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I. INTRODUCTION

It is well established in a majority of U.S. jurisdictions' real property laws that forcible reentry by a landlord to regain possession of a residential premises—known as landlord "self-help"—is impermissible.[1] This is true in both New York State in general[2] and New York City (NYC) in particular.[3] Indeed, landlords in NYC who act in such a manner, with a tenant "disseized, ejected, or put out of real property in a forcible or unlawful manner," are civilly liable for treble damages,[4] and could be criminally liable, as well.[5] To lawfully regain possession of a given premises, landlords must usually[6] resort to summary proceedings,[7] which were created to provide landlords with an efficient, equitable, and timely means to recover possession of real property.[8]

Self-help laws apply to all residential units in NYC—to free market units[9] as well as to rent-controlled and rent-stabilized units.[10] However, the portion of cases landlords file to evict residential tenants that result in judgments to evict is strikingly low.[11] Regardless of the NYC Civil Housing Part's (the "Housing Part") ultimate disposition, current law often causes cases to drag out for extended periods, which means that landlords must wait a long time before they attain any monetary or possessory relief.[12]

This note argues that despite the Housing Part's summary proceeding goals of efficiency, equity, and timeliness for the litigating parties,[13] current law and precedent are counterproductive to those ends, to the detriment of landlords.[14] Moreover,

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1. Restatement (Second) of Prop.: Landlord and Tenant Competition § 14.1 note on the statutes (Am. Law Inst. 1977).

2. Romanello v. Hirschfeld, 470 N.Y.S.2d 328 (App. Div. 1983), *aff'd*, 468 N.E.2d 701 (N.Y. 1984).

3. Andrew Scherer & Fern A. Fisher, Residential Landlord-Tenant Law in New York § 1:20 (2016–2017 ed.).

4. N.Y. Real Prop. Acts. Law § 853 (McKinney 2017).

5. N.Y. City Admin. Code § 26-521 (2017); Scherer & Fisher, *supra* note 3, § 7:5.

6. This note does not address ejectment actions or other types of proceedings involving landlords and tenants.

7. Real Prop. Acts. art. 7; Scherer & Fisher, *supra* note 3, § 7:4.

8. Scherer & Fisher, *supra* note 3, § 7:4.

9. Free market units are units that are not subject to rent regulations.

10. *See* Scherer & Fisher, *supra* note 3, §§ 7:5–7:16.

11. Mireya Navarro, *Evictions Are Down by 18%; New York City Cites Increased Legal Services*, N.Y. Times (Feb. 29, 2016), https://www.nytimes.com/2016/03/01/nyregion/evictions-are-down-by-18-new-york-city-cites-increased-legal-services.html. NYC's Civil Housing Part averaged 350,000 case filings each year from 1992 to 2012. *New York City Civil Court: Civil Court History*, NYCourts.gov, http://www.courts.state.ny.us/courts/nyc/civil/civilhistory.shtml (last updated Nov. 29, 2012).

12. *See* James B. Fishman, *A Primer on Non-Primary Residence Cases*, Fishman Rozen LLP (2005), http://www.nyctenantslaw.com/nyc-tentant-consumer-lawyers-new-york-city-practice-areas/non-primary-residence-proceedings; *infra* Sections III.C.1–2.

13. Scherer & Fisher, *supra* note 3, § 7:4.

14. *See infra* Sections III.A–E.

current law does not adequately support landlords or provide remuneration for their wasted time and money.[15] In some instances, the law even prevents landlords from pursuing the relief to which they are contractually entitled.[16] Additionally, current law lacks uniformity in enforcement and creates confusion for landlords who may be allowed to seek certain relief against one tenant, but not another.[17]

This note contends that by amending and refining the law and precedent,[18] the Housing Part would better attain its goals.[19] Part II provides a brief background of summary proceedings within the Housing Part, and then discusses why the New York legislature created rent regulations. Part III identifies problems the Housing Part has created for landlords seeking relief, and discusses the hurdles legislation and case law have created for landlords. Part IV proposes reform to laws aimed at improving areas within summary proceedings and better promoting the Housing Part's goals of efficiency, equity, and timeliness for the litigating parties. Part V concludes that if such measures are taken and certain laws modified, efficiency, equity, and timeliness in summary proceedings within the Housing Part can be better achieved.

II. HISTORY OF NEW YORK SUMMARY PROCEEDINGS AND NYC RENT REGULATIONS

A. History of New York Summary Proceedings

In 1924, the New York State Legislature enacted reform that merged actions by landlords—to recoup outstanding rental arrears and to regain legal possession of a given premises—into a single "summary proceeding."[20] The legislature's goals in creating these summary proceedings were to "enhance judicial efficiency, promote the interests of justice, and dissuade landlords from resorting to self-help evictions."[21] Indeed, judges from roughly a century ago acknowledged the financial concerns of landlords whose tenants failed to timely pay rent, noting landlords' many recurring costs, including "real-estate taxes, mortgage payments, insurance premiums, maintenance costs, heating bills, and water and sewage assessments."[22] As a result, judges agreed that for landlords to properly operate a building they need to maintain a steady cash flow by collecting timely rental payments from tenants.[23]

15. *See infra* Sections III.A–E.

16. *See infra* Sections III.A–B.

17. *See infra* Section III.E. Relief sought may depend on a specific unit's rent-regulation status or a judge's discretion. *See infra* Sections III.D–E.

18. *See infra* Part IV.

19. Some of the legislation and case law referenced in this note affect *all* residential rental units, some only rent-stabilized units.

20. Dolan v. Linnen, 753 N.Y.S.2d 682, 683 (Civ. Ct. 2003).

21. *Id.* at 688.

22. *Id.* at 702.

23. *Id.* at 702–03.

Modern summary proceedings are governed by article 7 of the New York State Real Property Actions and Proceedings Law (RPAPL),[24] and are known under the RPAPL as "summary proceedings to recover possession of real property."[25] Additionally, since summary proceedings are categorized as "Special Proceedings,"[26] the New York Civil Practice Law and Rules (CPLR) govern them.[27] The RPAPL and CPLR govern *all* rental units in NYC.[28] However, in addition to being governed by the RPAPL and CPLR, rent stabilized NYC rental units—which compose almost half of the total NYC rental units—are governed by the more stringent Rent Stabilization Code.[29]

NYC, under the New York laws mentioned above, began litigating summary proceedings in large quantities after 1973, when the Housing Part was created as part of the Civil Court of the City of New York to resolve landlord-tenant matters.[30] Today, each of NYC's five boroughs has its own Housing Part within the Civil Court of the City of New York.[31]

B. History of NYC Rent Regulation

The development of rent-regulated rental units first emerged early in the 1920s, and rent regulations were held to be constitutional in 1921.[32] Rent regulations were first imposed during World War II,[33] and were further advanced in New York in the 1950s,[34] mainly to prevent extreme rent increases in response to the post–World War II housing shortage.[35]

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24. N.Y. Real Prop. Acts. Law art. 7 (McKinney 2017).

