

Owner Can't Waive Illegal Sublet Claim

If you sue to evict a tenant for illegal subletting, the tenant may claim that by waiting too long to start the case, you waived your right to sue to evict the tenant for this reason. But, in a recent case handled by Manhattan attorney and CHIP member Adam Leitman Bailey, the court refused to allow the tenant to make this claim [*Powellton Holdings, LLC v. DeGonzalez*: Index No. L & T 75417/06 (Civ. Ct. NY)]. The owner had sued to evict the tenant for illegally subletting the apartment. The tenant asked the court to rule in its favor without a trial, arguing that the owner had waived its right to bring the case by waiting too long to start it. The court ruled that an owner can't waive the right to bring an illegal sublet case. It noted that restrictions on subletting apartments, like the primary residence requirement, are "important to advance public policy considerations inherent in the goals and purposes of rent regulation." So the owner could bring the case. And, while the case was pending, the court ordered the tenant to pay "use and occupancy" in the amount stated as rent in the most recent lease renewal. ■