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"HEAT & HOT WATER CASES" TAKE A DIP

Did you know that, last year, the number of heat and hot water complaints filed by New York City residents dropped from 117,790 (2005/2006) to 114,980 (2006/2007)?

What we found particularly interesting about the statistics released by the New York City Department of Housing Preservation & Development (HPD) is that the number of cases brought by the agency to compel the provision of essential services (such as heat and hot water) dropped from 2,680 to 2,616. And that the revenue generated from the associated fines and penalties dipped to $1,614,340 from the prior year's $2.1 million.

Is this yet another byproduct of global warming? [Maybe ... but we're waiting to hear back from Al Gore on that one.]

Is HPD being less vigilant enforcing the law? [We tend to doubt that. Since city agencies are judged (among other things) by the amount of revenue they generate for the municipality, we'd like to think the decline is attributable to landlords' compliance with the governing laws.]

Should be interesting to see how this year's "heat season" unfolds.

As of October 1, 2007, owners are required to provide residential tenants with an indoor temperature of at least 68 degrees Fahrenheit between 6:00 A.M. and 10:00 P.M. when the outdoor temperature falls below 55 degrees. Between the hours of 10:00 P.M. and 6:00 A.M., indoor temperatures must be maintained at a minimum of 55 degrees when the outdoor temperature falls below 40 degrees.

Hot water temperatures must remain at a constant minimum of 120 degrees Fahrenheit.

"Heat season" ends on May 31, 2008.

Until then ... keep the heat on!

* * *

On a related note, a reader sent us the following question:

> *I am a renter of a house. The owner promised to provide heat. By law, which you have mentioned, whenever the outside temperatures dip below 55 degrees Fahrenheit, building owners must maintain an indoor temperature of at least 68 degrees Fahrenheit between the hours of 6:00 a.m. to 10:00 p.m. From 10:00 p.m. to 6:00 a.m., whenever exterior temperatures fall below 40 degrees Fahrenheit, landlords must maintain an indoor temperature of at least 55 degrees Fahrenheit.*
>
> *My question is that what if the outside temperature is below the law says (40F night,*

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"THE EARTH WAS NOT GOOD"

In *Shohet v. Shaaya*, Yardena Shohet tripped and fell on a part of Youssef Shaaya's driveway but admitted that the accident had occurred on the "edge" of the street. Shohet also testified "that the cause of her accident was that 'the earth … was not good' and the 'place is wrong.'"

When Shaaya moved for summary judgment seeking the lawsuit's dismissal, the Kings County Supreme Court sided with him, and granted the request. When Shohet appealed, the Appellate Division, Second Department, was unmoved by her claim.

The AD2 found that "the alleged defect did not constitute a trap or nuisance and was merely a trivial defect which was not actionable as a matter of law." And, since Shohet was unable to raise a triable issue of fact, the court determined that her opponent was entitled to the litigation's end.

We're betting Shohet wasn't feeling good about the earth after that decision.

DON'T SQUAT ON ME!

While it isn't uncommon for parents to insist that their grown children move out of the family home, few actually bring a summary proceeding to recover possession. But that is what happened in *Goffe v. Goffe*.

Initially, Jason Goffe was given permission by his mother to stay (for one night) in his parents' home. Thereafter, Mrs. Goffe agreed to allow her son to stay "until further notice."

Faced with the prospect of a foreclosure, Mr. and Mrs. Goffe requested that Jason vacate the property. When their son refused, the Goffes filed suit, alleging that Jason entered into possession without consent and that he was a "squatter."

After trial, the District Court of Nassau County, First District, awarded the Goffes possession based on Jason's "unlawful holdover." On appeal, the Appellate Term, Second Department, reversed and dismissed the case.

A squatter proceeding is only available when an individual takes possession of space without permission. Since Jason originally entered the home with his mother's consent, a "squatter" proceeding was not maintainable and the case had to be dismissed.

While the AT2's decision was silent as to the correct eviction procedure to be utilized, before a new case could be started, the Goffes would likely need to serve a 30-day notice (predicated upon their son's status as a "tenant-at-will" or "at sufferance.")

There's certainly something to be said for abstinence.

If you have any questions or comments about the above articles, please contact partner Jonathan H. Newman at 212-619-5400 x 205 or email him at JNewman@fnfllp.com. To join the debate, visit us at www.nyreblog.com.

SURRENDER?

In *Lewis v. Cathedral Parkway Towers*, Joanne Lewis and her family resided in a subsidized apartment. In light of her family's size and composition, Lewis applied for a larger unit in the same building. When her application was approved, she moved her family out of that smaller residence and the landlord changed the locks and began to renovate that space.

