



Analysis  
As of: Dec 05, 2012

**40 East 68th Street Co., Petitioner-Landlord-Respondent, against Hani Jamil Saud  
Habbas, Respondent-Tenant-Appellant.**

**570587/08.**

**SUPREME COURT OF NEW YORK, APPELLATE TERM, FIRST  
DEPARTMENT**

**22 Misc. 3d 135A; 880 N.Y.S.2d 872; 2009 N.Y. Misc. LEXIS 347; 2009 NY Slip Op  
50284U**

**February 20, 2009, Decided**

**NOTICE:** THIS OPINION IS UNCORRECTED AND  
WILL NOT BE PUBLISHED IN THE PRINTED  
OFFICIAL REPORTS.

PUBLISHED IN TABLE FORMAT IN THE NEW  
YORK SUPPLEMENT.

**PRIOR HISTORY:** *40 E. 68th St. Co. v. Habbas*, 17  
*Misc. 3d 1101A*, 851 N.Y.S.2d 57, 2007 N.Y. Misc. LEXIS  
6485 (2007)

**HEADNOTES**

**[\*\*872]** **[\*135A]** Landlord and  
Tenant--Lease--"No Alterations" Clause.

**JUDGES:** **[\*\*\*1]** PRESENT: McKeon, P.J.,  
Schoenfeld, Heitler, JJ.

**OPINION**

Tenant appeals from an order of the Civil Court of  
the City of New York, New York County (Gary F.

Marton, J.), entered February 28, 2008, which denied his  
motion for summary judgment dismissing the petition in  
a holdover summary proceeding.

Per Curiam.

Order (Gary F. Marton, J.), entered February 28,  
2008, affirmed, with \$ 10 costs.

This holdover proceeding, based on tenants' claimed  
violation of the "no alterations" clause of the parties' rent  
stabilized lease agreement, is not susceptible to summary  
disposition. Triable issues exist as to the circumstances of  
the tenants' removal and replacement of kitchen cabinets  
and appliances (*see Mengoni v Passy*, 254 AD2d 203, 679  
N.Y.S.2d 122 [1998]; *Britton v Yazicioglu*, 189 AD2d  
734, 592 N.Y.S.2d 737 [1993]), and the efficacy of their  
purported cure.

THIS CONSTITUTES THE DECISION AND  
ORDER OF THE COURT.

Decision Date: February 20, 2009