of my motion to dismiss the nonpayment petition dated March 13, 2013.

AS AND FOR A FIRST GROUND TO DISMISS

3. The petition fails to state a cause of action as to the claim for payment of March 2013 rent.

4. The petition demands payment of rent in the amount of \$950. However, I have paid my December rent and petitioner has accepted it. A copy of the canceled check is annexed as Exhibit A.

5. Accordingly, the demand in the petition for payment of the March rent must be dismissed.

AS AND FOR A SECOND GROUND TO DISMISS

6. Upon information and belief, the three day demand for rent was not properly made. RPAPL §711(2) requires that the rent demand be served in accordance with the service requirements set forth in RPAPL §735 and that failure to serve the demand as required by this statute prohibits a landlord from commencing a nonpayment proceeding.

7. Petitioner only served one copy of the rent demand upon me by regular mail. I never received a copy affixed to my door nor a copy mailed by certified mail.

8. Therefore, the petition must be dismissed for failure to serve the demand for rent as required by RPAPL §711(2).

AS AND FOR A THIRD GROUND TO DISMISS

9. The petition dated claims that March rent is due and owing and that there is a total sum due of \$2300.

10. However, the demand for rent, in the identical amount of \$2300, is dated February 28, 2013, before the March rent is even due. Because the sums demanded are identical in the notice and the petition, obviously the petitioner was seeking the March rent in the demand notice. (Exhibit B).

11. The petitioner has never made any demand to me for the March rent alleged owing nor have I received a three day written demand for said monies.

12. It follows that petitioner improperly demanded the March rent in his February 28^t demand letter and therefore the claim for March rent in the petition must be dismissed.

AS AND FOR A FOURTH GROUND TO DISMISS

13. I have been advised by my attorney Legal Services of the Hudson Valley that the law, RPAPL §721 requires that the proceeding may be brought by a landlord or lessor but not by an agent.

14. This proceeding was commenced by Larry Landlord but he is the managing agent for my landlord, Charlie Corporation. As indicated on my lease, Exhibit C, the lease agreement is between Charlie Corporation and myself, not Larry Landlord..15. Upon information and belief, a corporation has officers who are the proper persons to maintain a nonpayment proceeding pursuant to RPAPL §721. It follows that Larry Landlord is merely an agent of the actual owner/landlord.

16. My attorney has advised me that an agent cannot maintain a proceeding and to do so violates RPAPL §721, requiring a dismissal of the proceeding.

WHEREFORE, it is respectfully requested that this court grant this motion to dismiss, and for any further relief this court deems just.

TINA TENANT

Sworn to before me this 26th
Day of March 2013

Notary Public

F

CITY COURT: CITY OF MOUNT VERNON
COUNTY OF WESTCHESTER

LARRY LANDLORD,
Petitioner-Landlord,

-against-

ANSWER

TINA TENANT
Respondent-Tenant.

Index No. _____

Respondent, by her attorney, Westchester/Putnam Legal Services, without waiving any defenses set forth in her motion to dismiss, answers the petition and alleges as follows:

1. A denial of knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph "1" of the petition.
2. A denial of each and every allegation contained in Paragraphs "5 ", "6 ", and "7" of the petition.
3. A denial of that portion of the petition following paragraph 7 which alleges that the landlord is in full compliance with the Emergency Tenant Protection Act of 1974.

AS AND FOR A FIRST SEPARATE DEFENSE,
RESPONDENT ALLEGES THAT:

4. Respondent states that petitioner has overcharged her rent and that her rent is not \$650 per month as alleged in the petition.
5. Respondent has filed a complaint with the NYS Division of Housing and Community Renewal (DHCR) that petitioner has overcharged her rent in excess of the legal regulated rent and that matter is now pending.
6. If respondent is successful, her rent will be reduced to a lower rent and petitioner will owe respondent money for the overcharge of rent.

7. Therefore, respondent asks that this proceeding be stayed pending a determination by DHCR as to her correct rent.

AS AND FOR A SECOND SEPARATE DEFENSE,
RESPONDENT ALLEGES THAT:

8. Pursuant to Section 235-b of the Real Property Law, there is implied in every rental agreement for residential premises a warranty of habitability.

9. The subject premises are not fit for human habitation or for the uses reasonably intended by the parties, and there exist in the subject premises conditions which are dangerous, hazardous and detrimental to the life, health, and safety of respondent, said conditions continuing to the present unless otherwise noted and including but not limited to:

- a. Bathroom sink faucet defective, water runs constantly;
- b. Bathroom ceiling leaks and collapsing.
- c. Inoperable wall outlets in two bedrooms;
- d. Severe infestation of insects and rodents; no regular program of extermination;

10. Said conditions have caused respondent substantial inconvenience and hardship and emotional and mental distress.

11. Respondent has on numerous occasions complained of the above conditions to petitioner, but petitioner has failed and refused to correct said conditions.

12. By reason of the foregoing, petitioner has breached the warranty of habitability, as contained in Real Property Law §235-b, thereby relieving respondent of the obligation to pay rent during the period in question and entitling respondent to a set-off of \$2600 against petitioner's claim for rent.

AS AND FOR A FIRST COUNTERCLAIM
RESPONDENT ALLEGES THAT:

13. A repetition of the facts contained in paragraphs "3" through "7", supra.

14. By reason of the foregoing, petitioner has breached the warranty of habitability, as contained in Real Property Law §235-b, to respondent's damage of \$4000.

WHEREFORE, respondent respectfully requests that this court:

- (1) Dismiss the petition;
- (2) Grant a stay of this proceeding pending an administrative determination by the New York State Division of Housing and Community Renewal;
- (3) Grant respondent a set off of \$2600;
- (4) Grant judgment on respondent's counterclaim in the amount of \$4000;
- (5) Grant respondent costs and an award of attorney's fees pursuant to RPL 234;
- (6) Grant any further relief this court deems just.

Dated: April 9, 2007

Legal Services of the Hudson Valley
JUDITH B. STUDEBAKER, Of Counsel
Office & P.O. Address
4 Cromwell Place
White Plains, New York 10601
Tel.: (914) 949-1305
Attorney for Respondent

VERIFICATION

TINA TENANT, being sworn, says:

Deponent is the respondent in the within proceeding; deponent has read the foregoing Answer and knows the contents thereof; the same is true to deponent's own knowledge, except as to the matter therein stated to be alleged on information and belief, as to those matters deponent believes them to be true.

TINA TENANT

Sworn to before me this 9th
day of April 2007

Notary Public

G

CITY COURT: CITY OF MOUNT VERNON
COUNTY OF WESTCHESTER

-----X
LARRY LANDLORD
P. O. Box 123
Eastchester, NY 10709

Petitioner (Landlord)

Index No. XXXX-13

NON-PAYMENT
Judgment Rendered in Favor Of

- against -

Landlord: LARRY LANDLORD

TINA TENANT
Any Street, Apt. 1A
Mount Vernon, NY 10550

Respondent Tenant

Address: P. O. Box 123
Eastchester, NY 10709

-----X
A notice of petition, containing a notice of demand for judgment for rent due, together with the petition, having been duly filed in the office of the clerk of this court, and proof of service of said notice of petition and petition having been duly filed within three days after service of said papers and it appearing that the Respondent-Tenant has been served by personal service with the notice of petition and petition and the notice of petition having been made returnable before the court on March 26, 2013, at 9:00 a.m., and the matter having been heard before the HON. ADAM SEIDEN on that date and time and the Respondent-Tenant having appeared.

Now, on motion of WILLIAM M. PERMUTT attorney for Petitioner-Landlord it is

ADJUDGED, that possession of the premises described in the petition be awarded to the Petitioner-Landlord and it is further

ADJUDGED, that LARRY LANDLORD Petitioner-Landlord residing at P. O. Box 123, Eastchester, New York 10709 recover of TINA TENANT Respondent-Tenant residing at Any Street, Apt. 1A, Mount Vernon, New York 10550 the sum of \$2,300.00 the amount determined to be due the Petitioner-Landlord for rent, together with \$75.00 costs and disbursements and \$180.00 legal fees, amounting in all to the sum of \$2,555.00 and that the Petitioner-Landlord have execution therefor.

ADJUDGED, that a warrant of eviction issue, such issuance to be stayed to and including the 5th day of April 2013.

Dated: _____, 2013

Enter,

HON. ADAM SEIDEN, J.C.C.

Judgment entered in accordance with the foregoing.

Dated: _____, 2013

Clerk

CITY COURT: CITY OF MOUNT VERNON
COUNTY OF WESTCHESTER

Index No. XXXX-13

-----X
LARRY LANDLORD
P. O. Box 123
Eastchester, NY 10709

Petitioner (Landlord)

**WARRANT
Non-Payment**

- against -

TINA TENANT
Any Street, Apt. 1A
Mount Vernon, NY 10550

Respondent (Tenant)

-----X
TO: CITY MARSHAL

GREETING:

WHEREAS, LARRY LANDLORD, has made petition in due form in writing, and presented the same, duly verified, to me HON. ADAM SEIDEN, Justice of the CITY COURT of the CITY OF MOUNT VERNON that LARRY LANDLORD is the Petitioner-Landlord of Any Street, Apt. 1A, Mount Vernon, New York 10550, premises now occupied by TINA TENANT Respondent-Tenant located in the CITY OF MOUNT VERNON and described as follows, to wit: Any Street, Apt. 1A, Mount Vernon, NY 10550.

