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J.R. Bronze Corp. v Watson
2024 NY Slip Op 51366(U)
Decided on April 5, 2024
Civil Court Of The City Of New York, Bronx County
Miller, J.
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on April 5, 2024

Civil Court of the City of New York, Bronx County

<p style="text-align: center;">J.R. Bronze Corp., Petitioner,</p> <p style="text-align: center;">against</p> <p style="text-align: center;">Brunetta Watson, JOHN DOE, JANE DOE, Respondents.</p>
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Index No. L&T 305649/22

Gregory Smith, Esq., of Hertz, Cherson & Rosenthal, P.C., for Petitioner.

Brunetta Watson, Respondent appearing pro se.

Kisha L. Miller, J.

Petitioner commenced this holdover summary eviction proceeding to recover possession of the premises located at 1812 Clay Ave., Apt A, Bronx, New York. The "7 Day Notice of Termination — Nuisance," incorporated by the petition, alleges that Respondent Brunetta Watson has engaged in a course of objectionable conduct constituting a nuisance under Rent Stabilization Code §2524.3(b), including assaulting one of Petitioner's employees in December 2021, verbally abusing and threatening the superintendent in December 2021, disposing of cat excrement out of the apartment window, and repeatedly failing to provide access to address repairs in June, July, and August 2021. Respondent denies the allegations in

the answer and in the amended answer.

The court conducted a nonjury trial, where Respondent, Petitioner's managing agent, Valentina Gojcaj, and superintendent, Ernest Thompson testified. Petitioner submitted evidence in support of its prima facie case, including a videotape recording.

Respondent did not submit evidence in support of her testimony.

Findings of Facts

Petitioner is the owner of the subject building, a multiple dwelling currently registered with the NYC Department of Housing Preservation and Development. [\[FN1\]](#) Respondent, a rent stabilized tenant, has resided in the subject apartment for 29 years. The most recent renewal lease executed by the parties includes a one-year term commencing November 1, 2023 and ending October 31, 2024.

On July 31, 2018, Respondent filed an application with the New York State Division of Housing and Community Renewal ("DHCR") requesting a rent reduction based on decreased services in the apartment. [\[FN2\]](#) After affording Petitioner an opportunity to respond to the complaint and conducting an inspection of the apartment, DHCR issued an order dated April 8, 2019, reducing the legal regulated rent effective September 1, 2018. When Petitioner filed an application on August 16, 2019, requesting to restore the rent, DHCR denied the application by order dated November 25, 2020, concluding that the conditions were partially corrected. [\[FN3\]](#) Petitioner filed a petition for administrative review ("PAR") of the November 25, 2020 order, but the PAR was denied. [\[FN4\]](#)

On November 5, 2019, Respondent applied for a rent reduction order. [\[FN5\]](#) DHCR issued an order dated November 19, 2020, reducing the legal regulated rent effective December 1, 2019. When Respondent filed an affirmation of non-compliance of the November 19, 2020 order, a Notice of Settlement dated January 26, 2021 was signed by the DHCR Compliance Unit indicating Petitioner paid a civil penalty and was afforded sixty (60) days to remedy the conditions in the November 19, 2020 order. [\[FN6\]](#)

In November 2020, Respondent filed two separate applications for rent reduction orders. On March 19, 2021, DHCR issued an order reducing the legal regulated rent effective

January 1, 2021 due to a defective entrance door lock. [\[FN7\]](#) On July 20, 2021, DHCR issued a rent reduction order, reducing the rent effective January 1, 2021. [\[FN8\]](#) In August 2021, Petitioner applied to restore the rent based on the DHCR order issued July 20, 2021. [\[FN9\]](#)

On June 11, 2021, Respondent filed another application with DHCR requesting a rent reduction for decreased services. [\[FN10\]](#) On December 16, 2021, an inspector from DHCR, Ms. Gojcay, and Mr. Thompson arrived at Respondent's apartment to inspect the apartment. Two weeks prior to the inspection date, Respondent had complained about an infestation of roaches. After the inspector, Ms. Gojcay, and Mr. Thompson entered the apartment, Respondent and Ms. Gojcay became involved in an altercation. The inspector completed the inspection of the premises without the presence of Petitioner's employees.

The parties offered diametrically opposed versions about what occurred during the inspection.

