

Fordham Law School

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

---

[All Decisions](#)

[Housing Court Decisions Project](#)

---

2020-03-10

### STATEN ISLAND BEHAVIORAL NETWORK, INC. v. BURNS

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

---

#### Recommended Citation

"STATEN ISLAND BEHAVIORAL NETWORK, INC. v. BURNS" (2020). *All Decisions*. 1141.  
[https://ir.lawnet.fordham.edu/housing\\_court\\_all/1141](https://ir.lawnet.fordham.edu/housing_court_all/1141)

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).

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF RICHMOND: HOUSING PART Y

-----X  
STATEN ISLAND BEHAVIORAL NETWORK,  
INC.,

L&T Index No. 053656/18

Petitioner-Landlord,

-against-

**DECISION/ORDER**

YEKIVA BURNS,  
"JOHN DOE,"  
"JANE DOE,"

Respondents-Undertenants.  
-----X

Present:

Hon. KIMBERLEY SLADE  
Judge, Housing Court

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of Respondent's motion for summary judgment.

<b>Papers</b>	<b>Numbered</b>
Respondent's Motion.....	<u>1</u>
Petitioner's Opposition Papers.....	<u>2</u>
Respondent's Reply.....	<u>3</u>

Respondent's motion for summary judgment is decided as follows:

After service of a notice to cure and a notice of termination, Petitioner, Staten Island Behavioral Network, Inc., commenced this holdover proceeding seeking to recover possession of 29 Arcadia Place, Apt. 1H, Staten Island, NY 10310 ("subject premises") from Respondent, Yekiva Burns. The ground for recovery is that Respondent has allegedly violated substantial obligations of her sub-tenancy and the occupancy agreement between the parties. Petitioner is the primary tenant and

provides Respondent with supportive-housing services. The subject premises is not subject to the Rent Stabilization Laws by virtue of the fact that the subject premises is a condominium unit. Both parties are represented by counsel and the court has appointed a guardian ad litem for Respondent. Respondent has filed a written answer.

Prior to serving the notice of petition and petition, Petitioner served a notice to cure and notice of termination. The predicate notices state the grounds upon which Petitioner seeks recovery. The 30-day notice to cure states that Respondent is violating substantial obligations of her sub-tenancy and occupancy agreement. The grounds stated are:

1. Contrary to Paragraph 35 of your Occupancy Agreement, on information and belief, you are harboring a pit bull dog in your apartment. Staff visited your apartment and saw the dog in your apartment.
2. Contrary to Paragraphs 8 and 10, on information and belief, you have allowed a roommate and/or family member to reside in the apartment, without the prior written approval of your landlord. Staff visited your apartment and found an unidentified female in your apartment, during your absence.
3. Contrary to Paragraph 9, on information and belief, you and/or other occupants and/or guests, are involved in the consumption and/or sale of illicit drugs in your apartment.
4. Contrary to Paragraph 5, you have failed to provide your landlord with timely and correct updated income information, despite numerous requests by staff to meet with you.

The notice to cure states that these violations are to be cured by October 22, 2018. Petitioner then served a 10-day notice to terminate, dated the next day on October 23, 2018, which states that "staff members" have confirmed that Respondent has failed to cure the second through fourth violations listed in the notice to cure.

Respondent now makes a post-answer motion to dismiss, treated as a summary judgment motion, seeking dismissal of this proceeding pursuant to C.P.L.R. §§ 3212(a)(2) and (a)(7) on the grounds that Petitioner has issued an invalid notice to cure

and notice of termination and that the petition has failed to state a cause of action. In the alternative, Respondent seeks an order granting leave to conduct discovery pursuant to C.P.L.R. § 408. Petitioner opposes the motion.

Respondent's arguments that the predicate notices are invalid and that the petition fails to state a cause of action essentially boil down to a single contention: that the grounds stated in the predicate notices are vague, lack specificity, are insufficient in detail, and are not particular enough to allow Respondent to formulate a defense to this proceeding. Respondent takes issue with the predicate notices, claiming that they devoid of dates and do not reveal the identity of the staff members who allegedly made the observations of the violations or confirmed that Respondent remains in default. Because the predicate notices are insufficient, Respondent argues that the petition is defective and, therefore, the proceeding must be dismissed.

Petitioner opposes the motion by arguing that the grounds for recovery are sufficient in detail to adequately provide Respondent with an opportunity to defend herself in this proceeding. Petitioner contends that it need not provide any further details because the defaults alleged are of the nature that Respondent would already have knowledge of. In other words, Respondent would know whether unauthorized occupants reside at the subject premises, whether there is drug activity taking place, and whether Respondent provided Petitioner with necessary income documents.

The court will not address whether the first cause of action concerning the harboring of a dog, an alleged violation of the occupancy agreement, is legally sufficient. Although raised in the notice to cure, Petitioner forwent this claim by not

raising it in the notice of termination. As for the sufficiency of the other claims, the court makes the following determinations.

