

(Cite as: 142 Misc.2d 978, 542 N.Y.S.2d 899)

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Supreme Court, Appellate Term, New York,
 First Department.
FIRST STERLING CORP.,
 Petitioner-Landlord-Appellant,
 v.
 Andrew ZURKOWSKI,
 Respondent-Tenant-Respondent.

March 28, 1989.

Landlord brought holdover proceeding to evict rent-controlled tenant. The Civil Court, New York County, Taylor, J., granted tenant's motion to dismiss petition, and landlord appealed. The Supreme Court, Appellate Term, held that: (1) New York city rent and eviction regulations were applicable to holdover proceeding to evict rent-controlled tenant upon ground of nonprimary residence, and (2) termination notice given tenant was insufficient where it merely recited legal ground of nonprimary residence for eviction, but failed to set forth any facts upon which ensuing nonprimary residence proceeding would be based.

Affirmed.

West Headnotes

[1] Landlord and Tenant ↪278.4(3)

233k278.4(3) Most Cited Cases

New York city rent and eviction regulations, applicable generally to actions seeking eviction of rent-controlled tenants by court process, apply in proceedings to evict tenant upon ground of nonprimary residence brought in courts of competent jurisdiction. Rent and Eviction Regulations, § 2204.3, McK.Unconsol.Laws.

[2] Landlord and Tenant ↪297(2)

233k297(2) Most Cited Cases

Termination notice given rent controlled tenant was insufficient to serve as predicate for eviction proceeding where it merely recited that termination was based on tenant's failure to use premises as his primary residence and did not set forth facts supporting that legal ground. Administrative Code, § 26-403, subd. e, par. 2(i)(10); Rent and Eviction Regulations, §§ 2204.3, 2204.3(b), McK.Unconsol.Laws.

****900 *978** Elliot M. Rudick and Betty Jane Jacobs, New York City, for petitioner-landlord-appellant.

Lansner, **Himmelstein & McConnell** (Samuel J. **Himmelstein**, New York City, of counsel), for respondent-tenant-respondent.

Before SANDIFER, J.P., and MILLER and McCOOE, JJ.

PER CURIAM:

Order entered November 11, 1987 (Taylor, J.) affirmed, with \$10 costs.

[1][2] This is a holdover proceeding to evict a rent controlled tenant upon the ground of nonprimary residence. Landlord's thirty day notice of termination recited that termination of the tenancy "... results from the fact that you do not use the premises *979 as your primary residence". Civil Court granted tenant's dismissal motion upon the ground that the termination notice did not set forth facts supporting the nonprimary residence claim.

We affirm. Section 2204.3 of the New York City Rent and Eviction Regulations (9 NYCRR), applicable generally to actions which seek eviction of controlled tenants by court process, should be deemed applicable in nonprimary residence proceedings brought in "a court of competent jurisdiction" (see New York City Rent and Rehabilitation Law, Adm.Code § 26-403, subd.

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e[2][i] [10]). In consequence, landlord was required to state in its termination notice the ground for removal or eviction of the tenant, as well as "the facts necessary to establish the existence of such ground" (9 NYCRR § 2204.3 [b]). [FN1] A notice which, as here, merely recites the legal ground for eviction, but fails to set forth any of the facts upon which the ensuing nonprimary residence proceeding will be based, is ineffective and cannot serve as a predicate for an eviction proceeding.

FN1. This construction harmonizes with the procedural rules in place for like proceedings brought under the Rent Stabilization Code (§ 2524.2 [b]).

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