25. Scherer & Fisher, *supra* note 3, § 7:27.

26. A special proceeding is defined as "[a] proceeding that can be commenced independently of a pending action and from which a final order may be appealed immediately" or "[a] proceeding involving statutory or civil remedies or rules rather than the rules or remedies ordinarily available under rules of procedure; a proceeding providing extraordinary relief." *Proceeding: Special Proceeding*, Black's Law Dictionary (10th ed. 2014).

27. N.Y. C.P.L.R. 401–411 (McKinney 2017).

28. Scherer & Fisher, *supra* note 3, § 7:27.

29. Sabine Bernards, *New York—Where the Majority Rents*, Global Tenant, Dec. 2012, at 10, 10; *see* N.Y. Comp. Codes R. & Regs. tit. 9, §§ 2520–2531 (West, Westlaw through 2017).

30. Dennis E. Milton, Comment, *The New York City Housing Part: New Remedy for an Old Dilemma*, 3 Fordham Urb. L.J. 267, 267 (1974).

31. Raymond H. Brescia, *Sheltering Counsel: Towards a Right to a Lawyer in Eviction Proceedings*, 25 Touro L. Rev. 187, 192 (2009).

32. *See* Scherer & Fisher, *supra* note 3, § 4:3; People *ex rel.* Durham Realty Corp. v. La Fetra, 130 N.E. 601, 608–09 (N.Y. 1921).

33. Scherer & Fisher, *supra* note 3, § 4:4.

34. *Id.* § 4:5.

35. Lauren C. Wittlin, Comment, *Access Denied: The Tale of Two Tenants and Building Amenities*, 31 Touro L. Rev. 615, 617 (2015). There was a housing shortage after World War II because of a decrease in homebuilding and the return of millions of veterans. *Fast and Affordable, A Century of Prefab Housing: Post*

The NYC statutes governing rent regulations are a byproduct of legislation passed in the 1960s and revisions made in the 1970s and 1980s.[36] Most pertinent to this note however, is the Rent Stabilization Law, which the NYC Council passed in 1969.[37] The Rent Stabilization Law regulated rent for a large portion of rental units through 1969 and was used to create the current rent stabilization laws in NYC.[38] Rent regulation has undergone six substantial modifications since the law was introduced in 1969: The Omnibus Housing Act of 1983; The Rent Regulation Reform Act of 1993; The Rent Regulation Reform Act of 1997; The Rent Law of 2003; The Rent Act of 2011; and The Rent Act of 2015.[39]

III. LAWS FAILING TO SUPPORT EFFICIENCY, EQUITY, AND TIMELINESS

A. The "Pet Law" as a Paradigm

While the Rent Stabilization Code poses many hurdles for landlords seeking to evict tenants from rent-stabilized units, there are laws and legal precedents that generally affect the enforceability of contractual lease provisions and thus affect landlords of *all* NYC rental units.

The so-called "Pet Law," which governs when landlords can commence summary proceedings against a tenant harboring a pet, states:

> Where a tenant in a multiple dwelling openly and notoriously for a period of three months or more . . . harbors or has harbored a household pet or pets, . . . and the owner or his or her agent has knowledge of this fact, and such owner fails within this three month period to commence a summary proceeding or action to enforce a lease provision prohibiting the keeping of such household pets, such lease provision shall be deemed waived.[40]

This law does not directly apply to tenants with disabilities who require a pet, as there are other laws and precedents in place to protect such tenants.[41] Nevertheless, household pets serve important functions for certain people, such as providing companionship

WWII Housing Crisis, Cornell U. Libr., http://exhibits.mannlib.cornell.edu/prefabhousing/prefab.php?content=seven (last visited Apr. 6, 2017).

36. Scherer & Fisher, *supra* note 3, § 4:6.

37. *Id.* § 4:20; *see* N.Y. City Admin. Code §§ 26-501 to 26-520 (2017).

38. Scherer & Fisher, *supra* note 3, § 4:20; Timothy L. Collins, N.Y.C. Rent Guidelines Bd., An Introduction to the New York City Rent Guidelines Board and the Rent Stabilization System 31 (rev. ed. 2016), http://www.nycrgb.org/html/about/intro%20PDF/full%20pdf/intro_2016.pdf.

39. Collins, *supra* note 38, at 30–34, 36–42. Under The Rent Act of 2015, the NYC Rent Guidelines Board, in an unprecedented move, voted to freeze the regulated rents for one-year leases, the first such freeze in its history. *See* Mireya Navarro, *New York City Board Votes to Freeze Regulated Rents on One-Year Leases*, N.Y. Times (June 29, 2015), https://nyti.ms/1g3YmtD.

40. N.Y. City Admin. Code § 27-2009.1(b).

41. Ocean Gate Assocs. Starrett Sys., Inc. v. Dopico, 441 N.Y.S.2d 34, 35 (Civ. Ct. 1981).

and safety,[42] which was likely motivation for the Pet Law. Further, it is possible that the Pet Law was designed to protect tenants against vengeful landlords, who resort to a retaliatory eviction, and use pet harboring as a ground for summary proceedings, despite having known about or even authorized the harboring of the pet.[43]

Despite the Pet Law's good intentions, it creates problems for landlords who seek to enforce no-pet provisions that their tenants contractually agreed to. Tenants who agreed to such provisions should adhere to their contractual obligation. In theory, the burden to act—by removing the pet or leaving the premises—should fall on tenants who have breached their obligation not to harbor a pet, but the Pet Law puts this burden on landlords and gives landlords a narrow window of time to act when they learn of a harbored pet.[44] If a landlord tries to resolve an issue with a tenant who is harboring a pet but is unsuccessful, or if a landlord merely fails to timely act, the landlord is stuck with the pet and can no longer seek to evict a tenant on that basis.[45]

Current case law further complicates this issue for landlords. The New York Supreme Court Appellate Division has held that landlords or their authorized agents need not have personal knowledge of a tenant openly and notoriously harboring a pet to start the three-month clock.[46] In *Seward Park Housing Corp. v. Cohen*, the appellate division stated that knowledge of open and notorious conduct can be imputed to the landlord by superintendents and contractors.[47] The court reasoned, "[a] landlord may not avoid having imputed knowledge of [a] tenant harboring [a] pet by turning a 'blind eye' to this open and notorious fact."[48] In *184 West 10th Street Corp. v. Marvits*, the appellate term explained what constitutes "open and notorious" knowledge that a tenant is harboring a pet.[49] As the court stated, a landlord or her managing agent need not even have physically seen a pet to invoke "open and notorious" knowledge and start the three-month clock for the landlord;[50] instead, the mere presence of pet paraphernalia such as a litter box is "sufficient to alert the . . . owner's agents that [a] tenant had a pet or pets."[51]

A three-month period for landlords to commence summary proceedings upon learning of a harbored pet is too narrow a time frame. Even worse, since a pet's

42. Linden Hill No. 1 Coop. Corp. v. Kleiner, 478 N.Y.S.2d 519, 520 (Civ. Ct. 1984) (discussing N.Y. City Admin. Code § 27-2009.1(a)).