And that on or about November 1, 2012, ANTHONY SENERCHIA leased the said premises under written agreement to the said TINA TENANT at the monthly rent of \$950.00 payable on the first day of each month.

That the said TINA TENANT entered into the possession of the said premises, and have continued therein to the present time, by virtue of the said agreement, and is justly indebted to the above-named Petitioner-Landlord in the sum of \$2,555.00 due March 1, 2013.

That LARRY LANDLORD demanded the said rent from said TINA TENANT since the same became due and payable, under said agreement, and that the Respondent has defaulted in the payment thereof, pursuant to the agreement under which the premises were held, and that the Respondent is holding over and continues in possession of the same, without permission of the Landlord, after default in the payment of the rent as aforesaid, and

WHEREAS, a notice of petition was duly issued by WILLIAM M. PERMUTT, attorney for Petitioner, specifying the time and place of the hearing of the petition, and proof of service of the notice of petition and petition was presented, and the Respondent having failed to interpose or establish any defense, I did there upon render final judgment awarding to the Petitioner-Landlord among other things, the delivery of the possession of the said property.

THEREFORE, in the name of the People of the State of New York, **YOU ARE COMMANDED** to remove TINA TENANT and all others in possession and residence from the said premises, and put the Petitioner Landlord in full possession thereof.

IN WITNESS WHEREOF, I have subscribed to these presents, this _____ day of _____, 2013.

HON. ADAM SEIDEN, JCC

H

**MOUNT VERNON CITY
MARSHAL**

9 West Prospect Avenue, Suite 203, Mount Vernon, NY 10550
Tel: (914) 665-1072, Fax: (914) 665-7003

Date _____
Index # _____

72 HOUR NOTICE OF EVICTION

To: _____

ATTACHED HERETO IS A WARRANT DIRECTING YOUR REMOVAL

NOTICE IS HEREBY GIVEN TO YOU UNLESS YOU REMOVE FROM YOUR PREMISES BEFORE _____ 20____, YOU WILL BE EVICTED AND ALL YOUR PERSONAL PROPERTY REMOVED AND PLACED ON THE SIDEWALK IN FRONT OF THE BUILDING. YOU ARE HEREBY WARNED TO MAKE ARRANGEMENTS AT ONCE TO PROTECT YOUR BELONGINGS FOR **THE MOUNT VERNON CITY MARSHAL ASSUMES NO RESPONSIBILITY FOR THE LOSS OR DAMAGE TO YOUR PERSONAL PROPERTY.**

Yours, etc.,
SERAPHER CONN-HALEVI, CITY MARSHAL
CITY COURT OF MOUNT VERNON

within sixty days of entry of the judgment, for affirmative equitable relief which was not sought by counterclaim in the proceeding because of the limited jurisdiction of the court.

3. If the proceeding is founded upon an allegation of forcible entry or forcible holding out the court may award to the successful party a fixed sum as costs, not exceeding fifty dollars, in addition to his disbursements.

4. The judgment, including such money as it may award for rent or otherwise, may be docketed in such books as the court maintains for recording the steps in a summary proceeding; unless a rule of the court, or the court by order in a given case, otherwise provides, such judgment need not be recorded or docketed in the books, if separately maintained, in which are docketed money judgments in an action.

Add. L 1962, ch 312, eff Sept 1, 1963; derived from CPA §§ 1430, 1431, 1445; amd. L 1965, ch 910, § 11, eff July 17, 1965.

§ 747-a. Judgments; stays

In the city of New York, in any non-payment summary proceeding in which the respondent has appeared and the petitioner has obtained a judgment pursuant to section seven hundred forty-seven of this article and more than five days has elapsed, the court shall not grant a stay of the issuance or execution of any warrant of eviction nor stay the re-letting of the premises unless the respondent shall have either established to the satisfaction of the court by a sworn statement and documentary proof that the judgment amount was paid to the petitioner prior to the execution of the warrant or the respondent has deposited the full amount of such judgment with the clerk of the court.

Add. L 1997, ch 116, § 37, eff Oct 18, 1997 (see 1997 note below).

§ 749. Warrant

1. Upon rendering a final judgment for petitioner, the court shall issue a warrant directed to the sheriff of the county or to any constable or marshal of the city in which the property, or a portion thereof, is situated, or, if it is not situated in a city, to any constable of any town in the county, describing the property, and commanding the officer to remove all persons, and, except where the case is within section 715, to put the petitioner into full possession.

2. The officer to whom the warrant is directed and delivered shall give at least seventy-two hours notice, excluding any period which occurs on a Saturday, Sunday or a public holiday, in writing and in the manner prescribed in this article for the service of a notice of petition, to the person or persons to be evicted or dispossessed and shall execute the warrant between the hours of sunrise and sunset.

3. The issuing of a warrant for the removal of a tenant cancels the agreement under which the person removed held the premises, and annuls the relation of landlord and tenant, but nothing contained herein shall deprive the court of the power to vacate such warrant for good cause shown prior to the execution thereof. Petitioner may recover by action any sum of money which was payable at the time when the special proceeding was commenced and the reasonable value of the use and occupation to the time when the warrant was issued, for any period of time with respect to which the agreement does not make any provision for payment of rent.

Add. L 1962, ch 312, eff Sept 1, 1963; derived from CPA §§ 1432, 1433, 1434; amd. L 1963, ch 891, eff Apr 30, 1963, L 1964, ch 404, L 1966, ch 750, eff Sept 1, 1966. L 1975, ch 192, eff June 10, 1975, L 2009, ch 256, § 1, eff Aug 27, 2009.



WS 735

§ 735. Manner of service; filing; when service complete

1. Service of the notice of petition and petition shall be made by personally delivering them to the respondent; or by delivering to and leaving personally with a person of suitable age and discretion who resides or is employed at the property sought to be recovered, a copy of the notice of petition and petition, if upon reasonable application admittance can be obtained and such person found who will receive it; or if admittance cannot be obtained and such person found, by affixing a copy of the notice and petition upon a conspicuous part of the property sought to be recovered or placing a copy under the entrance door of such premises; and in addition, within one day after such delivering to such suitable person or such affixing or placement, by mailing to the respondent both by registered or certified mail and by regular first class mail,

(a) if a natural person, as follows: at the property sought to be recovered, and if such property is not the place of residence of such person and if the petitioner shall have written information of the residence address of such person, at the last residence address as to which the petitioner has such information, or if the petitioner shall have no such information, but shall have written information of the place of business or employment of such person, to the last business or employment address as to which the petitioner has such information; and

(b) if a corporation, joint-stock or other unincorporated association, as follows: at the property sought to be recovered, and if the principal office or principal place of business of such corporation, joint stock or other unincorporated association is not located on the property sought to be recovered, and if the petitioner shall have written information of the principal office or principal place of business within the state, at the last place as to which petitioner has such information, or if the petitioner shall have no such information but shall have written information of any office or place of business within the state, to any such place as to which the petitioner has such information. Allegations as to such information as may affect the mailing address shall be set forth either in the petition, or in a separate affidavit and filed as part of the proof of service.

2. The notice of petition, or order to show cause, and petition together with proof of service thereof shall be filed with the court or clerk thereof within three days after:

(a) personal delivery to respondent, when service has been made by that means, and such service shall be complete immediately upon such personal delivery; or

(b) mailing to respondent, when service is made by the alternatives above provided, and such service shall be complete upon the filing of proof of service.

Add, L 1962, ch 312, deriving in part from CPA § 1421(b)(1); amd, L 1963, ch 535, eff Sept 1, 1963, L 1965, ch 910, §§ 6, 7, 9, eff July 17, 1965, L 1965, ch 910, § 7, L 1971, ch 83, eff Sept 1, 1971, L 1980, ch 370, § 1, eff Sept 1, 1980.

§ 741. Contents of petition

The petition shall be verified by the person authorized by section seven hundred twenty-one to maintain the proceeding; or by a legal representative, attorney or agent of such person pursuant to subdivision (d) of section thirty hundred twenty of the civil practice law and rules. An attorney of such person may verify the petition on information and belief notwithstanding the fact that such person is in the county where the attorney has his office. Every petition shall:



~~RENTAL AGREEMENT~~

Please Check The Appropriate Box.

The Eviction has already taken place. My belongings have been Removed . I was evicted on _____
Date

The Eviction is in progress.

The Locks to the premises have been changed. My belongings Are still in the apartment.

The Eviction is scheduled for _____, As of
Date
Today, _____ I have access to the apartment.
Date

Other (**Please Print**)

Tenant's Signature Date

J

CITY/JUSTICE COURT : CITY/TOWN/VILLAGE OF [1] _____
COUNTY OF _____

Index No. _____

[2]

Petitioner-Landlord,

-against-

PRO SE ORDER TO SHOW
CAUSE TO STAY ISSUANCE OF
JUDGMENT & WARRANT, OR
ALTERNATIVELY, TO VACATE
JUDGMENT & WARRANT

Respondent-Tenant.