Conclusions of Law

The Notice of Termination alleges Respondent's "occupancy" terminated, effective January 21, 2022, pursuant to Rent Stabilization Code §2524.3(b) and §2524.2(c)(2) on the basis that Respondent is committing/permitting a nuisance. The petition alleges that Respondent is in possession pursuant to a written lease agreement "starting 11/1/2021 ending 12/21/2023" and that the term expired on January 21, 2022. It further alleges Respondent continues in possession without permission of Petitioner "after expiration of said term." The expiration date in the petition — January 21, 2022 — is the same date contained in the Notice of Termination.

RPAPL §711(1) provides, in pertinent part, that a special proceeding may be maintained where a tenant "continues in possession of any portion of the premises after expiration of [her] term, without permission of the landlord..." To maintain a summary holdover proceeding, a landlord must allege and prove that, as of the time the proceeding is commenced, the tenant remains in possession beyond the expiration of her term (*Perotta v Western Regional Off-Track Betting Corp.*, 98 AD2d 1 [4th Dept 1983]). Although the petition here does not specifically cite to RPAPL §711(1), this proceeding was commenced pursuant to this section of the statute since Petitioner alleges Respondent's term expired on January 21, 2022, prior to expiration of the fixed lease term.

A landlord seeking eviction based on early termination of a fixed lease term cannot take advantage of the summary remedy offered by RPAPL Article 7 unless the lease contains a conditional limitation providing for its early termination ([*BEC Continuum Owner, LLC v Foster*, 80 Misc 3d 1233](#)[A], 2023 NY Slip Op 51154[U] [Civ Ct, Kings County 2023]; [*72-15 Realty Co LLC v Marmol*, 70 Misc 3d 199](#), 2020 NY Slip Op 20251 [Civ Ct, Queens County 2020]). If a clause in the lease provides that the lease cannot endure beyond the time that a contingency occurs, it creates a conditional limitation upon the occurrence of which the lease automatically expires (*Perotta v Western Regional Off-Track Betting Corp*, supra). Based upon such lease provision, a summary eviction proceeding will lie to evict the tenant. However, absent evidentiary proof that such a condition exists in the lease, a landlord cannot maintain a holdover proceeding based on termination of the lease ([*Hatim Group, LLC v Johnson*, 36 Misc 3d 147](#)[A], 2012 NY Slip Op 51631[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2012]; [*Fourth Hous. Co. Inc. v Bowers*, 53 Misc 3d 43](#), 2016 NY Slip Op 26217 [App Term, 2d Dept. 2d, 11th & 13th Jud Dists 2016]).

As part of its prima face case, Petitioner submitted a renewal lease only.^[FN11] Ms. Gojcaj testified that she believes Respondent's occupancy began in 1995 and that the current owner does not have a copy of the original lease. Rent Stabilization Code §2522.5(g) provides that any renewal lease provided must be on the same terms and conditions as the expired lease. But there is no language in the renewal lease creating a conditional limitation, or giving Petitioner the right to terminate the time fixed for Respondent's occupancy if it deemed Respondent's conduct objectionable (*Gonzalez v Peterson*, 177 Misc 2d 940, 1998 NY Slip Op 98526 [App Term, 1st Dept 1998] [the parties' lease did not permit summary termination of the tenancy if the landlord deem the tenants objectionable or for any other reason]). This court cannot assume that the original lease contains a conditional limitation. Without proof of such clause, this court is without jurisdiction to entertain this holdover proceeding and it must be dismissed (*Thora Dass-Gonzalez v Peterson*, 258 AD2d 298 [1st Dept 1999]).

In any event, even if this court were to conclude that Petitioner may maintain this proceeding, Petitioner failed to establish by a preponderance of the credible evidence that Respondent has engaged in conduct constituting a nuisance.

Rent Stabilization Code §2524.3(b) provides for eviction where:

"The tenant is committing or permitting a nuisance in such housing accommodation or the building containing such housing accommodation; or is

maliciously, or by reason of gross negligence, substantially damaging the housing accommodation; or the tenant engages in a persistent and continuing course of conduct, the primary purpose of which is to harass the owner or other tenants or occupants of the same or an adjacent building or structure by interfering substantially with their comfort and safety."