43. *See id.* at 523.

44. *See, e.g.*, Starret City v. Jace, 524 N.Y.S.2d 130 (App. Term 1987) (dismissing a landlord's petition because the landlord did not bring an action within three months of learning of the tenant's pet).

45. N.Y. City Admin. Code § 27-2009.1(b).

46. Seward Park Hous. Corp. v. Cohen, 734 N.Y.S.2d 42, 45–46 (App. Div. 2001); 184 W. 10th St. Corp. v. Marvits, 852 N.Y.S.2d 557, 559 (App. Term 2007), *aff'd*, 874 N.Y.S.2d 403 (App. Div. 2009).

47. 734 N.Y.S.2d at 45–46.

48. *Id.* at 51.

49. 852 N.Y.S.2d at 559–60.

50. *Id.* at 559.

51. *Id.*

presence can be imputed to landlords and their agents without either party actually seeing the pet,[52] landlords seeking to enforce a contractually agreed upon no-pet policy have a hard time doing so.

B. Late Fee and Legal Fee Lease Provisions: Not a Deterrent

Two other legal obligations on landlords negatively affecting landlords' abilities to enforce certain lease provisions involve late fees and legal fees. First, if a tenant does not file an answer with the court within five days of being served with a Nonpayment Notice of Petition and Petition, a default judgment is entered.[53] In nonpayment proceedings, a civil court in Richmond County ruled that late fee and legal fee lease provisions cannot be enforced upon a tenant's default.[54]

Worse yet for landlords of rent-stabilized units, late fees and legal fees are not awarded by courts altogether, even if a tenant defaults.[55] New York's appellate term has held: "The Rent Stabilization Law makes it unlawful to charge any 'rent' in excess of the legal regulated rent. Thus, lease clauses deeming legal and late fees additional rent have been held to be unenforceable against rent-stabilized tenants."[56] These legal obligations hurt landlords who seek to collect rent from tenants. Landlords who include late and legal fee clauses into leases undoubtedly do so not only to deter tenants from breaching the lease, but also to protect themselves against additional costs resulting from missed payments.[57]

New York courts, which tend to favor summary proceedings, recognize the need to afford landlords the ability to pay their bills and mortgages on time,[58] yet established case law leads to the opposite result. These holdings disfavor landlords who merely seek to enforce contractual provisions and collect fees owed to them.[59] New York courts have discretion to overlook tenants' inaction and allow tenants to proceed without facing any repercussions.[60] Savvy tenants, cognizant that legislation

52. *See id.*

53. N.Y. Real Prop. Acts. Law § 732(3) (McKinney 2017).

54. *See, e.g.*, Dolan v. Linnen, 753 N.Y.S.2d 682, 703 (Civ. Ct. 2003) ("The court may not, on default, award legal fees, late fees, or anything but the sum certain of arrears and use and occupancy . . . .").

55. Related Tiffany, L.P. v. Faust, 743 N.Y.S.2d 802 (App. Term 2002).

56. *Id.* at 803 (citations omitted) (citing 4220 Broadway Assocs. v. Perez, 723 N.Y.S.2d 816 (App. Term 2000); and Brusco v. Miller, 639 N.Y.S.2d 246 (App. Term 1995)).

57. *See* Daniel Finkelstein & Lucas A. Ferrara, New York Practice Series—Landlord and Tenant Practice in New York § 4.76 (2016–2017 ed.); Erin Eberlin, *4 Costs to Hold Rental Property Vacant: What a Landlord Still Has to Pay for*, Balance (Oct. 17, 2016), https://www.thebalance.com/holding-costs-for-rental-property-vacancy-2124976.

58. *See, e.g.*, *Linnen*, 753 N.Y.S.2d at 702–03.

59. Scherer & Fisher, *supra* note 3, § 17:18.

60. *See* Harvey 1390 LLC v. Bodenheim, 948 N.Y.S.2d 32, 33 (App. Div. 2012) (stating that a court can vacate a warrant of eviction if it determines good cause exists); Fazal Realty Corp. v. Paz, 573 N.Y.S.2d 399, 401 (Civ. Ct. 1991) (stating that the default judgment would have been vacated because the tenant did not understand the purpose of the Notice of Petition and Petition).

and case law are in their favor, can purposely miss payments because they know that courts may ignore late fee and legal fee provisions in their leases.[61]

C. Too Much Discretion for Judges Prolongs Already Lengthy Proceedings

Another barrier to achieving efficient, equitable, and timely results for the parties within summary proceedings is the amount of statutorily awarded discretion given to judges. First, rule 2214(d) of the CPLR gives courts authority to grant orders to show cause.[62] The decision whether to grant an order to show cause rests entirely in the judge's discretion, as rule 2214(d) of the CPLR provides that the court may grant an order to show cause in a "proper case."[63] Courts have supported this by rejecting the idea of a "hard and fast rule" in determining when, and under what circumstances, the judges of the civil court may sign an order to show cause.[64] Instead, the appellate term states, "[e]ach application requires a *sui generis* inquiry devoted to the particular facts and circumstances of the case . . . , including the extent of the delay . . . as well as a delicate balancing of the equities between the parties . . . ."[65]

Another instance of discretion afforded to judges in this area is found in holdover proceedings.[66] A judge has discretion to stay the execution of a warrant for up to six months from the time judgment is entered.[67]

These two statutorily awarded forms of judicial discretion significantly increase the already lengthy timeline of landlord-tenant disputes.[68] Undeniably, the goals of the RPAPL and CPLR are to provide tenants with a shield during summary proceedings when there is good cause or when tenants can prove they are taking steps to resolve the issue with the landlord. But often, allocating a large amount of

61. *See* 943 Lexington Ave., Inc. v. Niarchos, 373 N.Y.S.2d 787, 787–88 (App. Term 1975) (striking down a late-rent surcharge of five per cent a month); Spring Valley Gardens Assocs. v. Earle, 447 N.Y.S.2d 629, 630 (Rockland Cty. Ct. 1982) (voiding a fifty dollar late fee because it was unconscionable); Tivoli Assocs. v. Wing, 471 N.Y.S.2d 1018, 1018, 1021 (Civ. Ct. 1984) (holding that a claim for attorney's fees, late charges, and rent owed beyond the current three months were not a valid basis to bring a summary eviction proceeding, and must be brought in a separate action at law).

