

Appeals Court Rules that Nuisance Tenant Can't Cure Violation After Trial

Owners should have an easier time evicting nuisance tenants, thanks to a recent appeals court ruling. The appeals court ruled that if a tenant is found to be a nuisance after a trial, the tenant isn't entitled to a chance to "cure," that is correct, the nuisance behavior [Cabrini Terrace Joint Venture v. O'Brien: 2010 NY Slip Op 01891 (App. Div. 1st Dept. 3/11/10)]. The court's ruling broke new ground by finding that where the evidence of a nuisance is overwhelming and the tenant has denied it, a post-judgment cure is inappropriate because the tenant can't cure what the tenant can't appreciate, says Adam Leitman Bailey of the Manhattan law firm of Adam Leitman Bailey, P.C., who represented the owner in this case.

The tenant's apartment was described by all courts hearing the case as a place of roach and rodent infestation, clutter, offensive odors, and stacked newspapers and wiring in disarray. The court clarified the law on post-judgment cure in nuisance cases, finding that "A post trial opportunity to cure was properly denied upon a finding, based on the testimony and the trial court's own inspection, that the nuisance conditions had existed over a substantial period, had not abated although tenant had been given ample opportunity to do so, and were unlikely to be abated." Key in this determination were the tenant's protestations that there was no nuisance, says Bailey. ♦