To constitute a nuisance, the tenant's use of property "must interfere with a person's interest in the use and enjoyment of land, which encompasses the pleasure and comfort derived from the occupancy of land and the freedom from annoyance (*Domen Holding Co v Aranovich*, 1 NY3d 117 [2003]). A nuisance is a condition that threatens the comfort and safety of others in the building (*Frank v Park Summit Realty Corp.*, 175 AD2d 33 [1991]). But not every annoyance will constitute a nuisance (*Domen Holding Co v Aranovich*, supra). Nuisance imports a continuous invasion of rights — "a pattern of continuity or recurrence of objectionable conduct" (*Frank v Park Summit Realty Corp.*, supra).

Mr. Thompson testified that over a "few weeks" Respondent discarded cat feces/litter out of her window. He stated that he reported it to the office and the next day, he discussed the issue with Respondent who argued with him. He further testified that Respondent is on the "A line" and that no other tenants on that line own a cat. Petitioner admitted into evidence photographs showing Respondent's window and the sidewalk below her window. [\[FN12\]](#)

Respondent denied discarding cat feces/litter out of her window. She testified that her cat's litter box is in her bathroom; that she does not own a scooper to discard the litter; that she throws the entire litter in the garbage because she "can't stand the stench"; and that she discards the garbage twice a day. The court finds her testimony credible and convincing (*Caputo v [*2]Assante*, 42 Misc 3d 133[A], 2014 NY Slip Op 50054[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2014] [the credibility of the witnesses, the reconciliation of conflicting statements, a determination of which should be accepted and which rejected, the truthfulness and accuracy of the testimony, whether contradictory or not, are issues for the trier of fact]; see *Matter of Carota Enterprises Ltd v Jackson*, 241 AD2d 667 [3d Dept 1997] [the trier of fact is in the best position to assess credibility and the probative value of respective testimonies]). Respondent also testified credibly that her cat's feces do not resemble what was shown in the photographs.

Even if this court were to conclude that Respondent discarded cat feces/litter, Petitioner did not offer testimony from any witness that the discarded cat feces/litter threatened the comfort and safety of others in the building, a necessary element of a nuisance cause of

action (*Frank v Park Summit Realty Corp.*, supra). While Mr. Thompson described the cat feces as "unsanitary," he acknowledged that he received no complaints from other tenants about the cat feces/litter.

Turning to Respondent's conduct on December 16, 2021, Ms. Gojcaj testified that she and Mr. Thompson accompanied the inspector from DHCR to the apartment to identify the areas of Respondent's complaints. She testified that when she began taking photographs, Respondent became irate, started yelling and screaming, and pushed her out the door. Mr. Thompson testified that Respondent knocked the phone out of Ms. Gojcaj's hand, shoved Ms. Gojcaj out of the door, and slammed the door closed while the inspector remained inside.

Respondent testified that during the inspection, Ms. Gojcaj and Mr. Thompson were laughing and making jokes, and that Ms. Gojcaj glided her fingers over the top of Respondent's refrigerator stating, "she doesn't do a good job of cleaning her house." She further testified that when the inspector went to the bathroom, Ms. Gojcaj started walking around videotaping the apartment, Respondent put her hand over Ms. Gojcaj's camera, and Ms. Gojcaj pushed her saying "don't touch me." According to Respondent, Mr. Thompson jumped between the two, Ms. Gojcaj told Respondent to "get out," and Respondent told Ms. Gojcaj to "get out."

Ms. Gojcaj denied making jokes, laughing, or commenting about the condition of Respondent's house during the inspection. She also denied pushing Respondent.

The videotape recording shows Ms. Gojcaj and Respondent exchanging words. [\[FN13\]](#) Ms. Gojcaj says to Respondent, "you put your hands on me," and in response Respondent shouts repeatedly, "you pushed me, you pushed me." In the video, Mr. Thompson is standing against the wall in the public hallway. The recording does not show what lead to the heated exchange or more importantly, which person initiated the contact.

Weighing the truthfulness and accuracy of Respondent's word against the word of Ms. Gojcaj and Mr. Thompson, this court finds no reason to assess more credibility and greater probative value to Petitioner's version that Respondent pushed Ms. Gojcaj first. The recording does not show any pushing or shoving, and the testimonies are too conflicting to conclude that Respondent assaulted Ms. Gojcaj.