Upon the annexed affidavit of [3] _____ (TENANT)
sworn to on [4] _____, 200__, and on all the proceedings in this matter, let the Petitioner-
Landlord or attorney show cause before this court at Landlord-Tenant Part at the courthouse located
at [5] _____, New York on * _____, 200__, at ___ am/pm
(or as soon as the clerk calls the matter), why an order should not be made:

- (1) staying the issuance of a judgment and warrant pursuant to CPLR § 2004, and
- (2) restoring the matter to the calendar so that the respondent may be heard,

OR ALTERNATIVELY

- (1) vacating the warrant of eviction and the judgment in favor of the landlord pursuant to
RPAPL §749(3) and CPLR 5015(a) and,
- (2) dismissing the petition for reasons set forth in the annexed affidavit, and
- (3) granting any other relief as this court deems just, and it is

ORDERED that until this motion is heard and an order deciding this motion is entered by
the court clerk, all proceedings by the Petitioner-Landlord, Petitioner's agent or attorney and any
marshal/constable/sheriff of the City/Town/Village to enforce the judgment and execute the warrant
of eviction of the tenant are stayed, and it is further

ORDERED, that the Tenant may personally serve a copy of this order together with a copy
of the annexed affidavit on the Petitioner-Landlord, petitioner's agent or attorney, and in addition
upon any marshal/constable/sheriff of the City/Town/Village or upon a person authorized to accept
service on their behalf, if a warrant has been issued, on or before * _____, 200__.
Dated:* _____

*

JUDGE OF THE CITY/JUSTICE COURT

Numbers 1-10: Read instruction sheet before completing

***LEAVE BLANK FOR THE JUDGE TO COMPLETE**

Admission of Service: Received by Marshal/Constable/Sheriff _____ on _____
Received by Attorney/Landlord/Agent _____ on _____

Form Prepared by Legal Services of the Hudson Valley 2004 as a courtesy to this pro se
tenant. No attorney/client relationship exists and none is to be inferred between "Tenant" and
Legal Services of the Hudson Valley.

SIXTH: I have a meritorious defense to this proceeding,
as follows: (DEFENSE)

[8] _____

SEVENTH: No previous application has been made by me for the relief requested in this affidavit. If I am evicted, I will be irreparably harmed. I do not want to become homeless.

EIGHTH: I have no one else to serve copies of this order to show cause and therefore I request permission to serve this order personally.

WHEREFORE I ask this court to grant the relief requested in this order to show cause.

[9] _____
SIGNATURE OF TENANT

[3] _____
(Print tenant's name)

[10] Sworn to before me this
__ day of _____, 200__

Notary Public

INSTRUCTIONS FOR FILLING OUT THE ORDER TO SHOW CAUSE AND AFFIDAVIT

The numbers on this list of instructions match the Order to Show Cause and Affidavit form. Fill in each blank according to the matching instructions.

- [1] Write the name of the City/Town/Village and County where the court is located.
- [2] Write the caption exactly as it appears on your court papers. The caption is on the top of the court papers and states the landlord's (petitioner) name and tenant's (respondent) name.
- [3] Print your name.
- [4] Write the date your signed affidavit was notarized before a Notary Public.
- [5] Write in the address of the court including the name of the City/Town/Village.
- [6] Write your address and apartment number.
- [7] Explain the reason why you did not appear in court or what happened when you did go to court.
- [8] Explain why you think the court should vacate the judgment and warrant. For example, why you did not pay your rent or why you believe that you do not owe the rent.
- [9] Sign your affidavit before a Notary Public. **Do not sign until you are in front of the notary and have completed the form.**
- [10] The Notary Public fills this part out.

INSTRUCTIONS FOR GETTING THE ORDER SIGNED BY THE COURT AND SERVED

-After you complete the affidavit and have it notarized, take the Order To Show Cause to the court clerk for the judge to sign. Ask the clerk when the order will be signed by the judge and when you can pick up copies to serve upon and deliver to the landlord and the marshal/constable/sheriff.

-Remember the date the judge said you are to return to court, and the date you must serve the Order to Show Cause upon both the marshal/constable/sheriff and the landlord, agent or attorney. **The eviction is not legally stopped until the marshal/constable/sheriff is served with a copy of the Order signed by the judge.**

-When you serve the order to show cause, ask each person served to sign their name and the date on the original order. If anyone refuses to sign, complete the affidavit of service and have it notarized. Return the original order to show cause and affidavit of service to the court. **The case will not be on the court calendar until the original Order to Show Cause is returned to the court.**

INSTRUCTION FOR COMPLETING THE AFFIDAVIT OF SERVICE OF THE ORDER

If any of the persons you serve refuses to admit receipt of a copy of the order by signing their name on the original Order to Show Cause, you must complete the affidavit of service to indicate who was served and where and when. This affidavit must be notarized by a notary public before the original papers can be filed with the court.

AFFIDAVIT OF SERVICE OF ORDER TO SHOW CAUSE

State of New York, County of _____:

[3] _____, being sworn, says: I am the tenant in this proceeding and am over 18 years of age and reside at _____.
On _____, 200____, at _____ (address) I served a copy of this order and affidavit by:
(check applicable box and write name of person served)

[] PERSONAL SERVICE ON _____, Petitioner by delivering a true copy to Petitioner personally at _____. I know the person served to be the person described as Petitioner.

[] PERSONAL SERVICE ON _____, Petitioner's agent by delivering a true copy personally at _____. I know that the person served is the agent of the Petitioner.

[] PERSONAL SERVICE ON Petitioner, a Corporation/Partnership by delivering a true copy to _____ personally at _____. I know that this person is the _____ (position) of the Corporation/Partnership.

[] PERSONAL SERVICE ON _____, the petitioner's attorney by delivering a true copy personally to the office of petitioner's attorney and the person served is the attorney or secretary authorized to accept service.

[] PERSONAL SERVICE ON _____, Marshal/Constable/Sheriff.

[] CERTIFIED MAIL, RETURN RECEIPT REQUESTED, on _____.

[] By FAX at # _____, the number designated by _____ for receipt of papers.

[9] _____
(Signature of Tenant)

[10] Sworn to before me this
____ day of _____, 200____.

Notary Public

K

CITY/JUSTICE COURT : CITY/TOWN/VILLAGE OF [1] _____
COUNTY OF _____

[2] _____
Petitioner-Landlord,
-against
Respondent-Tenant.

PRO SE ORDER TO SHOW
CAUSE FOR REINSTATEMENT
AFTER EXECUTION OF THE
WARRANT
Index No. _____

Upon the annexed affidavit of [3] _____ (TENANT)
sworn to on [4] _____, 200__, and on all the proceedings in this matter, let the Petitioner-
Landlord or attorney show cause before this court at Landlord-Tenant Part at the courthouse located at
[5] _____, New York on * _____, 200__, at ___ am/pm
(or as soon as the clerk calls the matter), why an order should not be made:

- (1) reinstating respondent to possession,
- (2) vacating the warrant of eviction and the judgment in favor of the landlord pursuant to
RPAPL §749(3) and CPLR 5015(a) and,
- (3) dismissing the petition for reasons set forth in the annexed affidavit, and
- (4) granting any other relief this court deems just, and it is

ORDERED that until this motion is heard and an order deciding this motion is entered by the court
clerk, petitioner shall provide respondent access, re-entry and possession of the apartment, and it is

ORDERED that petitioner is stayed from re-letting, leasing, assigning or permitting occupancy of
the premises by persons other than petitioner, and petitioner is stayed from removing, destroying or
disposing of the personal property and possessions of respondent now in the premises, and it is

ORDERED, that the tenant may personally serve a copy of this order together with a copy of the
annexed affidavit on the Petitioner-Landlord, petitioner's agent or attorney and in addition upon any
marshal/constable/sheriff of the City/Town/Village or upon a person authorized to accept service on their
behalf, on or before * _____, 200__.

DATED: * _____

* _____
JUDGE OF THE CITY/JUSTICE COURT

Numbers 1-10: Read instruction sheet before completing

***LEAVE BLANK FOR THE JUDGE TO COMPLETE**

Admission of Service: Received by Marshal/Constable/Sheriff _____ on _____
Received by Attorney/Landlord/Agent _____ on _____

Form Prepared by Legal Services of the Hudson Valley 2004 as a courtesy to this pro se tenant.
No attorney/client relationship exists and none is to be inferred between "Tenant" and Legal
Services of the Hudson Valley.

CITY/JUSTICE COURT OF THE CITY/TOWN/VILLAGE OF _____
COUNTY OF _____

(SAME TITLE AS ABOVE)

AFFIDAVIT IN SUPPORT OF
ORDER TO SHOW CAUSE

County of _____ State of New York)ss. :

(TENANT)[3] _____ being sworn, says:

FIRST: I am a Tenant in the above entitled proceeding, and I make this affidavit in support of this motion for an order:

- (1) providing me access, re-entry and possession of my apartment.
- (2) vacating the warrant of eviction and the judgment entered in favor of the landlord
- (3) dismissing the petition.

SECOND: This is a summary proceeding for recovery of possession of real property and I am a tenant of the premises at [6] _____.

THIRD: On information and belief, a judgment has been entered in this proceeding.

