

**CIVIL COURT OF THE CITY OF NEW YORK**

**ADVISORY NOTICE**

Class: AN - 12

Category: LT - 10

**Subject:** Superintendent Holdover Proceedings

Issued: September 9, 2011

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**BACKGROUND**

Judges of the Civil Court and of the Housing Part have expressed concern about whether holdover proceedings brought against superintendents for residential apartments (“superintendent holdover proceedings”) should be handled in Part 52, the Commercial Landlord-Tenant Part, or in Part 18, the Housing Part (see generally RPAPL § 713 [11]). Occasionally, practitioners and/or clerks designate these holdover proceedings as commercial landlord-tenant matters on the ground that the relationship of the parties is one of employer and employee. As a result, these proceedings have come before Civil Court Judges in Part 52. Civil Court Judges throughout the City of New York have either determined the issue before them, transferred the matter to the Housing Part or dismissed the proceeding without prejudice.

**ADVISORY**

Please be advised that the employment relationship between a petitioner and a respondent is not dispositive of the Part in which superintendent holdover proceedings belong. Key in determining whether a holdover proceeding against a superintendent should be brought in the Housing Part or Commercial Landlord-Tenant Part is the type of property at issue. Section 208.42 (a) of the Uniform Rules for the New York City Civil Court explicitly states that RPAPL article 7 proceedings “involving residential property shall be commenced in the housing part” (emphasis added). Therefore, a holdover proceeding against a superintendent of a residential building, who resides on the premises incident to his/her employment, cannot properly be heard in the Commercial Landlord-Tenant Part. A proceeding against a superintendent to recover an office or storage facility, however, may be commenced in the Commercial Landlord-Tenant Part.

Where a petitioner commences a holdover proceeding against a superintendent in the Commercial Landlord-Tenant Part for a residential apartment, Judges should consider dismissing the proceeding without prejudice. This is the best practice where the petitioner has obtained access to the Commercial Landlord-Tenant Part by inaccurately describing the premises in the petition (see RPAPL § 741 [requiring, among other things, that every petition shall “(d)escribe the premises from which removal is sought”]; see also MSG Pomp Corp. v Baez, 185 AD2d 798, 799 [1<sup>st</sup> Dept 1992 [setting forth the well-established rule that “failure to comply with the statutes governing summary proceedings deprives the court of jurisdiction and mandates dismissal”]).

Where the petition complies with all requisites of RPAPL § 741 and no other impediments to the court’s jurisdiction exist, Judges might instead consider their discretion to transfer the proceeding to the Housing Part (see 22 NYCRR [Uniform Rules for the New York

City Civil Court] § 208.3 [b] [7] and 208.43 [j]; Civil Court Act §§ 204 and 303). To transfer a holdover proceeding against a superintendent from the Commercial Landlord-Tenant Part to the Housing Part, Judges should complete a transfer order form (see CIV-LT-94 [Revised, March, 1999]).

September 9, 2011

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Date

Hon. Justice Fern A. Fisher  
Deputy Chief Administrative Judge of the New York City Courts