



Positive

As of: Dec 05, 2012

**1251 Americas Associates II, L.P. f/k/a 1251 AMERICAS ASSOCIATES, L.P.,
Petitioner-Landlord-Appellant, against Rock 49th Rest. Corp. d/b/a CITY
LOBSTER & CRAB CO., Respondent-Tenant-Respondent, "JOHN DOE", "JANE
DOE" and "R. DOE, INC.", 1251 AVENUE OF THE AMERICAS, NEW YORK,
NY 10019, Respondents.**

No.570075/06

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

*13 Misc. 3d 142A; 831 N.Y.S.2d 360; 2006 N.Y. Misc. LEXIS 3590; 2006 NY Slip Op
52282U*

November 29, 2006, Decided

NOTICE: [***1] THIS OPINION IS
UNCORRECTED AND WILL NOT BE PUBLISHED
IN THE PRINTED OFFICIAL REPORTS.

JUDGES: PRESENT: McCOOE, J.P.,
GANGEL-JACOB, SCHOENFELD, JJ.

SUBSEQUENT HISTORY: Subsequent appeal at *1251
Ams. Assoc. II, L.P. v. Rock 49th Rest. Corp., 2009 N.Y.
Misc. LEXIS 756 (N.Y. App. Term, Apr. 9, 2009)*

OPINION

Per Curiam:

DISPOSITION: Landlord appeals from an order of the
Civil Court, New York County (Jose A. Padilla, Jr., J.),
entered on or about June 9, 2005, which granted tenant's
motion to dismiss the petition pursuant to *CPLR
3211(a)(1)* in a holdover summary proceeding.

Order (Jose A. Padilla, Jr., J.), entered on or about
June 9, 2005, reversed, with \$ 10 costs, motion denied,
petition reinstated and matter remanded to Civil Court for
further proceedings.

CORE TERMS: tenant, pay rent, notice, lease, rent

Landlord's acceptance of tenant's tender of the April
2005 rent on April 6, 2005 did not vitiate the notice
terminating the commercial tenancy as of April 5, 2005.
Since the governing lease required tenant to pay rent "in
advance on the first day of each calendar month," tenant
was obligated to pay rent for the entire month, even
though the lease was terminated as of April 5, 2005 (*see
Intell 157 W. 57th St. Realty v Block Travel, 2002 N.Y.*

HEADNOTES

[*142A] [**360] Landlord and Tenant--Rent.

13 Misc. 3d 142A, *142A; 831 N.Y.S.2d 360, **360;
2006 N.Y. Misc. LEXIS 3590, ***1; 2006 NY Slip Op 52282U

Misc LEXIS 106, 2002 NY Slip Op 50058(U)). Nor did *N.Y.S.2d 403 [1993]*.
the brief pendency of the nonpayment [***2] proceeding
- discontinued on consent on April 11, 2005 - nullify the
previously served termination notice underlying the
within holdover proceeding (*cf. Zitomer Pharmacy v*
MacFarlane 64th St. Dev. Corp., 191 A.D.2d 333, 595

Decision Date: November 29, 2006