

# Landlord-Tenant Monthly

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Nonprimary residence/spouses  
Hon. Rolando T. Acosta, J.S.C.

## **Respondent prevails in illegal sublet and non-primary residence proceedings**

Since the Petitioner-Landlord failed to prove by a preponderance of evidence that the premises were not the Respondent's primary residence, or Respondent illegally sublet her premises, both of these claims were consolidated and final judgment was awarded to the Respondents.

In *Riverton Associates v. Russell*, the court found Respondent's testimony, as well as that of her witness, credible in proving that she maintained the subject premises as her primary residence since 1993. Despite Petitioner's claim that the tenant maintained a separate residence pursuant to a 1997 marriage, the court acknowledged the legitimacy of a spouse maintaining a separate dwelling as his or her primary residence stating that "[i]t is perfectly legitimate for a husband and wife to establish two separate residences." (Citations omitted). Therefore, the court decided that Petitioner failed to prove that Respondent did not maintain an "on-going, substantial physical nexus with the premises for actual living purposes during the relevant period."

Respondent's documentary evidence (bank and credit-card statements, a driver's license, income-tax returns, gas and utility bills) rebutted Petitioner's claim that Respondent had illegally sublet the premises. Accordingly, the court dismissed Petitioner's hold over petitions and restored the matter to the calendar to determine Respondent's attorney's fees application.

Case: *Riverton Associates v. Dawn Russell* (Civ.Ct., N.Y. County, \*\*051203; 3 pages).

Our thanks to Adam Leitman Bailey, Esq., of the Law Firm of Adam Leitman Bailey, P.C., for sharing this decision with our readers. Mr. Bailey's firm represented the Respondent in this case.