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2022-01-28

### Ink 967-969 Willoughby, LLC v. Cordero

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[\*1]

<b>Ink 967-969 Willoughby, LLC v Cordero</b>
2022 NY Slip Op 50063(U)
Decided on January 28, 2022
Appellate Term, Second Department
Published by <a href="#">New York State Law Reporting Bureau</a> pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on January 28, 2022

SUPREME COURT, APPELLATE TERM, SECOND DEPARTMENT, 2d, 11th and 13th  
JUDICIAL DISTRICTS

PRESENT: : THOMAS P. ALIOTTA, P.J., WAVNY TOUSSAINT, DONNA-MARIE E.  
GOLIA, JJ  
2021-109 K C

**Ink 967-969 Willoughby, LLC, Appellant,**

**against**

**Sol Nora Cordero, Respondent.**

The Price Law Firm, LLC (Joshua C. Price and Jennifer Milosavljevic of counsel), for appellant. NYLAG-Tenant Protection Unit (Raphael I. Ruttenberg of counsel), for respondent (no brief filed).

Appeal from an order of the Civil Court of the City of New York, Kings County (Thomas M. Fitzpatrick, J.), dated May 17, 2020. The order, insofar as appealed from as limited by the brief, dismissed the petition with prejudice, pursuant to, in effect, CPLR 409 (b), in a holdover summary proceeding.

ORDERED that the order, insofar as appealed from, is affirmed, without costs.

In this holdover proceeding based upon tenant's failure to renew the lease (*see* Rent Stabilization Code [RSC] [9 NYCRR] § 2524.3 [f]), it was undisputed that tenant was not given the option of a one-year or two-year lease for her initial, vacancy lease and that such lease did not contain a rent stabilization rider. The Civil Court dismissed the petition, in

effect pursuant to CPLR 409 (b), because landlord's predecessor was not entitled to the 18% vacancy increase added to the legal regulated rent in tenant's initial lease (*see* RSC §§ 2522.5, 2522.8; *Housing Dev. Assoc. LLC v Gilpatrick*, 27 Misc 3d 134[A], 2010 NY Slip Op 50740[U] [App Term, 1st Dept 2010]). As landlord has not established that it was entitled to collect a vacancy increase [\*2](*see* RSC § 2522.5 [c] [3]) and the subsequent increases in the legal regulated rent were based upon the improper initial rent, tenant properly refused to sign the offered renewal lease and a holdover proceeding for failure to renew does not lie.

We reach no other issue.

Accordingly, the order, insofar as appealed from, is affirmed.

ALIOTTA, P.J., TOUSSAINT and GOLIA, JJ., concur.

ENTER:

Paul Kenny

Chief Clerk

Decision Date: January 28, 2022

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