

Fordham Law School

## FLASH: The Fordham Law Archive of Scholarship and History

---

All Decisions

Housing Court Decisions Project

---

2020-11-09

### York v. West Kingsbridge, LLC

Follow this and additional works at: [https://ir.lawnet.fordham.edu/housing\\_court\\_all](https://ir.lawnet.fordham.edu/housing_court_all)

---

#### Recommended Citation

"York v. West Kingsbridge, LLC" (2020). *All Decisions*. 207.  
[https://ir.lawnet.fordham.edu/housing\\_court\\_all/207](https://ir.lawnet.fordham.edu/housing_court_all/207)

This Housing Court Decision is brought to you for free and open access by the Housing Court Decisions Project at FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in All Decisions by an authorized administrator of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact [tmelnick@law.fordham.edu](mailto:tmelnick@law.fordham.edu).

[\*1]

<b>York v West Kingsbridge, LLC</b>
2020 NY Slip Op 51409(U)
Decided on November 9, 2020
Civil Court Of The City Of New York, Bronx County
Black, J.
Published by <a href="#">New York State Law Reporting Bureau</a> pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on November 9, 2020

Civil Court of the City of New York, Bronx County

<p><b>Heather York, Petitioner,</b></p> <p><b>against</b></p> <p><b>West Kingsbridge, LLC, Exclusive Realty Corp., Ignacio Castillo,</b> <b>Respondents.</b></p>
--

L & T 801300/20

For Petitioner:

Mobilization for Justice, Inc.

By Christopher Sina, Esq.

100 William Street, 6th Floor

New York, New York, 10038

Tel (212) 417 3819

For Respondents:

Emmanuelli & Pilotti, Esqs.

By Dean Emmanuelli, Esq

1000 Grand Concourse, Suite 1B

Bronx, New York, 10451

Tel (718) 992-8042

Bernadette G. Black, J.

Petitioner, Heather York, commenced this illegal eviction proceeding by order to show cause filed on September 22, 2020, seeking to be restored to possession of the subject premises, 145 West Kingsbridge Road, Apartment 1D, Bronx, New York, pursuant to Real Property Action and Proceedings ("RPAPL") §§ 711, 713(10), 721(10). Petitioner alleges that on or about September 10, 2020, respondents, landlord West Kingsbridge, LLC, head officer and managing agent Ignacio Castillo, and managing agent Exclusive Realty Corp., caused the locks to the apartment entrance door to be changed, and that respondents have refused to provide her with key to the premises, her home of many years. Petitioner seeks treble

damages based upon respondent's actions, and costs and fees associated with bringing and maintaining this proceeding. Respondents contend that petitioner surrendered or abandoned the apartment.

Due to the conditions caused by the COVID-19 pandemic, on consent of the parties, the court conducted an evidentiary hearing virtually, utilizing the Microsoft Teams platform. All parties were represented by counsel. At the conclusion of the hearing, respondents' counsel [\*2] provided oral summation and petitioner's counsel provided a post-hearing memorandum of law. Respondents' counsel declined the opportunity to submit same. Based upon the credible evidence submitted, the court makes the following findings of fact and conclusions of law.

## PETITIONER

Ms. York credibly testified that her mother, May Anderson, the former tenant of record at the subject rent stabilized apartment, had resided at the premises for over 40 years, and that her mother died on August 20, 2020 at 97 years old. Petitioner submitted into evidence a certified copy of Ms. Anderson's certificate of death, with the subject address as the residence of Ms. Anderson, and listing the informant, Heather York, the daughter of the decedent as residing at the same address. Ms. York stated that she initially lived at the apartment with her mother from the beginning of the tenancy. She left the premises when she married, but after her relationship with her husband deteriorated, she returned to live with her mother many years ago. Ms. York testified that took care of her elderly ailing mother and that although her mother had the assistance of a home health aide for four hours on weekdays, she was her mother's primary caregiver until her mother's death on August 20, 2020. Ms. York is 64 years old, and recently retired. She relies on social security benefits and a small pension from her union, totaling \$2300 in income each month.

Prior to her mother's death Ms. York had paid the landlord the monthly rent, currently \$814.15, by money orders made out to the landlord on behalf of May Anderson, the named tenant of record. Ms. York testified that she was aware that her mother owed the landlord rent. Following her mother's death, Ms. York contacted the landlord's office to inform them that Ms. Anderson had passed away. She also spoke with the landlord's daughter at the management office about clearing up her mother's rental arrears. She borrowed money from a

friend to pay the landlord and gave the building superintendent money orders totaling \$2000.00, to be delivered to the landlord.

