

Fordham Law School

FLASH: The Fordham Law Archive of Scholarship and History

[All Decisions](#)

[Housing Court Decisions Project](#)

2023-05-17

Ocean Hill II, LCC v. Whyte

Follow this and additional works at: https://ir.lawnet.fordham.edu/housing_court_all

Recommended Citation

"Ocean Hill II, LCC v. Whyte" (2023). *All Decisions*. 1221.
https://ir.lawnet.fordham.edu/housing_court_all/1221

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.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS, HOUSING PART S

-----X

Ocean Hill II, LCC

Index No. LT-321594-22/KI

Petitioner-Landlord

DECISION/ORDER

-against-

Motion Seq #1

Boni Whyte,

Respondent-Tenant(s)

-----X

Present: Hon. Tashanna B. Golden

Recitation as required by CPLR 2219(a), of the papers considered in the review of the Respondent's Motion to for Summary Judgment pursuant to CPLR 3212:

Papers:	Numbers
Respondent's Motion, Affirmation in Support, and Exhibits.....	10-16
Petitioner's Affirmation in Opposition and Exhibits.....	18-20
Respondent's Reply.....	21
Court File.....	Passim

Petitioner filed this instant holdover proceeding on or about September 21, 2022, seeking final judgment and possession of the premises located at 430 Saratoga Avenue, Apt 507, Brooklyn, New York 11233, from respondent, Boni Whyte. Petitioner predicated its holdover proceeding upon service of a 10-day Notice to Cure dated July 5, 2022, alleging the Respondent "violated and continues to violate substantial obligations of [her] tenancy" with a cure date of July 22, 2022.¹ The alleged lease violations were: 1) On March 14 2022, Jayden Whyte (Respondent's son) broke into and burglarized the community center at 1835 Sterling Place, Brooklyn, NY; 2) On March 19, 2022, he stole the super's car and money contained therein; and 3) On May 30, 2022, he threatened children from 1765 Prospect Place and brandished a BB gun, for which he was

¹ See NYSCEF document 13, Ten Day Notice To Cure

arrested.² A 7-day notice of termination of tenancy dated August 18, 2022, and effective August 31, 2022 states that "since the service of the Notice to Cure upon you, your son has been involved in incidents of swiping straphangers' iPhones from within Brooklyn subway stations."³ The Notice of Termination also reasserts the allegations outlined in the Notice to Cure and added "In or about July/August 2022 your son has been involved in incidents of swiping straphangers' iPhones from within Brooklyn subway stations."⁴ Respondent, by Counsel seeks Summary Judgment pursuant to CPLR 3212 on the grounds that the petition fails to state a claim upon which relief can be granted in that the notice of termination fails to state sufficient facts to establish grounds upon which Petitioner may recover possession of the subject premises.

Summary judgment will be granted "if upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party" (CPLR 3212[b]). The proponent of a motion for summary judgment must make prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (*Zuckerman v. City of New York*, 49 NY2d 557, 404 N.E.2d 718, 427 N.Y.S.2d 595 [1980]). In considering a summary judgment motion, the courts function is to determine whether a material issue of fact exists, not to determine said issues (*Esteve v. Abad*, 271 AD 725, 68 N.Y.S.2d 322 [1st Dept 1947]). Summary judgment should be granted when the moving party makes a prima facie showing of entitlement to judgment as a matter of law, giving sufficient evidence to eliminate any material issues of fact from the case. See (*Winegrad v. New York University Medical Center*, 64 NY2d 851, 476 N.E.2d 642, 487 N.Y.S.2d 316 [1985]). The papers submitted in support of and in opposition to a summary judgment motion are examined in the light most favorable to the party opposing the motion. *Martin v. Briggs*, 235 AD2d 192, 196, 663 N.Y.S.2d 184 (1st Dept.

² Id.

³ See NYSCEF doc 14, Seven Day Notice of Termination

⁴ Id.

1997). Mere conclusions, unsubstantiated allegations, or expressions of hope are insufficient to defeat a summary judgment motion. *Zuckerman, supra*, 49 NY2d, at 562. Upon the completion of the court's examination of all the documents submitted in connection with a summary judgment motion, the motion must be denied if there is any doubt as to the existence of a triable issue of fact. *Rotuba Extruders, Inc. v. Ceppos*, 46 NY2d 223, 231, 385 N.E.2d 1068, 413 N.Y.S.2d 141 (1978).

Pursuant to RSC 2524.3 a Notice of Termination for breach of lease must allege with specificity the alleged conduct which constitutes the breach and must also state which provisions of the lease are being violated. *Williamsen v. Bugay*, 21 Misc. 3d 1128(A), 2008 WL 4866330, *3, *6. Here, the allegations in the Notice to Cure are specific, but none of them are alleged to have occurred within the subject premises or even in the building that the Respondent occupies. The lease provisions referenced in the Notice to Cure state:

"You will do nothing to interfere or make more difficult Owner's efforts to provide You and all other occupants of the **Building** with the required facilities and services...." (Paragraph 8);

"As a tenant in the Building, You will not engage in objectionable conduct. Objectionable conduct means behavior which makes or will make the **Apartment** or the **Building** less fit to live in for You or other occupants. It also means anything which interferes with the right of others to properly and peacefully enjoy their **Apartments**..." (Paragraph 12).

Emphasis added.

Based on the plain language of the lease provisions, the Court finds that a claim for breach of lease is improperly plead as the alleged activities in the initial Notice to Cure nor the additional allegation in the Termination Notice occurred in the apartment or the building. Additionally, the Court finds that the sole post-cure period allegation of alleged theft of iPhones "from within Brooklyn subway stations" is insufficient as a matter of law to rise to the level of nuisance, which is defined as continuous invasion of rights, and must interfere with a person's interest in the use

and enjoyment of land. *Domen Holding Co. v. Aranovic*, 1 N.Y.3d 117 (2003). Based on the foregoing, the Court grants Respondent's Motion for Summary Judgment. This matter is dismissed.

The foregoing is the Decision/Order of this court.

Dated: Brooklyn, New York
May 17, 2023



Hon. Tashanna B. Golden
Judge, Housing Court

SO ORDERED
HON. TASHANNA B. GOLDEN
JUDGE, HOUSING COURT