62. N.Y. C.P.L.R. 2214(d) (McKinney 2017).

> An order to show cause is merely an alternative way of bringing on a contested motion. Instead of [one party] serving a notice of motion in accordance with the instructions in CPLR 2214(a) and (b), the applicant in the first instance presents a proposed order to show cause to a justice of the court.

Id. at 2214(d) cmt. 2214:24.

63. *Id.* at 2214 cmt. 2214:25.

64. Parkchester Apartments Co. v. Heim, 607 N.Y.S.2d 212, 213 (App. Term 1993).

65. *Id.* at 213. *Sui generis* means "[o]f its own kind or class; unique or peculiar." *Sui generis*, Black's Law Dictionary (10th ed. 2014).

66. A holdover proceeding is a summary proceeding in which a landlord seeks to evict a tenant who refuses to return possession of the premises after the end of her tenancy. N.Y. Real Prop. Acts. Law § 711(1) (McKinney 2017); Finkelstein & Ferrara, *supra* note 57, § 15:1.

67. Real Prop. Acts. § 753(1).

68. S*ee infra* Sections III.C.1–2.

discretion to judges results in the judge prolonging the case to such a degree that it is nearly impossible to achieve efficiency, equity, and timeliness.

1. How Orders to Show Cause Affect the Timeline for Nonpayment Proceedings

In a residential nonpayment eviction proceeding, landlords must first serve the tenant with a predicate demand for the rent, giving the tenant at least three days' notice, in writing, before the landlord can commence with a court filing.[69] Assuming the full rental arrears have not been paid to the landlord after proper service of the rent demand, the landlord can proceed with the service and filing of the Nonpayment Notice of Petition and Petition.[70] At this point, at least three or four business days would have passed.[71] The tenant has five days from the date of service to file an answer, thereby triggering issuance of a court date.[72] Assuming the tenant does not file an answer within five days, a default judgment is entered in favor of the landlord;[73] at this point at least nine days have passed since the landlord first took action. The landlord then needs to seek a warrant of eviction[74] based on the tenant's default.[75]

Before requisitioning the warrant from the court,[76] however, the landlord must ascertain whether the tenant is currently in the military service and fill out and notarize a "military affidavit" confirming that the tenant is not in the military,[77] a task that could take a while to properly complete.[78] Upon the marshal's[79] receipt of the military affidavit, the marshal would then requisition the warrant from the

69. Real Prop. Acts. § 711(2).

70. *Id.* § 735(1).

71. *See id.* § 735(2).

72. *Id.* §§ 732(3), 743.

73. *Id.* § 732(3).

74. *New York City Housing Court: Eviction*, NYCourts.gov, http://nycourts.gov/courts/nyc/housing/eviction.shtml (last updated June 14, 2013).

> The issuance of the warrant of eviction cancels the agreement under which the tenant held the premises and ends the relationship between the landlord and tenant. The warrant of eviction authorizes the sheriff or marshal to perform the eviction. An eviction is the removal of a tenant and his or her personal belongings from an apartment.

Id.

75. Real Prop. Acts. § 749.

76. *New York City Housing Court: Warrants*, NYCourts.gov, http://www.courts.state.ny.us/courts/nyc/housing/warrants.shtml (last updated June 14, 2013).

77. David D. Siegel, *The Military Affidavit Needed for Default Judgments: Affidavits by Same Process Server Claiming Numerous Inquiries Made over Suspiciously Short Time Leads Court to Order Hearing*, Siegel's Prac. Rev., Nov. 2013, at 1.

78. *See* William J. Giacomo, *Failure to Understand the CPLR Will Result in Losing an Unopposed Motion for Default*, 34 Westchester B.J. 36, 37–38 (2007).

79. The marshal is "an officer of the United States, whose duty it is to execute the process of the courts of the United States. His duties are very similar to those of a sheriff." *New York City Housing Court: Definitions: Marshal*, NYCourts.gov, http://nycourts.gov/courts/nyc/housing/definitions.

court.[80] Typically, it takes three to six weeks for a court to issue a warrant of eviction based on default.[81] At this point, a minimum of a month has passed since the landlord first took action.[82]

Under the law, if the marshal served the tenant with the notice of eviction via mail, the marshal may not evict the tenant until six business days have passed from when she served the notice of eviction.[83] Conceivably, on the day of the scheduled eviction, the tenant can go to court and file an order to show cause—which the judge has thirty days to decide[84]—if she can illustrate a good excuse and meritorious defense[85] such as a claim that she never received any legal notices[86] or has a medical condition,[87] thereby staying eviction, triggering a court date,[88] and putting the landlord back to square one. In such a case, not only does the tenant not get penalized for failing to file a timely answer in accordance with the law,[89] but she also walks away having delayed summary proceedings and prevented the landlord from receiving any relief or equity.

At that first scheduled court appearance the tenant can formally state that she does not want to settle the case. The court would then calendar the matter for another date, potentially for trial,[90] which could be ten days away, or even more if

shtml#marshal (last updated Jan. 17, 2013). "In New York City, most evictions are performed by city marshals." Scherer & Fisher, *supra* note 3, § 15:52.

80. *New York City Housing Court: Warrants*, *supra* note 76.

81. *Top 50 Frequently Asked Questions*, EvictNY.com, http://evictny.com/top-50-faqs.html (last visited Apr. 6, 2017).

82. *See supra* text accompanying notes 69–81. Once a warrant of eviction is obtained, a landlord would then ask the marshal to serve the notice of eviction upon the tenant. Finkelstein & Ferrara, *supra* note 57, § 14:474. The amount of time that the tenant is afforded before the marshal returns to evict her depends on how the marshal served the notice of eviction. *New York City Housing Court: Eviction*, *supra* note 74.

83. Finkelstein & Ferrara, *supra* note 57, § 14:475; Scherer & Fisher, *supra* note 3, § 1:37; *New York City Housing Court: Eviction*, *supra* note 74.

84. *New York City Housing Court: Orders to Show Cause*, NYCourts.gov, https://www.nycourts.gov/courts/nyc/housing/osc.shtml (last updated June 14, 2013).

85. N.Y. C.P.L.R. 5015(a) (McKinney 2017); Finkelstein & Ferrara, *supra* note 57, §§ 14:251–14:252.

86. Mitchell v. Mid-Hudson Med. Assocs. P.C., 624 N.Y.S.2d 70, 71 (App. Div. 1995); Fern A. Fisher, Ass'n of the Bar of the City of N.Y. Hous. Court Pub. Serv. Projects Comm. & Civil Court of the City of N.Y., A Tenant's Guide to New York City Housing Court 8 (2006), http://www.nycbar.org/pdf/report/tenantsguide.pdf.