On or about September 8, 2020, Ms. York spent the night away from the apartment and when she returned her keys no longer worked to open the door to the premises. The locks had been changed and a padlock added to the apartment entrance door. She tried to reach the landlord, without success. She called the police and when they arrived, she tried again to reach the landlord with their assistance, again without success. Shortly after the police left, three men, including respondent Ignacio Castillo, appeared. Ms. York asked why her door locks had been changed and requested keys to the new locks. Mr. Castillo denied her request but allowed petitioner to go inside the apartment offering Ms. York the opportunity to arrange to remove her property. She was not prepared to remove the large items of furniture at that time, but she took pictures of the contents of the apartment. As respondents continued to refuse to provide keys to the new locks to the premises, Ms. York commenced this illegal eviction proceeding. Since being locked out petitioner stayed at a hotel for a couple of nights, but because she could not afford to continue to pay the cost of a hotel room, Ms. York has been sleeping in her car, according to petitioner.

Petitioner testified that during her mother's life, the apartment had been sparsely furnished, due, in part, to ongoing long term rat and roach infestation and more recently, leaks in the apartment. Shortly before her mother's death, Ms. York replaced her mother's old uncomfortable bed with a recliner, which her mother preferred. She also began to clean out the apartment and discarded certain items. Ms. York testified that in addition to the recliner, she had recently purchased a new refrigerator, a wall unit, side tables, and expensive window treatments [\*3] for the apartment. Ms. York submitted into evidence photographs of the items which are still inside the apartment. She also submitted into evidence a copy of her New York State driver's license, issued January 21, 2020 listing the subject address as well as other documents including Social Security Benefits correspondence, and her records concerning a car loan, all listing the subject address for Ms. York.

Petitioner credibly testified that the subject premises has been her home for most of her life and that since she moved back into the apartment many years ago, she has never resided anywhere else. Ms. York testified that she was residing at the premises when respondents locked her out at the beginning of September 2020. Petitioner seeks to be restored to

possession of the premises, and asserts a claim for succession to the tenancy, pursuant to the Rent Stabilization Law.

Petitioner's witness Lawrence Gallier testified that he had known Ms. Anderson and Ms. York as mother and daughter for over 40 years. He had visited them at the subject premises about three times each week for the past three or four years. Mr. Gallier averred that petitioner had been very devoted to and taken care of her mother. The apartment did not have much furniture. Because Ms. York had health issues which affected her feet, she no longer wanted to drive her car. Mr. Gallier usually drove petitioner in her car to take her where she needed to go, and the car was parked at his house. On the day that petitioner learned she was locked out of the apartment he had gone with her to remove furniture from the apartment. When they arrived at the apartment, the locks had been changed.

## **RESPONDENTS**

Ignacio Castillo, head officer of the corporation and managing agent for the building, appeared at the hearing but submitted no evidence in support of respondents' position. Respondent's witness, Chrissy Romero, testified that she is employed by respondent Ignacio Castillo, as his assistant in the management office. Her job includes processing the tenants' renewal leases, answering the phone, communicating with the tenants to address their complaints and following up with workers at the building. She knew Mae Anderson as the sole tenant of the apartment. Ms. York called the office to speak to Mr. Castillo after the tenant died to inform him of the tenant's death and identified herself as Ms. Anderson's next of kin. Around September 4, 2020 Ms. York called the office again. She informed Ms. Romero that she wanted to clear up her mother's rent arrears, that she did not intend to stay in the apartment, and that she was in the process of removing the contents of the apartment. Around September 8th or 9th Ms. Romero received rent payments sent by petitioner and signed by "Richard Rivera". Ms. Romero telephoned petitioner to inform her that the landlord could not accept the rent payments from a third party. Ms. Romero gave the payment to Mr. Castillo, who she understood, returned them to Ms. York. The building superintendent Ramon Cabeza reported that Ms. York had abandoned the apartment, that petitioner had been moving property out of the apartment, and that the door to the apartment had been left open with no one inside. Ms. Castillo was concerned that the open, unoccupied apartment would invite foul play and would present a danger to the other tenants in the building. She directed Mr. Cabeza

to change the locks and secure the apartment. Although Ms. Castillo had contact information for petitioner, she did not indicate that the management office ever attempted to reach petitioner regarding these concerns. She did not offer petitioner a copy of the keys to the premises. Although several items of furniture remained at the premises and petitioner had tendered rent payments only days before, Ms. Castillo assumed petitioner had abandoned the apartment. Ms. Castillo acknowledged that petitioner [\*4] never provided a surrender notice or tendered her keys to the premises to the management office.

