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85TH COLUMBUS CORP., Respondent, v STEVEN COOPERMAN, Appellant.

1978, 570525/06

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

**45 A.D.3d 358; 845 N.Y.S.2d 280; 2007 N.Y. App. Div. LEXIS 11607; 2007 NY Slip Op
8759**

November 13, 2007, Decided

November 13, 2007, Entered

PRIOR HISTORY: *85th Columbus Corp. v. Cooperman*, 14 Misc 3d 126A, 836 NYS2d 484, 2006 N.Y. Misc. LEXIS 3817 (2006)

COUNSEL: [***1] Penn Proefriedt Schwarzfeld & Schwartz, New York (Sharyn A. Tritto of counsel), for appellant.

Thomas S. Fleishell & Associates, P.C., New York (Susan C. Stanley of counsel), for respondent.

JUDGES: Concur--Saxe, J.P., Friedman, Sweeny, McGuire and Malone, JJ.

OPINION

[*358] [***281] Order of the Appellate Term of the Supreme Court of the State of New York, First Department, entered December 21, 2006, which reversed an order, Civil Court, New York County (Michelle D. Schreiber, J.), dated December 21, 2005, granting tenant's motion to dismiss the petition in a nonprimary residence summary holdover proceeding, and reinstated the petition, unanimously affirmed, without costs.

Appellate Term correctly determined that the notice of nonrenewal was timely served. While a landlord serving a 10-day notice to cure by mail must factor an additional five days into the cure period (*Matter of ATM One v Landaverde*, 2 NY3d 472, 812 NE2d 298, 779 NYS2d 808 [2004]), there is no requirement that a landlord add five days to service by mail of a 90/150-day notice of nonrenewal (*21 W. 58th St. Corp. v Foster*, 44 AD3d 410, 843 NYS2d 583 [2007]; *Skyview Holdings, LLC v Cunningham*, 13 Misc 3d 102, 827 NYS2d 399 [2006]). Concur--Saxe, [***2] J.P., Friedman, Sweeny, McGuire and Malone, JJ.