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2022-12-06

### 1785 BROADWAY REALTY CORP v. BROWN

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#### Recommended Citation

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10/28/22

Civil Court of the City of New York  
County of Kings - E  
Part

Index Number 310119-21  
Motion Cal. # \_\_\_\_\_ Motion Seq. # \_\_\_\_\_

**DECISION/ORDER**

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion:

1785 Broad Way Realty Corp

Claimant(s)/Plaintiff(s)/Petitioner(s)

against

Pedell Brown et al

Defendant(s)/Respondent(s)

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1 (NYSCEF 16-26)</u>
Order to Show Cause and Affidavits Annexed....	_____
Answering Affidavits .....	<u>2 (NYSCEF 27-31)</u>
Replying Affidavits.....	<u>3 (oral)</u>
Exhibits .....	_____
Other.....	_____

Upon the foregoing cited papers, the Decision/Order on this Motion to dismiss based on

failure to state a cause of action is as follows:

After argument, motion is granted. Respondent moves to dismiss this holdover where the subject premises are a rent-stabilized unit and a section 8 <sup>subsidy</sup> ~~tenancy~~ was undisputedly terminated and reinstated, stating that the termination of the Section 8 subsidy is not grounds upon which a rent stabilized tenancy is terminated ~~per se~~ and that there is no conditional limitation allowing for the termination of the tenancy based on failure to obtain unpaid section 8 subsidies (1900 Altomare LLC v. Solon, 57 Misc 3d 158 [A] [App Term, 2d Dept, 2d, 11th & 15th Jnt dist S 2017]). Petitioner argues that the HAP contract automatically terminates the lease and that the proceeding is not dispositive because the regulations may not have included a specific provision that required participants to certify annually (as it now does).

The court does not find the petitioner's arguments compelling and dismisses the proceeding for the reasons set forth in the Solon decision, ~~but~~ also because ~~of~~ even if the court accepts ~~respondent's~~ petitioner's position that

\_\_\_\_\_ Date \_\_\_\_\_ Judge, Civil Court

\_\_\_\_\_ of 1 \_\_\_\_\_

Civil Court of the City of New York

County of KINGS  
Part

Index Number 30119/21  
Motion Cal. # \_\_\_\_\_ Motion Seq. # \_\_\_\_\_

DECISION/ORDER

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion:

1785 Broadway Realty Corp  
Claimant(s)/Plaintiff(s)/Petitioner(s)  
against  
Brown et al  
Defendant(s)/Respondent(s)

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	_____
Order to Show Cause and Affidavits Annexed....	_____
Answering Affidavits .....	_____
Replying Affidavits.....	_____
Exhibits .....	_____
Other.....	_____

Upon the foregoing cited papers, the Decision/Order on this Motion to \_\_\_\_\_

is as follows:

The lease automatically terminates, statutory framework does not allow the tenancy to be terminated on such grounds (see RSC (NYCRR § 2524.2). Further, in the context of summary proceedings the court has found that there are two levels of statutory/regulatory framework and within the context of Article 7 proceedings both must be complied with (Greenport Preserve LP v. Keyward, 2021 NY Slip Op 21356 [App Term 2d Dept 2d, 11th & 13th Jud Dist, 2021]). Since the petitioner does not have a state law grounded reason for terminating the tenancy, the notice is not appropriate and the proceeding must be dismissed.

12/6/22  
Date

*Sergio Jimenez*  
Judge, Housing Court  
Judge, Civil Court