Ramon Cabeza testified that he has been the superintendent for the subject building for about a year and a half. He had been aware that the elderly woman who lived in Apartment 1D was ill. He did not know her name or petitioner's name. He knew petitioner by sight. He had spoken to petitioner before the tenant died when she called about needing repairs in the apartment. However, when he went to the apartment to address the repairs, Ms. York came to the door but did not permit access because of concerns about COVID-19 and her mother's health. On Friday, September 4, 2020, after the tenant's death, Mr. Cabeza saw petitioner again at the premises. He noted that she appeared to be moving property out of the apartment, and she asked him if he had a dolly. He told petitioner that he did not have one. Petitioner told him that she planned to pay rent to the landlord and asked Mr. Cabeza to return the next day for the payment. However, the next day petitioner said she needed to go to the bank, and she asked Mr. Cabeza to return on Monday. On Monday September 7, 2020, Mr. Cabeza met petitioner at the apartment. Petitioner gave him money orders, which he delivered to respondents' office.

Mr Cabeza testified that the following day, on Tuesday September 8th he noticed that the door of the apartment was open, and a neighbor informed him that "delinquents" were loitering around the apartment door Mr Cabeza entered the apartment and while he was inside a man who identified himself as Richard Rivera came to the apartment and said that Ms York had promised him the apartment When Mr Cabeza told him that he could not have the apartment, Mr Rivera said he had property inside Mr Cabeza allowed Mr Rivera to remove his property, including a "Tablet" and a speaker from the apartment Mr Cabeza did not indicate whether he attempted to contact petitioner to confirm the ownership of the items that he allowed Mr Rivera to remove Concerned that the open unoccupied apartment would invite criminal activity and endanger the other tenants in the building, Mr Cabeza changed the cylinder of the apartment door lock and added a padlock for extra security Mr Cabeza

testified that petitioner never asked him for a key to the new locks and that he did not offer Ms. York a key.

Mr. Cabeza also introduced a series of photographs that he took of the of the inside of the subject premises on the day that he changed to the locks to the apartment door. The photographs were admitted into evidence and show the same furniture as depicted in Ms. York's photographs, as well as a bowl and some glasses in the kitchen. Respondents also submitted a picture of an external latch lock on the apartment entrance door.

## DISCUSSION

Pursuant to RPAPL § 768 1. (a)(iii) and New York City Administrative Code § 26-521(a)(3) "It shall be unlawful for any person to evict or attempt to evict an occupant of a dwelling unit who has lawfully occupied the dwelling unit for thirty consecutive days or longer or who has entered into a lease with respect to such dwelling except to the extent permitted by law pursuant to a warrant of eviction or other order of a court of competent jurisdiction or a governmental vacate order by changing the lock on such entrance door without supplying the occupant with a key." Further, is unlawful for an owner to fail to take all reasonable and necessary steps to restore to occupancy any occupant whose vacatur resulted from the landlord's actions or omissions, after such occupant requests restoration within seven days of the owner's unlawful acts or omissions. See, NYC Admin. Code §26-521(b).

Respondents assert that petitioner either surrendered or abandoned the apartment. Respondents must therefore establish that two facts concurrently exist: (1) an intention to abandon or relinquish, and (2) some overt act or some failure to act which carries the implication [\*5] that the tenant or occupant neither claims nor retains any interest in the subject matter of the abandonment. The burden of proving an abandonment or surrender is on the party seeking to establish it or relying upon such abandonment or surrender. *Sam & Mary Housing Corp. v. Jo/Sal Market Corp.*, 100 AD2d 901, 474 N.Y.S.2d 786 (2nd Dept., 1984); *Hui Zhen Wei v. 259 East Broadway Associates, LLC*, 57 Misc 3d 136(A) (App Term, 1st Dept 2017); [Ahmed v. Chelsea Highline Hotel](#), 49 Misc 3d 139(A) (App Term, 1st Dept 2015); [Hip Hop Fries Inc. v. Gibbins Realty Corp.](#), 13 Misc 3d 128(A) (App Term, 1st Dept 2006); *Johnson v. Manning*, NYLJ, November 16, 1988, at 21, col 2, (App Term, 1st Dept).