FOURTH: On information and belief, a warrant for my eviction was executed by the Marshal/Constable/Sheriff and I have been evicted, causing severe hardship to me.

FIFTH: I did not appear in court or make a timely answer to the petition in this proceeding because (REASON FOR NON-APPEARANCE IN COURT OR FAILURE TO ANSWER) or I did appear in court and the following occurred:

[7] _____

SIXTH: I have a meritorious defense to this proceeding,
as follows: (DEFENSE)

[8] _____

SEVENTH: No previous application has been made by me for the relief requested in this affidavit.
I will be irreparably harmed if I am not restored to possession.

EIGHTH: I have no one else to serve copies of this order to show cause and therefore I request
permission to serve this order personally.

WHEREFORE I ask this court to grant the relief requested in this order to show cause.

[9] _____
SIGNATURE OF TENANT

[3] _____
(Print tenant's name)

[10] Sworn to before me this
__ day of _____, 200__

Notary Public

INSTRUCTIONS FOR FILLING OUT THE ORDER TO SHOW CAUSE AND AFFIDAVIT

The numbers on this list of instructions match the Order to Show Cause and Affidavit form. Fill in each blank according to the matching instructions.

- [1] Write the name of the City/Town/Village and County where the court is located.
- [2] Write the caption exactly as it appears on your court papers. The caption is on the top of the court papers and states the landlord's (petitioner) name and tenant's (respondent) name.
- [3] Print your name.
- [4] Write the date your signed affidavit was notarized before a Notary Public.
- [5] Write the address of the court including the name of the City/Town/Village.
- [6] Write your address and apartment number.
- [7] Explain the reason why you did not appear in court or what happened when you did go to court.
- [8] Explain why you think the court should vacate the judgment and warrant, and reinstate you. For example, why you did not pay your rent or why you believe that you do not owe the rent.
- [9] Sign your affidavit before a Notary Public. **Do not sign until you are in front of the notary and have completed the form.**
- [10] The Notary Public fills this part out.

INSTRUCTIONS FOR GETTING THE ORDER SIGNED BY THE COURT AND SERVED

-After you complete the affidavit and have it notarized, take the Order To Show Cause to the court clerk for the judge to sign. Ask the clerk when the order will be signed by the judge and when you can pick up copies to serve upon and deliver to the landlord and the marshal/constable/sheriff.

-Remember the date the judge said you are to return to court, and the date you must serve the Order to Show Cause upon both the marshal/constable/sheriff and the landlord, agent or attorney. **The eviction is not legally stopped until the marshal/constable/sheriff is served with a copy of the Order signed by the judge.**

-When you serve the order to show cause, ask each person served to sign their name and the date on the original order. If anyone refuses to sign, complete the affidavit of service and have it notarized. Return the original order to show cause and affidavit of service to the court. **The case will not be on the court calendar until the original Order to Show Cause is returned to the court.**

INSTRUCTION FOR COMPLETING THE AFFIDAVIT OF SERVICE OF THE ORDER

If any of the persons you serve refuses to admit receipt of a copy of the order by signing their name on the original Order to Show Cause, you must complete the affidavit of service to indicate who was served and where and when. This affidavit must be notarized by a notary public before the original papers can be filed with the court.

AFFIDAVIT OF SERVICE OF ORDER TO SHOW CAUSE

State of New York, County of _____:

_____, being sworn, says: I am the tenant in this proceeding and am over 18 years of age and reside at _____.
On _____, 200__, at _____ (address) I served a copy of this order and affidavit by:
(check applicable box and write name of person served)

PERSONAL SERVICE ON _____, Petitioner by delivering a true copy to Petitioner personally at _____. I know the person served to be the person described as Petitioner.

PERSONAL SERVICE ON _____, Petitioner's agent by delivering a true copy personally at _____. I know that the person served is the agent of the Petitioner.

PERSONAL SERVICE ON Petitioner, a Corporation/Partnership by delivering a true copy to _____ personally at _____. I know that this person is the _____ (position) of the Corporation/Partnership.

PERSONAL SERVICE ON _____, the petitioner's attorney by delivering a true copy personally to the office of petitioner's attorney and the person served is the attorney or secretary authorized to accept service.

PERSONAL SERVICE ON _____, Marshal/Constable/Sheriff.

CERTIFIED MAIL, RETURN RECEIPT REQUESTED, on _____.

By FAX at # _____, the number designated by _____ for receipt of papers.

[9] _____
(Signature of Tenant)

[10] Sworn to before me this _____ day of _____, 200__.

Notary Public

L

THIRTY DAY NOTICE TERMINATING TENANCY

Re: Premises: Any Street, Apt. 1A, Mount Vernon, New York 10550

To: Tina Tenant
Any Street, Apt. 1A
Mount Vernon, NY 10550

or assigns, and every person in possession of the premises.

You are hereby notified that the Landlord elects to terminate your tenancy of the above described premises now held by you under a month-to-month tenancy. Unless you remove from the said premises on or before July 31, 2013, the day on which your term expires, the Landlord will commence summary proceedings under the Statute to remove you from said premises for the holding over after the expiration of your term and will demand the value of your use and occupancy of the premises during such holding over.

Dated: June 12, 2013

LARRY LANDLORD
P. O. Box 123
Eastchester, NY 10709

WILLIAM M. PERMUTT
Attorney at Law
571 White Plains Road
Eastchester, NY 10709
914-268-0606

M

TO: TINA TENANT
Any Street, Apt. 1A
Mount Vernon, New York 10550

TEN DAY NOTICE TO CURE

Pursuant to New York Unconsolidated Laws
§2504.1 and §2504.2

PLEASE TAKE NOTICE that pursuant to Unconsolidated Laws §2504.2(b) you are committing or permitting a nuisance in your housing accommodations or are maliciously or by reason of gross negligence substantially damaging the housing accommodations or your conduct is such to interfere substantially with the conduct or safety of the landlord or other tenants or occupants of the same or other adjacent building or structure.

To wit:

On or about September 15, 2013, at 10:00 p.m. and again on or about October 1, 2013, at 1:00 a.m. you were observed spray painting and scratching graffiti onto the walls of the elevator and breaking the light in the elevator. This conduct is damaging to the housing accommodations and substantially interferes with the comfort and safety of other tenants.

PLEASE TAKE NOTICE that you are hereby required to cure said violation within ten (10) days after service of this notice upon you and that upon your failure to cure, the landlord will elect to terminate your tenancy pursuant to law.

Dated: Scarsdale, New York
October 4, 2013

LARRY LANDLORD

N



March 18, 2007

Re: Premises: _____
rooms floor side Apt. No.
at
used for Business Dwelling purposes.

TO:

_____ Tenant _____ and, _____ Undertenant*
TINA TENANT
Any Street, Apt. 1A
Mount Vernon, New York 10550

First name of Tenant and/or Undertenant being fictitious and unknown to petitioner, person intended being in possession of the premises herein described

or assigns, and every person in possession of the premises.

You are hereby notified that the Landlord elects to terminate your tenancy of the above described premises now held by you under monthly hiring. Unless you remove from the said premises on April 30, 2007, the day on which your term expires, the Landlord will commence summary proceedings under the Statute to remove you from said premises for the holding over after the expiration of your term and will demand the value of your use and occupancy of the premises during such holding over.

Tenancy is hereby terminated pursuant to §2504.3 of the Unconsolidated Laws of the State of New York for the reasons set forth in the previously served Ten Day Notice to Cure, which is attached hereto and made a part hereof, and for your failure to cure said violations by again being observed damaging the light in the elevator on or about March 15, 2007, at 1:00 a.m.

Dated: March 18, 2007

LARRY LANDLORD

Agent

P.O. Box 123
Scarsdale, New York 10583

Address

O



November 14, 2003, 19

Re: Premises:

Rooms Floor side Apt. No. 1A
at Any Street, Mount Vernon, NY 10550
used for Business Dwelling purposes.

TO:

Tenant and, Undertenant*
TINA TENANT
Any Street, Apt. 1A
Mount Vernon, NY 10550

First name of Tenant and/or Undertenant being fictitious and unknown to petitioner, person intended being in possession of the premises herein described

or assigns, and every person in possession of the premises.

You are hereby notified that the Landlord elects to terminate your tenancy of the above described premises now held by you under monthly hiring. Unless you remove from the said premises on December 31, 2005, the day on which your term expires, the Landlord will commence summary proceedings under the Statute to remove you from said premises for the holding over after the expiration of your term and will demand the value of your use and occupancy of the premises during such holding over.

You are hereby notified that your tenancy is being terminated pursuant to §(8)(4)(d)(3)(b) of your Section 8 lease, to-wit: the owner's desire to use the unit for personal or family use or for a purpose other than use as a residential rental unit.

Dated: November 14, 2003

Landlord
LARRY LANDLORD

Agent

Address
P.O. Box 123
Scarsdale, NY 10583

* Use window envelope if mailed to tenant.
Use ordinary envelope if mailed to undertenant.

P

CITY COURT: CITY OF MOUNT VERNON
COUNTY OF WESTCHESTER

Index No.

