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Governor



Judith A. Calogero  
Commissioner

New York State Division of Housing and Community Renewal  
Office of Rent Administration  
Gertz Plaza  
92-31 Union Hall Street  
Jamaica, NY 11433

March 15, 2006

This is in response to your letter, which we received on January 4, 2006, and which was forwarded to me for reply.

Basically, you stated that you are an eighty-one year old senior citizen who has lived in your rent stabilized apartment for thirty years. You also explained that you are in poor health and need to spend some time in a Florida's climate. You want to know what your rights are and how long you can stay on a vacation, if you and your family buy a condominium in Florida for vacation purposes?

Please be advised that the opinion letter process, which is designed to answer questions of general applicability, is not an appropriate forum for response to your inquiry. However, we can provide you with the following general information.

Rent Stabilization Code ("RSC") Sec. 2524.4(c) provides that an owner may refuse to offer a renewal lease to a rent regulated tenant if the tenant does not maintain the premises as his or her primary residence. After serving the tenant with the notice, as required by RSC Sec. 2524.2, the owner may commence an action or proceeding in a court of competent jurisdiction to recover possession of the premises. (RSC Sec. 2520.11(k) provides that primary residence issues are exclusively determined by a court of competent jurisdiction.)

Additionally, RSC Sec. 2520.6(u) defines primary residence as follows:

Although no single factor shall be solely determinative, evidence which may be considered in determining whether a housing accommodation subject to RSC is occupied as a primary residence shall include, without limitation, such factors as listed below:

- (1) specification by an occupant of an address other than such housing accommodation as a place of residence on any tax return, motor vehicle registration, driver's license or other document filed with a public agency;
- (2) use by occupant of an address other than such housing accommodation as a voting address;

- (3) occupancy of the housing accommodation for an aggregate of less than 183 days in the most recent calendar year, except for temporary periods of relocation pursuant to Sec. 2523.5(b)(2); and
- (4) subletting of the housing accommodation.

Therefore, the landlord must show the court that the tenant has not maintained an ongoing, substantial, physical nexus with the premises for actual living purposes. Although the landlord has the burden of proof, the burden shifts to the tenant once a landlord has made a prima facie showing in court. While no one factor is conclusive, courts will usually consider the totality of circumstances in determining whether a tenant maintains a rent regulated unit as his or her primary residence.

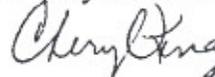
Enclosed for your information is Fact Sheet #4 – Lease Renewals in Rent Stabilized Apartments which defines the legitimate reasons that an owner can refuse to renew a tenant's lease.

We trust that we have responded to your inquiry as fully as possible under the circumstances.

Please be advised that this opinion letter is not a substitute for a formal agency order issued upon prior notice to all parties and with all parties having been afforded an opportunity to be heard.

Very truly yours,

Michael B. Rosenblatt  
Deputy Counsel



By: Cheryl King  
Senior Attorney

MBR:CK

Encl

cc: Deputy Commissioner Roldan  
(col-1969)