While Petitioner need not lay forth its evidence in its predicate notices, the court finds that the only ground for recovery which does not meet the level of sufficiency is the third claim which concerns alleged drug activity at the subject premises. This claim lacks specificity to apprise Respondent of details in order to formulate a defense. This claim generally states that either Respondent, her occupants, or guests, or all of them, were observed consuming or selling illicit drugs at the subject premises. The claim is devoid of time and dates this alleged activity took place and fails to state who actually was observed consuming or selling the illicit drugs. Petitioner only generally states that Respondent "and/or" her occupants "and/or" guests were observed without any further information. Such a broad claim raised by Petitioner here does not apprise Respondent of sufficient facts and details needed to formulate a defense. Hence, this claim is dismissed from the petition as it is legally insufficient.

The remaining grounds for recovery listed in the predicate notices (i.e., illegal occupant and failure to provide income information) are sufficient in detail to provide Respondent with information to formulate a defense to this proceeding. The grounds state the theories upon which Respondent allegedly breached the terms of her sub-tenancy and the provisions of the occupancy agreement Respondent allegedly violated. The notices state that a female occupant was observed residing at the premises, without prior written approval from Petitioner, during Respondent's absence. This claim is sufficient to provide Respondent with information needed to formulate a defense. Information regarding who observed the female occupant could be obtained through

discovery. Similarly, the notices state that Respondent has failed to provide updated income information upon numerous requests by Petitioner's staff pursuant to the occupancy agreement. These two claims are legally sufficient to apprise Respondent of facts needed to formulate a defense to this proceeding and the legal theories, agreement provisions, and facts upon which they are based upon. These claims make Respondent aware that an unknown female occupant has been observed residing at the subject premises upon staff visits and that Respondent has failed to provide relevant income information. Further information needed as to who specifically observed or contacted Respondent may be obtained through discovery. There is no need to restate these allegations as it is implicit by their inclusion in the termination notice that if false, they can be easily be refuted.

Respondent has demonstrated an "ample need" for discovery. See New York Univ. v. Farkas, 121 Misc. 2d 643 (Civ. Ct., N.Y. Co. 1983). Respondent has demonstrated the need to determine who observed or confirmed that Respondent breached the terms of her occupancy agreement and has also shown a need to review the actual lease between Petitioner and the owner of the subject premises. Respondent has met the factors of the Farkas test and has demonstrated that she is entitled to discovery to review evidence as to the basis of Petitioner's claim that Respondent has breached the terms of both her sub-tenancy and occupancy agreement. Petitioner, in its opposition papers, has not demonstrated that it will be prejudiced by the court granting Respondent's request for discovery.

Petitioner argues that there is no need for it to submit to discovery because Respondent knows whether a female occupant resides at the subject premises without

the prior written approval of Petitioner and knows whether she has failed to submit income information pursuant to the occupancy agreement. This argument is unavailing. Petitioner acknowledges in its opposition papers that some of the basis of its allegations stem from information provided to Petitioner by the owner which Respondent does not have access to. Thus, Respondent has demonstrated a need to be able to obtain such information that she is not privy to and forms the basis of the allegations made against her and which may, in turn, subject her to an eviction. Furthermore, although Respondent may know whether a female occupant resides at the subject premises without having sought prior written approval from Petitioner or whether she has failed to provide income information, Respondent should be able to access materials which state who observed the unknown female occupant residing at the subject premises and when these staff visits were allegedly made. Similarly, Respondent has demonstrated a need to have access to requests for income information made by Petitioner and when they were made. As stated above, Petitioner has not shown that it will be prejudiced by Respondent obtaining this information. The court finds that the proposed discovery demands annexed to Respondent's motion as Exhibits "G" and "H" are narrowly tailored and are not devised as to prejudice Petitioner if it was ordered to comply with those demands.

Based on the foregoing, Respondent's motion for summary judgment, in the alternative, to dismiss, is granted only to the extent that the claim concerning illicit drug activity is dismissed for being legally insufficient. In other respects, the motion is denied. However, Respondent's motion for discovery is granted. Petitioner shall comply with the discovery demands listed in Respondent's motion as Exhibits "G" and

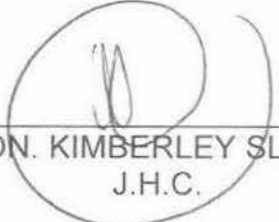
"H" within 30 days of the date of this order. However, Petitioner need not respond to paragraphs 10 and 14 of the interrogatories and paragraphs 2 and 5 of the documents requested because they concern the illicit drug claim which has been stricken. Petitioner's request for summary judgment in its favor is denied as Petitioner has not established a prima facie entitlement to judgment in its favor, there are triable issues of

"H" within 30 days of the date of this order. However, Petitioner need not respond to paragraphs 10 and 14 of the interrogatories and paragraphs 2 and 5 of the documents requested because they concern the illicit drug claim which has been stricken.

Petitioner's request for summary judgment in its favor is denied as Petitioner has not established a prima facie entitlement to judgment in its favor, there are triable issues of fact presented, and that such relief is not warranted at this juncture due to Respondent's demonstration of an ample need to conduct discovery. This matter is marked-off calendar pending completion of discovery. Either party may restore for appropriate relief in the event this order is not complied with or after completion of discovery.

This constitutes the decision and order for the court.

Dated: Staten Island, New York  
March 10, 2020



HON. KIMBERLEY SLADE  
J.H.C.