-----X
LARRY LANDLORD

Petitioner-Landlord

NOTICE OF PETITION

- against -

HOLDOVER

TINA TENANT

**Any Street, Apt. 1A
Mount Vernon, NY 10550**

Respondent-Tenant
-----X

To the Respondent above named and described, in possession hereafter described or claiming possession thereof: Any Street, Apt. 1A, Mount Vernon, New York 10550

PLEASE TAKE NOTICE that a hearing at which you must appear will be held at the City Court, Second Floor, Roosevelt Square, Mount Vernon, New York 10550, County of Westchester on August 22, 2013, at 9:00 a.m. on the annexed Petition of LARRY LANDLORD which prays for a final judgment of eviction, awarding to the Petitioner the possession of premises designated and described as follows: Any Street, Apt. 1, Mount Vernon, NY 10550, County of Westchester and further granting to the Petitioner such other and further relief as is demanded in the Petition, which you must answer.

TAKE NOTICE also that demand is made in the Petition herein for judgment against you, the Respondent for the sum of **\$2,100.00** and fair value of use and occupancy for the period for which you are holding over.

TAKE NOTICE that your answer may set forth any defense or counterclaim you may have against the Petitioner.

TAKE NOTICE also that if you shall fail at such time to interpose and establish any defense that you may have to the allegations of the Petition, you may be precluded from asserting such defense or the claim on which it is based in any other proceeding or action.

TAKE NOTICE also that your answer may be made at the time of hearing specified above unless this Notice of Petition is served upon you on or before **August 13, 2013**, in which event you must answer at least three (3) days before the Petition is noticed to be heard, either orally before the clerk of the court at his or her office or in writing by serving a copy thereof upon the undersigned attorney for the Petitioner, and by filing the original of such written answer with proof of service thereof in the office of the clerk at least three (3) days before the time the Petition is noticed to be heard; in addition thereto, you must appear before the court at the time and place herein above set forth for the hearing.

TAKE NOTICE that your failure to appear and answer may result in final judgment by default for the Petitioner in the amount demanded in the Petition.

Dated: August 8, 2013

WILLIAM M. PERMUTT
Attorney for Petitioner
517 White Plains Road
Eastchester, NY 10709
914-268-0606

CITY COURT: CITY OF MOUNT VERNON
COUNTY OF WESTCHESTER

Index No.

-----X
LARRY LANDLORD

Petitioner-Landlord

- against -

**PETITION TO RECOVER
POSSESSION OF
REAL PROPERTY
HOLDOVER**

TINA TENANT

**Any Street, Apt. 1A
Mount Vernon, NY 10550**

Respondent-Tenant
-----X

LARRY LANDLORD owner and Landlord of the premises shows that:

1. The undersigned is the Petitioner.
2. Respondent TINA TENANT is the Tenant of said premises who entered in possession thereof under a month-to-month basis beginning on December 2012, which ended on July 31, 2013, between Respondent and Landlord at the rental of \$1,050.00 for each month payable the first of each month.
3. The premises are described as follows: Any Street, Apt. 1A, Mount Vernon, New York 10550 which is situated within the territorial jurisdiction of this court.
4. The term for which said premises were rented by the Respondent-Tenants expired on July 31, 2013, pursuant to a Thirty Day Notice, copy of which is attached hereto and made a part hereof.
5. The Respondent continues in possession of the premises without permission of the Petitioner-Landlord, after the expiration of said term. That on said date of the expiration or termination of said term, the rent then due and unpaid amounted to \$2,100.00 and has not been paid although payment of the same was demanded of said Respondent-Tenant.
6. Premises are not subject to the ETPA or rent control.

The property herein sought to be recovered is the residence of the Tenant. Petitioner requests final judgment awarding possession of the premises to the Petitioner-Landlord; issuance of a warrant to remove Respondent from possession thereof; judgment for rent in arrears against Respondent-Tenant for \$2,100.00 and fair value of use and occupancy.

Dated: August 8, 2013

LARRY LANDLORD (Petitioner)

STATE OF NEW YORK, COUNTY OF WESTCHESTER

LARRY LANDLORD being duly sworn states that deponent has read the Petition, the contents of the Petition are true to deponent's own knowledge except as to those matters which are alleged on information and belief. As to them deponent believes them to be true.

Sworn to before me on August 8, 2013

LARRY LANDLORD (Petitioner)

WILLIAM M. PERMUTT
Attorney for Petitioner
571 White Plains Road
Eastchester, NY 10709
914-268-0606

**CITY COURT: CITY OF MOUNT VERNON
COUNTY OF WESTCHESTER**

-----X
LARRY LANDLORD
P. O. Box 123
Eastchester, NY 10709

Index No. XXXX-13

Petitioner-Landlord

- against -

TINA TENANT
Any Street, Apt. 1A
Mount Vernon, NY 10550

Respondent-Tenant

HOLDOVER
Judgment Rendered in
Favor of:
LARRY LANDLORD
P. O. Box 123
Eastchester, NY 10709

-----X
A notice of petition and petition having been duly served and filed herein with proof of due service thereof and

The Respondent-Tenant TINA TENANT having answered and appeared before me on August 22, 2013, and

The issues in this proceeding having come before the court having heard and decided as follows:
Stay until September 14, 2013.

NOW, on motion of WILLIAM M. PERMUTT attorney for Petitioner-Landlord,

It is hereby **ADJUDGED**, that the possession of the premises described in the petition be awarded to the Petitioner-Landlord LARRY LANDLORD, and it is further

ADJUDGED that LARRY LANDLORD Petitioner-Landlord residing at P. O. Box 123, Eastchester, New York 10709 recover of TINA TENANT Respondent-Tenant residing at Any Street, Apt. 1, Mount Vernon, New York 10550 the sum of \$2,100.00 the amount determined to be due the Petitioner-Landlord.

ADJUDGED that a warrant of eviction issue, such issuance to be stayed until September 14, 2013.

Dated: _____, 2013

Enter

HON. ADAM SEIDEN, J.C.C.

Judgment entered in accordance with the foregoing

Dated: _____, 2013

Clerk

**CITY COURT: CITY OF MOUNT VERNON
COUNTY OF WESTCHESTER**

Index No. XXXX-13

-----X
LARRY LANDLORD
P. O. Box 123
Eastchester, NY 10709

Petitioner-Landlord

**WARRANT
HOLDOVER**

- against -

TINA TENANT
Any Street, Apt. 1A
Mount Vernon, NY 10550

Respondent-Tenant

-----X
TO: CITY MARSHALL

GREETING:

WHEREAS, LARRY LANDLORD has made petition in due form in writing, and presented the same, duly verified, to me HON. ADAM SEIDEN, Justice of the City Court of the City of Mount Vernon that LARRY LANDLORD is the Petitioner-Landlord of the premises hereinafter described, and that Petitioner rented to TINA TENANT as tenant, the premises known as Any Street, Apt. 1A, Mount Vernon, New York 10550. Said tenancy ending on the 31st day of July 2013, which term has expired, and that the said tenant is holding over and continues in possession of the same, without permission of the Landlord, after the expiration of the tenant's term therein, and are justly indebted to the Petitioner-Landlord in the sum of \$2,100.00.

And that on or about the December 2012, LARRY LANDLORD leased the said premises under a month-to-month basis, which expired on July 31, 2013, to the said TINA TENANT at the monthly rent of \$1,050.00 for each month payable the first of each month.

WHEREAS, a Notice of Petition was duly issued by Petitioner directed to the Respondent specifying the time and place of the hearing of the Petition, and proof of service of the Notice of Petition and Petition was presented, and the Respondent having failed to interpose or establish any defense, I did thereupon render final judgment awarding to the Petitioner, among other things, the delivery of the possession of the said property.

THEREFORE, in the name of the People of the State of New York, **YOU ARE COMMANDED** to remove **TINA TENANT** and all other persons from the said premises, and put the Petitioner in full possession thereof.

IN WITNESS WHEREOF, I have subscribed to these presents, this ____ day of _____, 2013.

HON. ADAM SEIDEN, JCC

Pursuant to the command of the above Warrant, I have this day put the Petitioner into full possession of the premises above mentioned.

Dated this ____ day of _____, 2013.

Q

CITY COURT : CITY OF MOUNT VERNON
COUNTY OF WESTCHESTER

LARRY LANDLORD,

Petitioner-Landlord,

-against-

TINA TENANT,

Respondent-Tenant.

NOTICE OF MOTION TO DISMISS
HOLDOVER PROCEEDING

Index No. _____

PLEASE TAKE NOTICE that the respondent-tenant will make a motion to this court located at City Court, 2nd floor, Roosevelt Square, Mount Vernon, NY 10550 on May 15, 2013 at 9:00 a.m. or as soon as counsel can be heard for an order dismissing the holdover petition on the grounds that (1) the proceeding is maintained by an agent of the petitioner-landlord, in violation of RPAPL §721, and (2) the notice to terminate was issued by a person not authorized by the landlord or the lease to terminate respondent's tenancy, and (3) if this motion is denied, permitting respondent to serve and file an answer within five days after service of the order with notice of entry pursuant to CPLR §404(a) and for any further relief this court deems just.