87. Bellcourt v. Bellcourt, 564 N.Y.S.2d 580, 580 (App. Div. 1991).

88. C.P.L.R. 2214(d) cmt. 2214:24; Access to Justice N.Y. State Courts, New York City Tenants: Questions & Answers About Housing Court 25 (2016), https://nycourts.gov/courts/nyc/housing/pdfs/tenantsguide.pdf.

89. C.P.L.R. 5015(a).

90. Scherer & Fisher, *supra* note 3, § 1:32.

both parties consent.[91] There is no statutory limitation on the number of orders to show cause a tenant can file.[92]

As a result of the procedures and laws in place, and even excluding the effects of the statutorily awarded forms of judicial discretion, it could be months into a nonpayment proceeding before a landlord receives any relief. Supplementing the statutorily awarded forms of judicial discretion can significantly lengthen the already prolonged summary nonpayment proceedings, demonstrating the inefficiency, inequity, and untimeliness of summary proceedings.

2. How Judicial Authority and Discretion Affect the Holdover Proceeding Timeline

When a tenant either never had a lease or had a lease that expired, and the landlord is seeking to take back possession of the rental unit, the landlord must first serve the tenant with a predicate notice of termination, in writing, at least thirty days prior to the termination date.[93] Moreover, the termination date must be effective on the last day of a rental cycle.[94]

Assuming the tenant does not vacate and surrender the unit by the termination date, the landlord would proceed to file and serve the Nonpayment Notice of Petition and Petition.[95] This filing triggers the issuance of a court date, which at the earliest would be "at least five and not more than twelve days before the time at which the petition is noticed to be heard."[96] If a tenant does not show up at the first scheduled court appearance, the matter is set for inquest.[97] Assuming the tenant appears in court for the inquest pro se, as most tenants do,[98] she may ask for an adjournment to find time to retain counsel,[99] a request that is usually granted.[100] The matter could be

91. *Id.* § 14:8 ("However, RPAPL § 745.1 does not deprive the court of the right to control its own calendar.").

92. *See* C.P.L.R. 2214(d); Access to Justice N.Y. State Courts, *supra* note 88, at 26.

93. N.Y. Real Prop. Law § 232-a (McKinney 2017); Finkelstein & Ferrara, *supra* note 57, § 15:156.

94. For example, if rent is due from the tenant in advance of the first day of the month, the tenant would need to be served properly in advance of the last day of the current month, terminating the tenancy on the last day of the following month. *See* Finkelstein & Ferrara, *supra* note 57, § 15:156.

95. *Id.* §§ 15:209, 15:239.

96. N.Y. Real Prop. Acts. Law § 733(1) (McKinney 2017).

97. An inquest is "[a] proceeding, usu[ally] ex parte, to determine, after the defendant has defaulted, the amount of the plaintiff's damages." *Inquest*, Black's Law Dictionary (10th ed. 2014). "At an inquest, only the plaintiff is present because the defendant has failed to answer or appear in the action." *New York City Civil Court: Inquests (Non-Attorneys Only)*, NYCourts.gov, https://www.nycourts.gov/courts/nyc/civil/inquest_nonatty.shtml (last updated Apr. 1, 2013). Further, "[a]t the inquest, the plaintiff must prove the allegations made in the complaint to the satisfaction of the Judge." *Id.*

98. Rashida Abuwala & Donald J. Farole, *The Perceptions of Self-Represented Tenants in a Community-Based Housing Court*, 44 Ct. Rev. 56, 56 (2007–2008).

99. *See* Carlton Assocs. v. Bayne, 740 N.Y.S.2d 785, 789 (Sup. Ct. 2002); Scherer & Fisher, *supra* note 3, § 14:11.

100. *See Bayne*, 740 N.Y.S.2d at 789; *see also* 90 N.Y. Jur. 2d *Real Property—Possessory Actions* § 243 (2017) ("A trial judge is not prohibited from exercising his or her discretion in granting an adjournment . . . in

pushed down the court's calendar as many as twenty-eight days later[101]—over two months after the landlord commenced the proceedings.

At that scheduled court date, assuming the parties cannot come to an agreement, the matter could be sent out to trial that day.[102] However, it could also be adjourned before being sent to trial.[103] At trial, if the tenant does not appear, the court would then proceed with the inquest.[104] After the inquest, the marshal would then requisition the warrant from the court,[105] and as in the nonpayment setting, it typically takes three to six weeks for a court to issue a warrant of eviction.[106] Once a warrant of eviction is obtained, the landlord still needs to execute the warrant to schedule the eviction, which, depending on the service, could take from three to six days.[107]

Also as in the nonpayment setting, on the day of the scheduled eviction, the tenant can go to the court and file an order to show cause if she can illustrate a meritorious defense against eviction.[108] At this point, at least three months have passed since the landlord decided to commence proceedings, and the judge still has authority to stay execution of the warrant for up to six months from the time judgment was entered.[109] Like in nonpayment proceedings, in holdover proceedings a tenant can file multiple orders to show cause because there is no limitation express in the statute.[110]

Thus, landlords could potentially have to wait up to nine months from the commencement of a holdover proceeding before they could conceivably recover possession of the rental unit.[111] As in nonpayment proceedings, in holdover proceedings the amount of discretion given to judges can significantly lengthen the already prolonged summary proceedings, demonstrating the inefficiency, inequity, and untimeliness of summary proceedings.

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the case of the actual engagement of counsel.").

101. *See, e.g.*, *Bayne*, 740 N.Y.S.2d at 786, 789 (holding that granting a twenty-eight day adjournment, which gave a tenant time to seek counsel, was within the judge's authority); *see also* Scherer & Fisher, *supra* note 3, § 14:8 ("However, RPAPL § 745.1 does not deprive the court of the right to control its own calendar.").

102. *New York City Housing Court: Resolution Part*, NYCourts.gov, http://www.courts.state.ny.us/courts/nyc/housing/resolutionpart.shtml (last updated Jan. 22, 2016).

103. *Id.*

104. *Court Process*, Housing Ct. Answers, http://cwtfhc.org/court-process (last visited Apr. 6, 2017) ("In a holdover case, if the tenant or respondent does not appear in court, the judge will hold an inquest.").

105. The City of N.Y. Dep't of Investigation, New York City Marshals Handbook of Regulations 51 (2013), http://www1.nyc.gov/assets/doi/downloads/pdf/marshals/NYC_Marshals_Handbook.pdf.

106. *Top 50 Frequently Asked Questions*, *supra* note 81.

107. Scherer & Fisher, *supra* note 3, § 1:37; *New York City Housing Court: Eviction*, *supra* note 74.

108. N.Y. C.P.L.R. 5015(a) (McKinney 2017); Finkelstein & Ferrara, *supra* note 57, §§ 15:388–15:389.

109. N.Y. Real Prop. Acts. Law § 753(1) (McKinney 2017).

110. *See* C.P.L.R. 2214(d); Access to Justice N.Y. State Courts, *supra* note 88, at 26.

