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ABUSED WIFE WHO LEFT RENT-STABILIZED HOME WINS RENEWAL LEASE

By Bill Alden

A WOMAN WHO CLAIMS she was forced to leave a rent stabilized apartment for 14 months due to spousal abuse is entitled to a renewal lease, a New York City judge has ruled.

While conceding that the woman's husband, the tenant of record, gave up his rights in the premises during the hiatus, Civil Court Judge Arthur Birnbaum found that the landlord could not rely on that to terminate the lease.

The decision will be published tomorrow.

Instead, noting that the woman, Abbe Pearl, had lived in the apartment for 22 years, had given notice of the temporary relocation and had left property in the unit, Judge Birnbaum said the landlord "at the minimum" should have made inquiries concerning her "intentions."

The judge also rejected the landlord's contention that Ms. Pearl had failed to "substantiate" her claims that she was abused.

Pointing out that Ms. Pearl had filed a misdemeanor complaint against the husband, Warren Pearl, and had later sought an order of protection, Judge Birnbaum concluded that her "state of mind consisted of fear for her life."

The evidence presented by Ms. Pearl, he wrote, showed that she "had no intention of abandoning or relinquishing her claim to the apartment but rather acted reasonably under a stressful situation as best she could."

The rent stabilization law is designed to "prevent housing catastrophes," Judge Birnbaum added, in *390 West End Associates, L.P. v. Pearl*. "It would be unjustifiable reasoning to demand that a spouse put her life or physical safety in jeopardy in order to preserve a home otherwise hers by law."

The most recent renewal lease for the apartment, which was in Warren Pearl's name only, began on July 1, 1995 with an expiration date of June 30, 1997.

Several days after the effective date of the lease, Ms. Pearl left the residence. The couple, however, has not divorced nor is there any separation agreement between them.

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At the time she left, she sent a letter via certified mail to the landlord, 390 West End Associates, notifying it that she was leaving only temporarily and not abandoning the premises.

Meanwhile, the couple's son, Alex, a student at New York University, moved out of the unit to live in college housing.

390 West End Associates offered a renewal lease to Mr. Pearl earlier this year. But he advised the landlord that he was surrendering his rights in the apartment and that it was free to dispose of all personal property remaining there.

Right to Renew

Without giving notice to either Ms. Pearl or her son, 390 West End filed a nonpayment proceeding and obtained an eviction order. Ms. Pearl, by way of an order to show cause, had that order lifted.

The landlord then started a holdover proceeding, asserting that Ms. Pearl had no further rights in the premises.

Judge Birnbaum, however, found that not only was Ms. Pearl entitled to a renewal lease but that her son was as well.

Citing the Rent Stabilization Code and case law, Judge Birnbaum noted that there is an "independent right of a renewal lease for the adult issue of the tenant of record exempting the time temporarily residing elsewhere during college and law school."

Maintaining that the renewal right is thus retained "even where a protracted amount of time has elapsed," Judge Birnbaum found that Alex Pearl was entitled to the lease.

Finally, asserting that the landlord "illegally evicted" Ms. Pearl and her son in the first place, Judge Birnbaum ordered a further hearing for the determination of damages and attorneys fees.

Belkin, Burden, Wenig & Goldman represented 390 West End Associates. **Himmelstein,** McConnell & Gribben represented Ms. Pearl.

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