Dated: May 15, 2013
White Plains, New York

LEGAL SERVICES OF THE HUDSON VALLEY
JUDITH B. STUDEBAKER, Of Counsel
Office & P.O. Address
90 Maple Avenue
White Plains, New York 10601
Tel.: (914) 949-1305 ext 110
Attorney for Respondent

To: William Permutt, Esq.
571 White Plains Road
Eastchester, NY 10709
Attorney for Petitioner
Tel.: (914) 268-0606

CITY COURT : CITY OF MOUNT VERNON
COUNTY OF WESTCHESTER

LARRY LANDLORD,
Petitioner-Landlord,
-against-

AFFIDAVIT IN SUPPORT OF
MOTION TO DISMISS

TINA TENANT,
Respondent-Tenant.

Index No. _____

State of New York)
County of Westchester) ss.:

TINA TENANT, being sworn, says:

- 1. I am the respondent-tenant in this holdover proceeding and I am fully familiar with the facts and circumstances of this matter.
- 2. This affidavit is made in support of my motion to dismiss the holdover petition dated May 1, 2013.

AS AND FOR A FIRST GROUND TO DISMISS

- 3. I have been advised by my attorney that the law requires that the proceeding may be commenced by a landlord or lessor but not by an agent.
- 4. This proceeding was commenced by Larry Landlord but he is the managing agent for my landlord, Charlie Corporation. As indicated on my lease, Exhibit A, the lease agreement is between Charlie Corporation and myself, not Larry Landlord.
- 5. Upon information and belief, a corporation has officers who are the proper persons to maintain a summary proceeding pursuant to RPAPL §721. It follows that Larry Landlord is merely an agent of the landlord and this proceeding must be dismissed.

AS AND FOR A SECOND GROUND TO DISMISS

6. I have been advised by my attorney Westchester/Putnam Legal Services that the notice to terminate my tenancy must be given only by the landlord or a person authorized by the landlord to terminate my tenancy.

7. The notice to terminate my tenancy, Exhibit B, is signed by "Larry Landlord."

8. However, Larry Landlord is only the managing agent for my landlord, Charlie Corporation.

9. As indicated on my lease, Exhibit A, the lease agreement is between Charlie Corporation and myself, not Larry Landlord.

10. The lease expressly states that it is the landlord who shall terminate the tenancy. No other person is authorized by the lease and there is no accompanying authorization annexed to the notice to terminate.

11. Upon information and belief, a corporation has officers who are the proper persons to terminate my tenancy. It follows that Larry Landlord is merely an agent of the landlord.

12. My attorney has advised me that an agent cannot terminate my tenancy and that I have a right to know with certainty that it is the landlord who seeks to evict me, not some unauthorized person.

WHEREFORE, it is respectfully requested that this court grant this motion to dismiss, and for any further relief this court deems just.

TINA TENANT

Sworn to before me this 15th
day of May, 2013

Notary Public

R

CITY/JUSTICE COURT: CITY/TOWN/VILLAGE OF _____
COUNTY OF _____

Petitioner-Tenant,

-against-

Respondent-Landlord.

PRO SE ORDER TO SHOW CAUSE
TO RECOVER POSSESSION OF
REAL PROPERTY AND FOR DAMAGES
FOR WRONGFUL EVICTION

Index No. _____

Upon the annexed petition of [3] _____ (PETITIONER-TENANT) sworn
to on [4] _____, 200__.

LET the respondent-landlord or attorney show cause before this court located
at [5] _____, New York on * _____, 200__ at _____ am/p.m. (or
as soon as the clerk calls the matter), why an order should not be made pursuant to RPAPL §721(4) and (10)
awarding the petitioner possession of apartment/room [6] _____, at _____, New York
along with treble damages for respondent's forcible and unlawful entry pursuant to RPAPL §853, and it is

ORDERED, that pending a hearing of this matter respondent shall provide petitioner access, re-entry
and possession of apartment/ room [6] _____ at _____,
_____, New York and, it is further

ORDERED, that pending the hearing of this matter, respondent is stayed from re-letting, leasing,
assigning or permitting occupancy of the premises by persons other than petitioner, and it is further

ORDERED, that pending the hearing of this matter, respondent is stayed from removing, destroying
or disposing to the personal property including all furniture and personal possessions of petitioner now in the
premises, and it is further;

ORDERED, that the tenant may proceed as a poor person pursuant to Article 11 of the CPLR in
order to file these papers without charge, and it is

ORDERED, that the tenant may personally serve a copy of this order together with a copy of the
annexed petition upon respondent, respondent's agent or attorney on or before _____, 200__.
Dated: * _____

* _____
JUDGE OF THE CITY/JUSTICE COURT

Numbers 1-6: Read instruction sheet before completing

***LEAVE BLANK FOR THE JUDGE TO COMPLETE**

Admission of Service: Received by Landlord/Agent/Attorney _____ on _____

Form prepared by Legal Services of the Hudson Valley as a courtesy to pro se tenants. No
attorney/client relationship exists and none is to be inferred between "Tenant" and Legal
Services of the Hudson Valley.

CITY/JUSTICE COURT: CITY/TOWN/VILLAGE OF [1] _____
COUNTY OF _____

[2] Petitioner-Tenant, VERIFIED PETITION
-against- Index No.

[2] Respondent-Landlord.

State of New York)
County of Westchester)
ss.

PETITIONER _____, for his/her petition, being sworn says:

1. I am the tenant and the person entitled to possession of Room/Apartment # _____ located at _____, New York.
2. This proceeding is brought pursuant to Real Property Actions and Proceedings Law (RPAPL) §721 (10) because I am the person forcibly put out and kept out of the premises.
3. Respondent is (the agent) (owner of the premises).
4. I am seeking access, re-entry and possession of my apartment as well as treble damages pursuant to RPAPL §853 which provides that "if a person is disseized, ejected, or put out of real property in a forcible or unlawful manner, or, after he has been put out, is held and kept out by force or by putting him in fear of personal violence or by unlawful means, he is entitled to recover treble damages in an action therefore against the wrongdoer."
5. On _____, 200__, I entered into a (written) (oral) agreement with respondent for a (one year) (month-to-month) rental in the amount of \$_____ per (month) (week) for room/apartment # _____ in a (three family house) (multiple dwelling) (rooming house). I reside there (alone) (with _____).
6. On _____, I was in lawful possession of my apartment/room.
7. On _____, 200__ the locks were changed to the door of (my apartment/room) (the building) while I was outside and I was unable to enter my apartment/room.
8. Upon information and belief, respondent and/or its agents or employees caused the locks to be changed and respondent is now in possession of the premises.
9. I have not been able to gain possession or access to my apartment/room from

_____, 200__ to the present because respondent has refused me access and denied me possession.

10. I have furniture and personal belongings in the apartment as well as (money) (identification) (clothing) (medication) which I urgently need.

11. Upon information and belief, the apartment is unoccupied.

12. My tenancy and right to occupy the subject premises have not been lawfully terminated by respondent. I have not received a notice of petition and petition to appear in court. Upon information and belief, there is no summary proceeding now pending against me in this court for nonpayment or for holding over after notice to terminate.

13. I am proceeding by order to show cause because I have no other place to live and I am in immediate need of suitable housing.

14. From the date of the lockout to the present, I have suffered damages and out-of-pocket expenses in the amount of \$ _____ as a result of respondent's conduct and I continue to have additional damages at the rate of \$ _____ per day.

15. My only source of income is \$ _____ per month from (employment) (social services) (SSI) (Disability) (unemployment) (social security). I have no valuable assets I own no stocks, bonds, savings, or real or personal property, apart from clothing and household furniture of substantial value.

16. I am unable to pay the filing fee for this petition and ask this court to waive the fee.

17. No previous application of this relief has been made.

WHEREFORE, petitioner respectfully asks this court to grant a judgment:

(1) Awarding petitioner re-entry, access to and possession of said premises;

(2) Awarding petitioner \$ _____ and treble this amount as damages pursuant to RPAPL §853 together with costs and disbursements pursuant to RPAPL §747(3);

(3) Awarding petitioner a judgment for the amount of rent paid during the period of wrongful lockout;

(4) Awarding petitioner punitive damages for respondent's conduct; and

(5) Granting such other and further relief.

(Signature)Petitioner-Tenant

Sworn to before me on

_____, 200_____

Notary Public

INSTRUCTIONS FOR COMPLETING THE AFFIDAVITS OF SERVICE

If any of the persons you serve refuses to admit receipt of a copy of the order by signing their name on the original order to show cause, you must complete the affidavit of service to indicate who you served and where and when.

THIS AFFIDAVIT MUST BE NOTARIZED BY A NOTARY PUBLIC BEFORE THE ORIGINAL PAPERS CAN BE FILED WITH THE COURT.

REMEMBER: The court will not schedule the case on the calendar until the original order to show cause is returned to the court with the signed admissions and/or affidavits of service

AFFIDAVIT OF SERVICE OF ORDER TO SHOW CAUSE

State of New York)
County of)ss:

_____, being sworn says:

I am the tenant in this proceeding and am over 18 years of age and reside at _____

On _____, 200_____, at _____, (address) I served a copy of this Order and Affidavit by: **(Check applicable box and write name of person served)**

_____PERSONAL SERVICE ON _____, Respondent by delivering a true copy to Respondent personally. I know that the person served is Respondent.