When Lewis' son asserted a claim to the old unit and sought to be restored to that apartment, the New York County Civil Court granted that request. On appeal, the Appellate Term, First Department, reversed.

Since "there was a surrender by operation of law," Lewis' son -- who was only a "licensee" -- could not be restored. The AT1 indicated that "[w]here a tenant abandons possession, indicating an interest to yield his or her interest in the subject premises, and the landlord utilizes the premises in a manner inconsistent with the landlord-tenant relationship, a surrender will be inferred."

But what was there to infer? We thought the surrender was pretty unequivocal.

ROACH TAKES APPEAL AND WINS

In *Carrera v. Roach*, Fanny Carrera brought an action to recover damages for personal injuries she sustained while in Stephen Roach's employ.

Carrera was working as Roach's housekeeper and was injured while attempting to reach a bookcase's upper shelf. Apparently, Carrera used a nearby stool, which collapsed and caused her to fall to the floor.

After Carrera filed her lawsuit, Roach moved for summary judgment seeking the complaint's dismissal. When the New York County Supreme Court denied that request, Roach appealed.

Since the stool was "purely decorative," and there was an "open and obvious danger of using it as a step stool," the Appellate Division, First Department, sided with Roach and dismissed the case.

Because Roach was unaware that Carrera intended to use the item as a step stool, the AD1 was of the opinion that Roach was "under no duty to either make the stool safe for use ... or warn [Carrera] of the danger of using it as a step stool."

This is likely the first time a Roach has kicked a Carrera's Fanny.

"HEAT & HOT WATER CASES" TAKES A DIP

cont'd from pg. 1

55F day) but indoor is above 55F and 68F respectively? Do I have the right to ask for the owner to provide heat to us?

55F is cold for my family, we just can't stand with it. Looking for your reply. Thank you very much!

-K. Hung

Sorry to hear about your family's discomfort, Mr. Hung.

Generally speaking, if the law's minimum temperatures are met, and the lease is silent as to the temperature levels to be provided, a landlord would not be under a legal obligation to supply more heat (or higher temperatures).

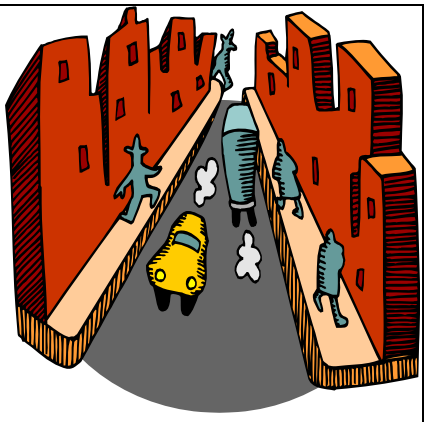
With that said, you should still address the situation with the owner and request that the temperature be raised. It is certainly possible that you may be able to reach an amicable resolution of the problem.

Without the owner's cooperation, you may need to explore other options, like wearing additional layers of clothing, securing the appropriate space heaters, and/or, relocating to another apartment (in another building) upon the expiration of your lease.

Stay warm!

If you have any questions or comments about the above articles, please contact partner Lucas A. Ferrara at 212-619-5400 x 211 or email him at LFerrara@fnfllp.com. To join the debate, visit us at www.nyreblog.com.

DOWNTOWN MANHATTAN GETS DOWN



In *Downtown Manhattan C.D.C. v. Barone*, the landlord filed a holdover proceeding against Michelle Barone -- the granddaughter of a deceased rent-controlled tenant -- who argued an entitlement to succeed to the regulated unit.

The New York County Civil Court found that Barone had "met her affirmative obligation to establish succession rights to the rent controlled tenancy," and dismissed the case.

On appeal, the Appellate Term, First Department, also sided with Barone because the evidence supported the finding that she "had long-term occupancy ties to the subject apartment."

While she had not resided in the unit for a period of time, the AT1 viewed that as an "excused educational absence," particularly since Barone returned to the apartment and "primarily resided there for the requisite two-year period immediately prior to her grandfather's death."

Downtown's additional argument, that as a minor there was a "presumption" that Barone's residence was that of her parents (rather than the subject unit), was found to be unpersuasive, as Barone had reached the age of majority three years prior to her grandfather's demise.

That, my friends, is the low-down on Downtown.

If you have any questions or comments about the above article, please contact partner Daniel Finkelstein at 212-619-5400 x 209 or email him at DFinkelstein@fnfllp.com. To join the debate, visit us at www.nyreblog.com.

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