

LANDLORD TENANT LAW

Court Refuses to Hold Domestic Violence Victim Liable for Rent



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Section 227-c of the Real Property Law (RPL), which was enacted in 2007, authorizes victims of domestic violence for whose benefit an order of protection has been issued by a court of competent jurisdiction, to terminate a lease or rental agreement covering premises occupied for dwelling purposes and to be released from liability thereunder. Many such victims, however, who are often unrepresented by counsel, are likely unaware of the protections offered by this statute.

In a recent decision issued by Judge Thomas Marcelle of the Albany County City Court, *Riverwalk on the Hudson v. Culliton*, Case No. LT-394-18/CO (Nov. 7, 2018), the court was presented with just such a situation where a domestic abuse victim who had obtained an

order of protection was unaware of the protections offered by RPL 227-c. As such, when the landlord sought a money judgment against her (as tenant with her husband) for rent arrears, the court could not rely on that Section to absolve the tenant of liability. The court, however, found that RPL 227-c did not abrogate the common law doctrine of unconscionability, and found that it would be unconscionable to enforce the lease against the domestic abuse victim tenant.

'Culliton'

The facts as recited by the court in *Culliton* were as follows. Robert and Morgan Culliton, as husband and wife, had leased an apartment from the landlord, Riverwalk. The lease contained a provision making both Robert and Morgan jointly and severally liable for the rent due under the lease.

Shortly after the lease was signed, Robert became abusive toward Morgan, to the point where Robert

threatened to kill Morgan, her child and unborn child. Morgan ended up moving out of the apartment with her baby girl and moved in with her mother for the safety of the child.

Morgan thereafter filed a petition under Article 8 of the Family Court Act seeking an order of protection, which was issued by the court.

In the meantime, the landlord had commenced a summary non-payment proceeding based on the tenants' failure to pay rent totaling \$3,300. After awarding possession to the landlord based on Robert's default and Morgan's lack of interest in returning to the apartment, the court ordered a trial on the landlord's request for a money judgment against Morgan for the rent arrears.

At trial, Morgan testified to the various abuses by Robert, the fact that she was forced to vacate the apartment with her baby girl, and the order of protection which the Family Court had issued. The landlord, however, made what the

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court characterized as “a simple but cogent argument;” namely, that the lease made Robert and Morgan jointly and severally liable for the rent and therefore “Morgan must pay Riverwalk unless either a statutory rule or common law principle trumps the lease’s joint and several liability clause.”

First, the court found that although Morgan qualified for the protections offered by RPL 227-c, she failed to invoke it as she was “unfamiliar with the statute and sadly, nothing in the law requires a court to explain this important statutory right to victims of domestic abuse.” Moreover, the court further found that it lacked the power to apply RPL 227-c retroactively.

Unconscionability

The question for the court became whether RPL 227-c “abrogates, or merely derogates, the common law.” In determining this question, the court noted that the “general rule of statutory construction is that a clear and specific legislative intent is required in order to override the common law” and thus “where the common law gives a remedy, and another remedy is provided by statute, the latter is cumulative, unless made exclusive by the statute.” The court held that RPL 227-c “neither displaces nor eliminates any common law contract defense that may be available to Morgan.”

Upon concluding that Morgan’s common law defenses were still

available, the court went on to conclude that it would be unconscionable in the circumstances to enforce the joint and several liability provision of the lease against her.

While the court acknowledged that the joint and several liability clause was clearly valid on its face, the question was “whether a legitimate clause can be rendered

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impotent because its implementation in a peculiar circumstance produces an unconscionable result.” While acknowledging that there appeared to be “no New York authority directly answering this question,” the court went on to find that the joint and several liability clause was invalid “when applied to the facts of this case.” It then explained why it would be unconscionable to enforce the clause in the circumstances:

“Riverwalk asks this court to hold Morgan responsible for \$3,498 of rent arrears pursuant to the joint and several liability clause of the lease. The court will not do so. A woman who is a victim of domestic violence should not be forced to pay the rent of her abuser. To sustain the contrary proposition, as Riverwalk seeks, would be shockingly unjust and unfair which is the very definition of an unconscionable

act. Therefore, the court holds the joint and several liability clause, as applied to the facts in this case, is unconscionable and thus void as to Morgan Culliton.”

Conclusion

RPL 227-c is an important remedy which provides a domestic abuse victim who has obtained an order of protection with the ability to terminate the lease and be absolved from liability for rent. It is unfortunate that many such victims are likely unaware of this important statutory right. As demonstrated above, however, at least one court has excused a victim’s failure to invoke this remedy by applying the common law doctrine of unconscionability to prevent the landlord from enforcing the lease against the victim. It will be interesting to see if other courts follow this course or find that the remedies provided by RPL 227-c abrogate a domestic abuse victim’s common law defenses to the enforcement of the lease.