_____PERSONAL SERVICE ON _____, Respondent's agent by delivering a true copy personally. I know that the person served is Respondent's agent.

_____PERSONAL SERVICE ON Respondent, a Corporation/Partnership by delivering a true copy to _____ personally. I know that the person is the _____ (position) of the Corporation/Partnership.

_____CERTIFIED MAIL, RETURN RECEIPT REQUESTED, ON _____.

SIGNATURE OF TENANT

Sworn to before me this
[10] _____ day of _____, 200__

Notary Public

INSTRUCTIONS FOR FILLING OUT THE ORDER TO SHOW CAUSE AND VERIFIED PETITION

The numbers below match the numbers on the **ORDER TO SHOW CAUSE AND FORM**. Fill in each blank according to the matching instructions.

- [1] Write the name of the City/Town/Village and County where the court is located and the name of the county in which you live..
- [2] Write your name (Petitioner-Tenant) and the name of your landlord and/or the name of the person who locked you out (Respondent-Landlord).
- [3] Print your name.
- [4] Write the date your signed Verified Petition was notarized before a Notary Public.
- [5] Write in the address of the court including the name of the City/Town/Village.
- [6] Write your address and apartment number.

*** The judge will fill in the date you and your landlord are to appear in court. The judge will also write the date by which you are to serve a copy of the order to show cause upon the landlord.**

INSTRUCTIONS FOR FILING OUT THE VERIFIED PETITION

- 1. Fill in the blanks in each paragraph.
- 2. Where there is a choice to complete the sentence, cross out the part that does not apply. For example, in number 5, if you have an oral lease agreement, cross out the work "written."
- 3. In number 14 in the first blank, write your total out-of-pocket expenses to date. Include money spent for other housing, eating in restaurants, transportation, time missed from work and any other expenses directly caused by the landlord locking you out. In the second blank in number 14, write the amount of expected on-going daily expenses because of the lock-out.
- 4. For (2) in the WHEREFORE section, write the total sum of your anticipated damages.
- 5. Sign the Verification before a Notary Public. Do not sign until you are before the notary and have completed the form.

INSTRUCTIONS FOR OBTAINING AND SERVING THE ORDER TO SHOW CAUSE

- 1. After you complete the Order to Show Cause and Verified Petition and have your signature notarized, take all the documents to the Court Clerk for the Judge to sign.
- 2. Find out from the court clerk when it will be signed and when the copies can be picked up to serve upon the respondent-landlord you named in the Order to Show Cause.
- 3. When the court clerk gives you the signed Order to Show Cause, note carefully the date you are to return to court, and the date by which you must serve this Order to Show Cause upon the other party. The judge filled in these dates.

4. When you serve the Order to Show Cause, ask the person served to sign his/her name and the date on the original Order to Show Cause to admit service and to notify the court that they have received a copy of the Order. The person served must be given a copy by the date for service which the Judge wrote in on the front of the Order to Show Cause.

5. If a person refuses or fails to sign the Order to Show Cause, then you must fill out an Affidavit of Service (annexed) which tells the court who you served and how the affidavit was served. This affidavit must be notarized by a notary public before the original papers can be filed with the court.

6. After service, take the original Order to Show Cause back to the court at least one (1) working day before the date the judge said you are to appear in court.

REMEMBER: The court will not schedule the case on the calendar until the original Order to Show Cause is returned to the court with the signed admissions and/or affidavits or service.

LOCAL LAW INTRO. NO. 6057 2013

A LOCAL LAW amending the Laws of Westchester County, in relation to prohibiting housing discrimination based on source of income.

BE IT ENACTED by the Board of Legislators of the County of Westchester as follows:

Section 1. The table of contents of Article II of Chapter 700 of the Laws of Westchester County is hereby amended to read as follows:

**Chapter 700
HUMAN RIGHTS**

Article II.	Fair Housing Law
Sec. 700.19.	Declaration of policy.
Sec. 700.20.	Definitions.
Sec. 700.21.	Unlawful discriminatory real estate practices.
Sec. 700.22.	Unlawful discriminatory real estate practices in relation to credit.
Sec. 700.22-a.	Discrimination in the provision of brokerage services.
Sec. 700.23.	Additional provisions defining discriminatory practices.
Sec. 700.23-a.	Education and Outreach.
Sec. 700.24.	Creation of a Fair Housing Board.
Sec. 700.25.	Formulations of policies by the Board.
Sec. 700.26.	Powers and duties of the Board.
Sec. 700.27.	Relations with county departments and agencies.
Sec. 700.28.	Administrative procedure – preliminary matters.
Sec. 700.29.	Administrative procedure—removal, orders and awards and review.
Sec. 700.30.	Complaints of discrimination; limitations.
Sec. 700.31.	Temporary injunctions.
Sec. 700.32.	Jurisdictional limitations.
Sec. 700.33.	Enforcement by private persons.
Sec. 700.34.	Judicial review and enforcement.
Sec. 700.35.	Separability.

Section 2. Paragraph H of Section 700.20 of the Laws of Westchester County is hereby amended to read as follows:

H. *Group identity* shall mean the race, color, religion, age, national origin, alienage or citizenship status, ethnicity, familial status, creed, gender, sexual orientation, marital status or disability of a person or persons, a person's source of income, or a person's status as a victim of domestic violence, sexual abuse, or stalking.

Section 3. Section 700.20 of the Laws of Westchester County is hereby amended by relettering paragraphs V, W and X as paragraphs W, X and Y, respectively, and adding a new paragraph V, to read as follows:

V. *Source of income* shall mean, as it relates to unlawful discriminatory real estate practices, lawful, verifiable income derived from social security, or any form of federal, state or local public assistance or housing assistance, grant or loan program, including the federal housing subsidy known as "Section 8", any disability payment, and assistance, grant or loan program from a private housing assistance organization.

(1) For the purposes of this article, as they relate to unlawful discriminatory real estate practices on the basis of source of income, it shall not be considered discriminatory if differentiations or decisions are based solely upon factually supportable, objective differences in the level of the individual's income, which is defined as the sum total of all sources of lawful and verifiable income, including, but not limited to, the sources of income defined herein.

Differentiations or decisions based on the level of income must bear a reasonable relationship to the individual's ability to meet his or her personal housing payment obligations that arise from the tenancy, ownership or occupancy of the housing accommodation.

(2) For purposes of this article, as they relate to unlawful discriminatory real estate practices on the basis of source of income, it shall not constitute an unlawful discriminatory real estate practice on the basis of source of income to make a written or oral inquiry concerning the level or source of income.

(3) The provisions of this article, as they relate to unlawful discriminatory real estate practices on the basis of source of income, shall be applicable to all housing accommodations, with the following exceptions: (a) cooperative apartments; (b) condominiums; (c) housing accommodations otherwise exempted by section 700.21(C) of this article; and (d) housing accommodations, other than publicly-assisted housing accommodations, for six or fewer families living independently of each other, provided that the person owns or has ownership interest in only one such housing accommodation.

(4) It shall not constitute an unlawful discriminatory real estate practice on the basis of source of income that a housing accommodation was denied based on the use by a person of his or her reasonable business judgment in relation to transactions involving housing accommodations that the person owns or in which the person has an ownership interest. The provisions of this subdivision shall not be construed to impair, alter, limit or modify the rights, obligations and/or defenses otherwise available to a respondent against whom any unlawful discriminatory real practice has been alleged pursuant this article.

W. Transaction shall mean, for purposes of this [chapter] article, the sale, rental, lease, sublease, assignment, transfer, finance, refinance, loan, or appraisal and any and all other terms and conditions of any housing accommodation.

a. A victim of an act or series of acts which would constitute a violation of Article 130 of the Penal Law;

b. A victim of an act or series of acts which would constitute a violation of section 120.45, 120.50, 120.55, or 120.60 of the Penal Law.

A victim of domestic violence, sexual abuse or stalking shall also include any individual who is perceived to be a person who has been, or is currently being, subjected to acts or series of acts as set forth in subdivisions (1) and (2) above.

Section 4. Subparagraph 3 of Subdivision (C) of Section 700.21 of the Laws of Westchester County is hereby amended to read as follows:

3. Nothing in this article:

a. Limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling;

b. Shall prohibit any person from limiting the rental or occupancy of housing accommodations to persons who are elderly in any housing facility designed, constructed or substantially rehabilitated and operated exclusively for older persons, as defined by the federal Fair Housing Act, as amended, 42 U.S.C. § 3607(b)(1) through (4) as of the effective date of the local law codified in this article, or for persons with disabilities[.]

c. Limits the applicability of any Federal, State or local laws, rules, regulations or restrictions on the residency of registered sex offenders.

Section 5. Article II of Chapter 700 of the Laws of Westchester County is amended by adding a new Section 700.23-a, to read as follows:

§ 700.23-a. Education and Outreach.

Educational programs shall be conducted by the County to ensure that the public is informed regarding the prohibitions against unlawful discriminatory real estate practices, as set forth in this article.