Where the tenant or legal occupant claims that she is moving out of the apartment but fails to return the keys to the premises and fails to provide a signed surrender statement or agreement "the prudent course of action is for the landlord to commence summary dispossess proceedings." See, Scherer, *Residential Landlord-Tenant Law In New York*, § 2:129, 2019-2020 Edition.

Petitioner maintains that she contacted the landlord around the beginning of September to inform the office of her mother's death and to try to clear up any rental arrears; that she never informed the landlord that she intended to vacate the premises; and that the subject apartment has been her only home for many years now. Ms. York credibly testified that she was away from the apartment for a couple of days and that when she returned, her apartment locks had been changed, respondent Castillo refused to provide her with the keys to the new locks on her apartment entrance door on that day, and that respondents have continued to refuse to restore her to possession of the premises.

Respondents' witnesses, the owner's assistant and the building superintendent, testified that petitioner informed them of her intention to move out of the apartment, and that petitioner was observed by the building superintendent removing her late mother's possessions out of the apartment. However, both of respondents' witnesses testified that petitioner neither submitted a surrender notice nor returned the keys to the apartment to the landlord's office or anyone employed by the landlord. Mr. Cabeza stated that on Monday September 7, 2020, he met petitioner at the subject premises, and Ms. York handed him rental payments for the apartment, which he delivered to the landlord's office. The next day, September 8, 2020, Mr. Cabeza allowed a man he did not know to remove property from petitioner's apartment without first notifying petitioner, and he changed the apartment entrance door lock and added a padlock to the door.

Ms. Romero testified that she received petitioner's rental payments of more than two months' rent on September 8th or 9th. The copies of the money orders attached to respondents' opposition papers and alleged to have been received by the landlord's office are machine-dated and appear to have been issued by Western Union on September 8, 2020. Ms. Romero noted that the payor on the money orders was not petitioner and that she delivered the money orders to her employer. The witness stated that Mr. Castillo rejected the payments and returned the money orders to petitioner. She contacted petitioner to inform her that the landlord would not accept the rent payment as offered, and that the money orders would be

returned. Ms. Romero did not specify when the rental payments were returned to petitioner. The witness also testified that she directed the superintendent to change the locks to the apartment, because she determined that petitioner had abandoned the apartment, after the apartment door was found open. Based upon Ms. Romero's testimony that she contacted petitioner regarding the rent payment, it is clear to the court that respondents could have reached petitioner, had they chosen to do so. However, respondents did not contact petitioner to inform her that they had changed the apartment lock, or, [\*6] to confirm whether petitioner intended to return to the premises to remove the furniture that remained inside the apartment. This is particularly noteworthy, given that petitioner had so recently tendered rent to respondents and had neither formally surrendered the apartment nor returned her keys to the premises.

Respondent Ignacio Castillo, appeared at the hearing but did not offer any testimony to contradict petitioner's assertion that he was one of the three men who arrived at the apartment on the day she discovered that she had been locked out, after the police had gone, and that he personally had refused to provide her with keys to the new locks on her apartment door, after she requested the keys on September 10, 2020.

The court finds that petitioner sustained her burden of proving that she had been in lawful possession of the subject apartment for more than thirty days at the time respondents locked her out of the apartment. Respondents' own witness testified to having met with petitioner at the subject premises several times before and after the death of her mother, the decedent tenant of record. The court also finds respondents' version of the facts neither credible nor plausible, and that respondents illegally evicted petitioner from the premises. Accordingly, the court grants petitioner a final judgment of possession for the subject premises. Respondents are directed to restore petitioner to possession of the premises forthwith, remove the padlock from the apartment door, repair any resulting damage to the door, and to provide petitioner with working keys to the apartment entrance door, forthwith. Petitioner may pursue the damages portion of her claims in a plenary action. The court makes no determination regarding petitioner's succession claim.

This constitutes the decision and order of the court.

Dated: November 9, 2020

Bronx, New York

Bernadette G. Black, Judge

Civil Court, Trial Part

[Return to Decision List](#)