

NYLJ

Tuesday, March 28, 2000

A-1 28, Col. 6 (APP. TM. - 9th + 10th)

liable for payment of the no-fault benefits (see, Insurance Law § 5106; see also, Presbyterian Hosp. v Maryland Cas. Co., 90 NY2d 274).

Thus, we find that substantial justice was done between the parties in accordance with the principles and rules of substantive law (see, UDCA 1807).

EAST BAY ASSOCIATES, res. v. JOHNSON, ap QDS: 18312195 — Appeal by tenant from a final judgment of the District Court, Suffolk County (B. Kahn, J.), entered February 17, 1999, awarding landlord possession and the sum of \$2,819.24.

Final judgment unanimously reversed with \$30 costs and petition dismissed.

Under the circumstances presented, landlord's retention of two of tenant's rent checks, one for seven weeks and one for three weeks, constituted an acceptance of rent and created, at the least, a month-to-month tenancy, which has not been terminated (see, Sowalsky v E. F. MacDonald Stamp Co., 31 AD2d 582; Giglio v Loschiaro, NYLJ, July 8, 1975 [App Term, 2d & 11th Jud Dists]). Landlord can not be allowed strictly to enforce the terms of its lease, which are designed to punish tenant for her delay in vacating, while seeking to be excused for its own delay in returning tenant's rent checks.

BURKE, res. v. WEST BABYLON ASSOCIATES, ap QDS: 18312196 — Appeal by defendant from a small claims judgment of the District Court, Suffolk County (E. Pines, J.), entered on March 9, 1999, in favor of plaintiffs in the principal sum of \$1,410.

Judgment unanimously modified by decreasing the amount of the award to the sum of \$940. and as so modified.

bail, released
gnizance, and
st for a hearing
tion of the tem-
l. The matter
e Judge Levine
lining whether
otection should

side the pres-
ra, and on appli-
's attorney,
fer from the
orary order of
following:

lock, the chil-
to the home
ents, namely
odouva, in
ce their visita-
ne from 6
the school
urther modi-
weekends
nd, this week-
o'clock p.m.

p.m. the chil-
ed and
ents' home,
douva, and
by Mrs.
o'clock p.m.

tendency of
ng as this