111. *See supra* text accompanying notes 95–113.

D. Habitual Nonpaying Rent-Stabilized Tenants: Nuisance or Not?

An additional protection afforded to rent-stabilized tenants is that each tenant is entitled to renew her expiring lease.[112] The Rent Stabilization Code states: "As long as the tenant continues to pay the rent to which the owner is entitled, no tenant shall be denied a renewal lease or be removed from any housing accommodation by action to evict or to recover possession."[113] However, this does not account for the time it takes a tenant to actually pay the rent that is due. In situations when rent-stabilized tenants consistently breach their duty to timely pay rent, it is difficult for landlords to properly protect themselves from recurring future legal costs, not to mention the loss in the time value of money. Case law has not clarified when a habitual nonpaying tenant in a rent-stabilized unit constitutes a "nuisance."[114] If a tenant does constitute a nuisance, the landlord's most effective way to attain relief is to commence a holdover proceeding seeking to evict the tenant on the basis of habitual nonpayment.[115] However, if the tenant is not deemed a nuisance, the landlord can commence a nonpayment proceeding against the tenant to recoup the arrears.[116] The nuisance distinction is important because the theory of holdover proceedings is that as a nuisance, the tenant breached a "substantial obligation" of the tenancy; the relief that a landlord could rightfully seek would be an eviction of such a tenant.[117] Once evicted, the landlord could repossess the premises without affording the nuisance tenant an opportunity to cure her habitual nonpayment of rent.[118]

On the other hand, if recurring nonpayment proceedings are commenced, each of which, as illustrated in this note, could drag out for months, the tenant could, at the last possible moment before eviction, pay the landlord all the rental arrears and remain in the unit. In fact, even after eviction, the tenant could file for an order to show cause[119] and still be allowed back into the unit if all rental arrears are paid.[120]

Courts have held that for landlords to prevail in a holdover proceeding under the nuisance theory, they must meet three strict burdens.[121] First, "the landlord must

112. *See* N.Y. Comp. Codes R. & Regs. tit. 9, § 2523.5 (West, Westlaw through 2017).

113. *Id.* § 2524.1(a) (Westlaw).

114. Michael Maiter, Note, Sharp v. Norwood*: New York Offers Little Guidance on Whether Chronically Late Rent Payments Constitute a "Nuisance,"* 19 Pace L. Rev. 549, 564–78 (1999).

115. Finkelstein & Ferrara, *supra* note 57, § 15:32.

116. *Id.* § 14:4.

117. *Id.* §§ 15:111, 15:32.

118. 1540 Wallco, Inc. v. Smith, No. 25657/2016, 2017 WL 123844, at *10 (N.Y. Civ. Ct. Jan. 9, 2017) (unpublished table decision).

119. *New York City Housing Court: Restoration After Eviction*, NYCourts.gov, http://nycourts.gov/courts/nyc/housing/restoration.shtml (last updated June 14, 2013).

120. *Eviction Notice from a Marshal*, Housing Ct. Answers, http://cwtfhc.org/eviction-notice-from-a-marshal (last visited Apr. 6, 2017) ("You may also be required to pay legal fees or marshal fees before you can stay in the apartment again.").

121. Maiter, *supra* note 114, at 579–80.

demonstrate that it was compelled to bring numerous nonpayment proceedings against the allegedly breaching tenant in a relatively short period of time."[122] Second, a landlord must show "that the 'tenant's nonpayment [of the rent] was willful, unjustified, without explanation, or accompanied by an intent to harass the landlord.'"[123] And third, landlords must show that nonpayment proceedings were commenced "in good faith to collect outstanding rent and not as a pretense to meet the definition of nuisance for the purposes of bringing a holdover action."[124]

Yet again, judges are given an enormous amount of discretion—this time in deciding whether the tenant has in fact been a nuisance. The last prong leaves judges with sole discretion to decide whether the landlord acted in "good faith," putting the landlord in a difficult position. On the one hand, if the judge deems that the landlord has met all three burdens, the landlord gets possession of the unit with the right to find a new tenant. However, if the judge decides that the landlord did not act in "good faith," not only is the landlord stuck with a habitual nonpaying tenant, but the landlord also loses the time and legal fees from the holdover proceeding without acquiring legal possession, notwithstanding the outstanding rental arrears. The landlord would then need to commence a nonpayment proceeding just to try and recoup the still outstanding rent, a result that is neither efficient nor equitable for the landlord.

To further its goals of preventing homelessness, and protecting tenants' overall rights,[125] the Rent Stabilization Code forces landlords to issue a lease renewal to tenants.[126] But the law as it stands does not promote efficiency, equity, and timeliness when it remains unclear what type of proceeding landlords should file to deal with habitual nonpaying tenants in a rent stabilized apartment. If landlords cannot commence a holdover proceeding for such tenants, then the law should state so clearly, and keep landlords from wasting time and money initiating such proceedings. Moreover, if the Rent Stabilization Code does prohibit landlords from bringing holdover proceedings, then the courts should provide landlords with a method to effectively deal with habitual nonpaying tenants. Without that basic system in place, landlords will continue to be prejudiced by having to accept recurring legal costs and late rental payments, without consequence to tenants.

E. No Uniformity: Free Market Versus Rent-Stabilized Units

Lastly, there is a lack of uniformity within summary proceedings about what circumstances permit a landlord to commence nonpayment proceedings. When a landlord is seeking to recover outstanding rental arrears from a tenant residing in a free market unit, and that tenant does not have an active lease, the landlord must

122. *Id.* at 579.

123. *Id.* (alteration in original) (quoting 25th Realty Assocs. v. Griggs, 540 N.Y.S.2d 434, 435 (App. Div. 1989)).

124. *Id.* at 579–80 (quoting Sharp v. Norwood, 643 N.Y.S.2d 39, 41 (App. Div. 1996)).

