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**North Shore Community Services, Inc., Plaintiff-Appellant, v Community Drive
LLC, Defendant-Respondent.**

13042N, 650335/13

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

*120 A.D.3d 1142; 992 N.Y.S.2d 435; 2014 N.Y. App. Div. LEXIS 6335; 2014 NY Slip
Op 06380*

**September 25, 2014, Decided
September 25, 2014, Entered**

NOTICE:

THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION. THIS OPINION IS UNCORRECTED AND SUBJECT TO REVISION BEFORE PUBLICATION IN THE OFFICIAL REPORTS.

COUNSEL: [***1] Lambert & Shackman, PLLC, New York (Thomas C. Lambert of counsel), for appellant.

Somer, Heller & Corwin, LLP, Commack (Stanley J. Somer of counsel), for respondent.

JUDGES: Sweeny, J.P., Moskowitz, DeGrasse, Manzanet-Daniels, Clark, JJ.

OPINION

[*1142] [**435] Order, Supreme Court, New York County (Cynthia Kern, J.), entered December 23, 2013, as amended February 19, 2014, which granted defendant's motion for summary judgment on its counterclaims for use and occupancy and attorney's fees, unanimously affirmed, with costs.

Plaintiff's argument that defendant's acceptance of its tender of rent for the month following the expiration of the lease agreement created a new month-to-month tenancy under *Real Property Law* § 232-c is refuted by the unambiguous terms of the [*1143] lease (*see Matter of Wallace v 600 Partners Co.*, 86 NY2d 543, 658 N.E.2d 715, 634 N.Y.S.2d 669 [1995]; 101123 *LLC v Solis Realty LLC*, 23 AD3d 107, 801 N.Y.S.2d 31 [1st Dept 2005]). *Real Property Law* § 232-c provides that if the landlord accepts rent for any period subsequent to the expiration of the lease term, the tenancy thereby created will be from month to month, "unless an agreement either express or implied is made providing otherwise." Article 61 of the parties' lease is such an agreement. It provides that, upon plaintiff's default of its obligation to surrender the premises at the end of the lease term, plaintiff's continued occupation of the premises, with or without [***2] defendant's consent or acquiescence, will be treated as a tenancy at will and "in no event" a tenancy from month to month.

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: SEPTEMBER 25, 2014