Section 6. Subparagraph (1) of Subdivision (B) of Section 700.29 of the Laws of Westchester County is hereby amended to read as follows:

f. Except in cases of unlawful discriminatory real estate practices on the basis of source of income under Section 700.20(V) of this article, [A]assessing a civil penalty, in an amount not to exceed \$50,000.00, to be paid to the County of Westchester by a respondent found to have committed an unlawful discriminatory real estate practice, or not to exceed \$100,000.00 to be paid to the County of Westchester by a respondent found to have committed an unlawful discriminatory real estate practice which is found to be willful, wanton or malicious;

f-1. For unlawful discriminatory real estate practices on the basis of source of income under Section 700.20(V) of this article, assessing a civil penalty, in an amount not to exceed \$50,000.00, to be paid to the County of Westchester by a respondent found to have committed an unlawful discriminatory real estate practice which is found to be willful, wanton or malicious;

Section 7. This Local Law shall take effect immediately, provided that:

[a] on and after such effective date, the prohibitions against unlawful discriminatory real estate practices on the basis of "source of income", as that term is defined in this Local Law,

shall only apply to a respondent who commits, is committing or is about to commit any such unlawful discriminatory real estate practice against a person who is a current lessee in a housing accommodation owned, operated, managed and/or controlled by such respondent; and

[b] on and after the one hundred eightieth (180th) day after passage of this Local Law, the prohibitions against unlawful real estate practices on the basis of "source of income", as that term is defined in this Local Law, shall apply to a respondent who commits, is committing or is about to commit any such unlawful discriminatory real estate practice against any person.

[c] This Local Law shall expire and be deemed repealed five (5) years after the effective date of subdivision (b) of this section.

Chapter 695

NO PET CLAUSES*

- Sec. 695.01. Legislative findings.
- Sec. 695.11. Waiver of lease provisions regarding pets.
- Sec. 695.21. Severability.

Sec. 695.01. Legislative findings.

The County Board hereby finds that the enforcement of covenants in multiple-dwelling leases, which prohibit the harboring of household pets, has led to widespread abuses by building owners, or their agents, who knowing that a tenant has had a pet for an extended period of time seek to evict the tenant and/or his or her pet often for reasons unrelated to the creation of a nuisance or waste, said reasons including, but not limited to, facilitating a co-op or condominium conversion by warehousing apartments or reducing the required number of subscribers; garnering a larger monthly rental due to a vacancy or to discourage tenants in enforcement of their rights. Because household pets are harbored for reasons of safety and companionship, as well as the physical and emotional well-being of their owners, and under the existence of a continuing housing emergency in the County of Westchester, it is necessary to protect pet owners from retaliatory, and other, evictions and to safeguard the health, safety and welfare of tenants who harbor pets under the circumstances provided herein, it is hereby found that the enactment of the provisions of this chapter is necessary to prevent hardship and dislocation of tenants within this county. It is further declared that to the fullest extent legally permissible this chapter is to have retroactive effect and that such retroactive effect is reasonable, necessary and appropriate to effectuate the purposes to be achieved by this chapter, as well as to prevent frustration of the legislative aims of this chapter. (Added by L.L. No. 6-1988; amended by L.L. No. 3-1990†)

Sec. 695.11. Waiver of lease provisions regarding pets.

1. Where a tenant in a multiple dwelling, openly and notoriously for a period of three months or more following taking possession of a unit, harbors or has harbored a household pet or pets, the harboring of which is not prohibited by the Health Code of Westchester County‡ or any other applicable law, ad** the owner or his or her agent has knowledge of this fact, and such owner and/or agent fails within this three-month period to commence a summary proceeding or action to enforce a lease provision prohibiting the keeping of such household pets, such lease provision shall be deemed waived. As used in this chapter, "multiple dwelling" shall mean a dwelling which is either rented, leased, including leased under a proprietary lease in a cooperative, let or hired out to be occupied or is occupied as the residence or home of three or more families or persons living independently of each other. This chapter shall be deemed to apply to a tenant in a multiple dwelling which is under conversion or has been converted to a cooperative or condominium.

2. It shall be unlawful for an owner or his or her agent, by express terms or otherwise, to restrict a tenant's rights as provided in this section. Any such restriction shall be unenforceable and deemed void as against public policy.

3. The waiver provision of this section shall not apply where the harboring of a household pet causes damage to the subject premises, creates a nuisance or interferes substantially with the health, safety or welfare of other tenants or occupants of the subject building. This chapter shall not apply to any multiple dwelling owned or operated by any government entity.

*Statutory references—Landlord Tenant Act, Real Property Law, § 220 et seq.

†Editor's note—This amendment provided for this chapter to be renumbered from Ch. 694 to Ch. 695.

‡Editor's note—See Ch. 873, Sanitary Code.

**Editor's note—So in original. Should be "and".

4. The provisions of this chapter shall apply retroactively and prospectively to all existing and future leases and renewals, including without limitation, those leases and renewals which are the subject of pending summary proceedings or actions to enforce the lease provision.
(Added by L.L. No. 6-1988; amended by L.L. No. 3-1990)

Sec. 695.21. Severability.

If any clause, sentence, paragraph, subdivision, section, rule or part of this chapter shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, rule or part thereof directly involved in the controversy in which such judgment shall have been rendered.
(Added by L.L. No. 6-1988; amended by L.L. No. 3-1990)

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EDUCATION:

Memphis State University School of Law, J.D.
University of Oklahoma, M.A.P.A. (Public Administration)
Syracuse University, B.A. (Psychology)
Smith College (2 years - no degree)

BAR ADMISSION:

New York, First Department, 1977
U.S. District Court, S.D.N.Y., 1977

EXPERIENCE:

1976 - Present: Legal Services of the Hudson Valley

Duties include extensive litigation and motion practice, orders to show cause, jury and non-jury trials, appeals, Article 78 and Article 7A proceedings (RPAPL), as well as speaking engagements to community groups and tenant associations. As a senior housing attorney, my practice concentrates on landlord-tenant problems including non-payment and holdover proceedings, public housing and federal subsidized housing in county and state courts and in all city, village and justice courts in Westchester County.

At a branch office in Mount Vernon in 1976 - 1980, I developed multiple self-help informational bulletins to assist tenants in pro se matters. In addition, I assisted in providing legal services at a community center and in establishing other non-profit community based organizations to help tenants.

I brought the first of several Article 7A proceedings in Westchester County on behalf of tenants in a large apartment building for the court appointment of an administrator to collect rents and repair the building. Also, I successfully litigated a case in which a landlord attempted to evict a tenant in retaliation against her activities in a tenants' association.

I have brought Article 78 proceedings concerning welfare and utility problems and represented clients in a variety of administrative

hearings before the Labor Department, Public Service Commission, Social Security Administration, Department of Social Services, Division of Housing and Community Renewal, and local school districts.

Published in 1990, I co-authored "Landlord Tenant Manual" with Legal Services former director, Gerald A. Norlander. This manual was prepared for use by volunteer attorneys who may be representing a tenant in a housing case for the first time. The manual includes numerous forms for motion practice, pro se orders to show cause with instructions for completion and service, and notice of appeal and order to show cause to the Supreme Court, Appellate Term to stay the judgment and warrant pending determination of the appeal. This manual has been distributed by the Administrative Law Judge of the Ninth Judicial District to all city and justice courts in the five counties of the Ninth Judicial District.

MEMBER:

N.Y.S. Bar Association: Residential Landlord-Tenant Committee of the Real Property Law Section

Chair: Legislative Subcommittee

Member: Task Force on Rent Administration

GULP Landlord-Tenant Committee 1994-96

Westchester Women's Bar Association 1978-2000

Arbitration Panel, Ninth Judicial District 1978-1980

PUBLICATIONS:

Landlord Tenant Manual, 1992, co-authored with Gerald A. Norlander

Landlord and Tenant Practice in the District, City and Justice Courts, Representing A Tenant in a Nonpayment Proceeding, NYSBA CLE 1992

Landlord and Tenant Practice Outside New York City, NYSBA CLE 1998

AWARDS:

New York State Bar Association 2004 Denison Ray Award

Hon. Adam Seiden

Graduated Lehman College cum laude, 1972; received his Juris Doctor from Brooklyn Law School in 1975 and his L.L.M. from New York University School of Law in 1986.

He has been practicing law since 1976 as a sole practitioner specializing in civil litigation, matrimonial and family law and real estate transactions. He is currently, and has been since 1995, Associate City Court Judge of the Mount Vernon City Court. Judge Seiden is Past President of the Mount Vernon Bar Association, past President of the Westchester County Bar Association, and has been a Member of the House of Delegates of the New York State Bar Association and American Bar Association.

Judge Seiden has taught CLE programs on behalf of Pace Law School, the New York State Bar Association, and various local and county bar associations.

Judge Seiden is a past trustee of the Mount Vernon City School District and currently serves as a board member of the Mount Vernon Neighborhood Health Center, The Mount Vernon Chamber of Commerce, and other community organizations.

William Permutt, Esq.

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Mr Permutt has been in private practice since 1983. Formerly with Westchester DA's office from 1979 – 1983. Mr. Permutt is an instructor at Hofstra teaching Family Law and Criminal Law. He has lectured at Pace Law School Center for Continuing Legal Education since 2000. He is a member of the Westchester County Bar Association and the New York State Bar Association.

William Permutt received his JD with honors from George Washington University in 1978.