125. Finkelstein & Ferrara, *supra* note 57, § 11:4.

126. N.Y. Comp. Codes R. & Regs. tit. 9, § 2523.5 (West, Westlaw through 2017).

commence holdover proceedings.[127] This is true even though the goal of nonpayment proceedings is to seek monetary relief, such as recovering outstanding rental arrears. Instead, landlords seeking to recoup rent owed to them, and not seeking to evict a tenant, are forced to commence a holdover proceeding and serve a one-month notice of termination,[128] instead of the typical three-day rent demand.[129] This sets landlords back at least twenty-seven more days from commencement of the summary proceedings. Relying on prior New York Supreme Court cases and other case law,[130] the Supreme Court of Nassau County succinctly stated:

> A landlord cannot maintain a nonpayment proceeding against a month-to-month tenant for rent which accrues after the lease expires and after the month-to-month tenant stops paying rent. The landlord's sole remedy is to bring a holdover proceeding . . . . The landlord must serve a RPL § 232-a notice of termination at least 30 days before expiration of the monthly term as a condition precedent to bringing a holdover proceeding.[131]

On the other hand, a landlord seeking to recover outstanding rental arrears from a tenant residing in a rent-stabilized unit must commence nonpayment proceedings, even when there is no active lease, and charge the tenant the same rent in the most recent lease.[132] Section 2523.5(c)(2) of the Rent Stabilization Code states:

> Where the tenant fails to timely renew an expiring lease . . . and remains in occupancy after expiration of the lease, such lease or rental agreement may be deemed to be in effect . . . where such deeming would be appropriate pursuant to Real Property Law section 232-c. In such event, the expiring lease will be deemed to have been renewed upon the same terms and conditions, at the legal regulated rent, . . . had the offer of a renewal lease been timely accepted.[133]

This lack of uniformity can lead to confusion for landlords and burdens landlords who seek merely to collect what they are owed. Landlords should not need to be experts in such nuances in the law, which can greatly affect the success and duration of summary proceedings. After all, summary proceedings were meant to provide efficient, equitable, and timely relief to the parties. Instead of such relief, landlords of free market units who have tenants without active leases are forced to commence

127. *See* Krantz & Phillips, LLP v. Sedaghati, No. 570718/02, 2003 WL 222778, at *1 (N.Y. App. Term Jan. 23, 2003) (per curiam) (dismissing the tenant's nonpayment petition because the lease had expired, thus the tenant's only recourse was to commence a holdover proceeding); *see also* Islands Heritage Realty Corp. v. Joseph, No. LT-002642-10, 929 N.Y.S.2d 200, 2011 WL 1599681, at *2 (Sup. Ct. Apr. 28, 2011) (unpublished table decision) (stating that since the tenant's lease expired, "[t]he landlord's sole remedy is to bring a holdover proceeding for the fair and reasonable value of past and present occupancy").

128. *Joseph*, 2011 WL 1599681, at *2; *see* N.Y. Real Prop. Law § 232-a (McKinney 2017); Finkelstein & Ferrara, *supra* note 57, § 15:156.

129. Finkelstein & Ferrara, *supra* note 57, § 14:43.

130. Licht v. Moses, 813 N.Y.S.2d 849 (App. Term 2006); *Sedaghati*, 2003 WL 222778.

131. *Joseph*, 2011 WL 1599681, at *2.

132. N.Y. Comp. Codes R. & Regs. tit. 9, § 2523.5(c)(2) (West, Westlaw through 2017).

133. *Id.*

holdover proceedings, and the ultimate relief attained may not be what the landlords desire and are due. Further, that relief can possibly be obtained later than relief could have arrived through nonpayment proceedings—a result that is inefficient, inequitable, and untimely.[134]

IV. THE SOLUTION: AMEND AND REFINE THE LAW

Though the goals of summary proceedings in the Housing Part are efficiency, equity, and timeliness for the litigating parties, legislation and case law achieve the opposite result to the detriment of landlords, as illustrated in this note. Moreover, the law discussed in this note does not adequately support, or provide relief for, landlords' loss of time and money. By amending and refining law and precedent however, courts can create parity between the parties in the adjudication of their cases.

A number of these legal impediments are harmful to landlords because they severely restrict the enforcement of certain contractual provisions. For example, the Pet Law[135] should undoubtedly stay in effect in some form because there is an important public policy concern for a person's right for companionship,[136] and because the law affects many New Yorkers.[137] Once a certain period elapses, landlords with knowledge of the harboring of pets should waive their right to enforce the contractually agreed upon pet provision in a lease. Without this period and waiver clearly in place, the law would leave landlords with an unfair coercive power over their tenants. That is, landlords with knowledge of an unauthorized pet could threaten or start litigation, at any time, to pursue an ulterior motive such as evicting the tenant.[138]

But as the law stands, landlords who have contracted to maintain pet-free buildings are heavily burdened and not given anything close to the protections of the contracting tenants. First, landlords should be given a six-month window to act before they waive their rights with respect to the pet. This way, if landlords get complaints from tenants that another tenant is harboring a pet, landlords will have enough time to try to look into the matter and come to an amicable resolution. A six-month window would leave landlords with enough time to commence summary proceedings, if they believe a tenant is violating the pet-free provision of a lease.

Moreover, instead of imputing the knowledge of the pet harboring to landlords or their authorized agents, via a superintendent, contractor, or the like, the law should be enforced such that landlords or their authorized agents must have actual knowledge of the pet. A visible item of pet paraphernalia should have no effect on the commencement of this six-month clock because such item could be misleading, given that a tenant may be temporarily babysitting a pet for a friend, or the

134. *See supra* Sections III.C.1–2.

135. N.Y. City Admin. Code § 27-2009.1 (2017).

136. Linden Hill No. 1 Coop. Corp. v. Kleiner, 478 N.Y.S.2d 519, 520 (Civ. Ct. 1984) (discussing N.Y. City Admin. Code § 27-2009.1(a)).

137. StatsBee, *New York City's Pet Population*, NYCEDC (Feb. 14, 2012), http://www.nycedc.com/blog-entry/new-york-city-s-pet-population.

138. *Kleiner*, 478 N.Y.S.2d at 523.

paraphernalia could be something that the pet's true owners accidentally left at the tenant's apartment. These refinements to the Pet Law would protect good-faith landlords who are trying to enforce a no-pet policy. And in making these changes, good-faith tenants' rights would be preserved, as well.

Laws restricting landlords' enforcement of late fee and legal fee lease provisions are even more restrictive than the Pet Law. These provisions are of great importance to landlords because they provide landlords with important shields against tenants who do not comply with the terms of their leases. To better promote the goal of helping landlords timely pay bills and mortgages,[139] the legislature should amend these laws.

Courts have ruled that in nonpayment proceedings, late fee and legal fee lease provisions cannot be enforced upon a tenant's default;[140] however, preventing that very behavior—tenants' failure to fulfill monetary obligations—is precisely the point of these lease provisions. Landlords of rent-stabilized units cannot enforce late fee or legal fee provisions at all.[141] The unenforceability of these provisions penalizes landlords, while tenants, who fail to file a timely answer after being served with a Nonpayment Notice of Petition and Petition and demonstrate a valid excuse for defaulting, remain unaffected by the law.[142] In fairness to landlords, tenants' violation of their contracts should not simply be overlooked. By repealing these precedents, courts can better achieve more equitable and efficient summary proceedings for both contracting parties.

In addition to current law affecting contractual obligations to landlords' detriment, judges' authority and discretion to grant an order to show cause[143] and to stay execution of a warrant for up to six months from entry of a judgment in holdover proceedings[144] also prejudices landlords. As discussed above, summary proceedings are lengthy even before being affected by an order to show cause or a stayed execution of a warrant.[145] Judicial discretion in these proceedings is, as a practical matter, a great source of inefficiency, inequity, and untimeliness for landlords.

Allowing judges to grant an order to show cause should still be permitted under the law since the purpose of rent stabilization and rent control is to limit dislocation.[146] But months of rent can be lost with little relief to a landlord as a result of a judge granting an order to show cause, which further prolongs the summary proceedings. To create more predictability for landlords and equity in how these matters are adjudicated, judges' orders to show cause, without relief for the landlords, should be capped at two orders per case. For a court to grant any subsequent order to show

139. *See* Dolan v. Linnen, 753 N.Y.S.2d 682, 703 (Civ. Ct. 2003).

140. *Id.*

141. Related Tiffany, L.P. v. Faust, 743 N.Y.S.2d 802, 803 (App. Term 2002).

142. *See* Scherer & Fisher, *supra* note 3, § 17:18.

143. N.Y. C.P.L.R. 2214(d) (McKinney 2017).

144. N.Y. Real Prop. Acts. Law § 753(1) (McKinney 2017).

145. *See supra* Sections III.C.1–2.

146. Finkelstein & Ferrara, *supra* note 57, § 11:4.

cause, courts should require tenants to deposit substantial monies with the court to be paid toward rental arrears.[147] This way, landlords likely receive the proper relief—a more efficient, equitable, and timely result. This also still protects tenants and ensures that they have ample time to either come up with outstanding arrears or find a new place to live.

Further, judges should not be afforded the discretion to stay the execution of a warrant for up to six months from the time judgment is entered in holdover proceedings.[148] Section 753(1) of RPAPL is as harmful to landlords as it is generous to tenants.[149] By illustrating good cause, tenants should be given more time before an eviction takes place. But permitting a stay for an additional six months from the time judgment is entered can leave landlords without rent or possession for nine months.[150] Capping the allotted discretion to stay the execution of a warrant for up to three months from the time judgment is entered creates more equity for landlords and streamlines summary proceedings as a whole. Amending the law this way ensures that tenants still have time to either come up with the arrears or find a new place to live.

To further promote efficiency, equity, and timeliness, the law should give landlords more avenues to legally evict rent-stabilized tenants in situations that warrant such relief. Specifically, tenants who habitually tender late rental payments, and who induce landlords to commence multiple nonpayment proceedings as a result, should be penalized. Discretion should be taken out of judges' hands in deciding whether such tenants are deemed a nuisance. Instead, a more rigid formula should be used to reach that conclusion, which would lead to more predictability and uniformity in such situations and ultimately award landlords the relief that they seek and likely deserve—an eviction.

First, the courts should eliminate the "good faith" prong of the nuisance theory. Landlords should still be required to demonstrate that they were provoked to bring numerous nonpayment proceedings against the recurring nonpaying tenant in a fairly short period, and that the tenant's nonpayment of the rent was "willful, unjustified, without explanation, or accompanied by an intent to harass the landlord."[151] However,

147. *See* Lang v. Pataki, 707 N.Y.S.2d 90, 92 (App. Div. 2000) ("Subject to certain conditions and exceptions, RPAPL 745(2) prohibits successive adjournments at a tenant's request unless the tenant deposits into court his or her rent accrued from the date the petition was served."); William H. Jeberg, Note, *A Victory for the Landlords—Or Is It? The Constitutionality of the 1997 Amendments to the RPAPL*, 74 St. John's L. Rev. 799, 826–27 (2000) (discussing how a deposit requirement balances landlords' property interests and prevents tenants from abusing the summary proceeding process); Susan E. Patrick, Note, Dameron v. Capitol House Associates Limited Partnership*: Protective Orders to Provide Rent Collection, Loophole for Landlords?*, 31 Cath. U. L. Rev. 615, 616 (1982) ("The tenant's most effective tactic in a landlord-tenant controversy is the withholding of rent. Deposit of rent into the court registry promotes the utility of this tactic, while assuring the landlord of the recovery of rent if he prevails." (footnote omitted)).

148. Real Prop. Acts. Law § 753(1).

149. *See supra* Section III.C.2.

150. *See supra* Section III.C.2.

151. Maiter, *supra* note 114, at 579 (quoting 25th Realty Assocs. v. Griggs, 540 N.Y.S.2d 434, 435 (App. Div. 1989)).

both of these prongs should have rigid requirements and should not be subject to judges' discretion.

The law should require that a specific number of nonpayment proceedings be commenced within a specific time frame—for example, three cases per calendar year, or four per eighteen months—for landlords to pursue an eviction based on the nuisance theory. Additionally, the law should provide a clear list of valid justifications for withholding rent, to eliminate unpredictability.

The effect of these changes in the law would likely deter tenants with no valid excuses from paying untimely rent. More importantly, the effect of these changes would allow landlords of rent-stabilized units to more easily and justly seek eviction of habitual nonpaying tenants. Landlords should not be forced to commence proceedings hoping that courts agree with their assessment of "nuisance," or else recommence under recurring nonpayment cases.[152] The rigid test outlined in this note provides predictability, efficiency, and equity as landlords' losses in fees and time can be averted, and timely payment of rent can be promoted, all while preserving rights of tenants who have valid excuses for untimely rental payments.

Lastly, the law should enforce more uniformity within summary proceedings by allowing landlords of both tenants with and without active leases to commence nonpayment proceedings. The dual goals of the nonpayment proceedings are to put tenants on notice of their rental arrears and to give landlords the ability to compel tenants to pay the landlords the rent that they are rightfully owed. But when the Housing Part restricts landlords in a free market setting who have tenants without leases from commencing such cases, as the law does now, it fails to promote efficiency, equity, and timeliness. Landlords in such a situation should be allowed to commence either a nonpayment or holdover proceeding, depending on their goals. Landlords who wish to keep a tenant and simply recoup what is owed should be allowed to commence a nonpayment proceeding. Landlords who want to rid themselves of such tenants would still have the opportunity to commence holdover proceedings to regain possession.

V. CONCLUSION

Although the purported goals of summary proceedings in the Housing Part are efficiency, equity, and timeliness for the litigating parties, legislative materials and case law yield the opposite result. Landlords who seek to enforce rights to which they are contractually entitled are quite often forced to relinquish those rights. Many times, summary proceedings are made even lengthier as a result of existing law. As it stands today, the law is ambiguous and lacks uniformity in enforcement, a situation exacerbated by judicial discretion to refuse to enforce contractual provisions in signed leases.

There should be refinements and amendments to the law that would incentivize tenants to pay rent on time, adhere to the contractual provisions in their leases, and not take advantage of the already lengthy proceedings in place. Importantly, these goals can be achieved without sacrificing the rights of tenants.

152. *See supra* Section III.D.

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