Extremely violent behavior may constitute a nuisance ([160 W. 118 St. Corp v Gray](#), [7 Misc 3d 1016](#)[A], 2004 NY Slip Op 51881[U] [Civ Ct, NY County 2004]), but isolated

incidents generally do not rise to the level of nuisance ([CDC Development Co III LLC v Rivera](#), 8 Misc 3d 132[A], 2005 NY Slip Op 51151[U] [App Term, 1st Dept 2005] [showing a "blank" gun and a threat to use the gun on a building employee did not constitute nuisance]; *Madison v Weider*, 91 [*3]NYS 2d 437 [1st Dept 1947] [kicking and scratching the elevator door is not nuisance conduct]; [Tsangarinos v Attaway](#), 43 Misc 3d 142[A], 2014 NY Slip Op 50848[U] [App Term, 1st Dept 2014] [two "isolated" altercations did not constitute nuisance]). Here, there was only one incident between Respondent and Ms. Gojcaj. At most, there was a push or a shove. Ms. Gojcaj did not sustain physical injuries or require medical attention, and there was no testimony or evidence that Respondent's conduct poses a continuing risk to the comfort and safety of other tenants in the building (*Spand v Franco*, 242 AD2d 210 [1st Dept 1997]). Respondent and Ms. Gojcaj have a contentious relationship, such that Ms. Gojcaj has not returned to the building since the incident, but the isolated altercation is not enough to conclude that Respondent's conduct during the inspection rose to the level of nuisance.

Regarding Respondent's failure to provide access, Mr. Thompson testified that he affixed a notice to Respondent's door. [\[FN14\]](#) This notice dated 6/29 (with no year), which Mr. Thompson described as a notice of "no access," is addressed to Respondent's apartment and states "please call me." Mr. Thompson further testified that he tried to gain access to Respondent's apartment on July 29, 2021, August 4, 2021 at 7:31 a.m., August 4, 2021 at 8:05 a.m., and August 12, 2021. He stated Respondent did not provide access. Petitioner admitted into evidence photograph snapshots from the building's CCTV feed showing Mr. Thompson in front of Respondent's apartment on the aforementioned dates. [\[FN15\]](#)

Courts have concluded that a tenant's refusal to allow a landlord access to correct a condition that threatens the health and safety of others in the building can constitute a nuisance ([12 Broadway Realty v Levites](#), 44 AD3d 372 [1st Dept 2007] [mice in tenant's apartment could spread to other parts of the building]; [17 Holding, LLC v Rivera](#), 21 Misc 3d 55, 2008 NY Slip Op 28363 [App Term, 2d Dept 2008] [recurrent instances of flooding accompanied by the tenant's refusal to allow the landlord access to investigate the cause can constitute nuisance]; *Chi-Am Realty Inc. v Guddahi*, 7 Misc 3d 54, 2005 NY Slip Op 25077 [App Term, 2d Dept, 2d and 11th Just Dists 2005] [five occurrences of flooding in 18 months is sufficient to support a finding of nuisance]). Here, Petitioner failed to offer evidence demonstrating that Respondent's failure to allow access on the four attempted dates affected other building residents ([Roxborough Apartments Corp v Kalish](#), 22 Misc 3d 130[A], 2009

NY Slip Op 50127[U] [App Term, 1st Dept 2009]).

Respondent's complaints about conditions in her apartment and in the building date back several years. When responding to Respondent's DHCR complaints, Petitioner repeatedly alleged that Respondent failed to provide access. But the DHCR records do not reveal such a long history of denial of access by Respondent ([Karagiannis v Nasr, 17 Misc 3d 133](#)[A], 2007 NY Slip Op 52069[U] [App Term, 2d Dept, 2d and 11th Jud Dists 2007]). DHCR Docket No. GS610228S (Petitioner's Exhibit 7D) shows that Respondent signed off on a work order in September 2018 addressing vermin, a kitchen leak, holes, and a radiator valve. DHCR Docket No. JM610023RO (Petitioner's Exhibit 7H) contains a work order indicating Respondent allowed access for pest treatment in February 2020. DHCR Docket No. HW610074S (Petitioner's Exhibit 7E) indicates Respondent provided access to a DHCR inspector, Ms. Gojcaj, [*4]Mr. Thompson and a contractor for an inspection on July 28, 2020, and additional access on August 19, 2020 to a DHCR inspector and Mr. Thompson for a follow-up inspection. DHCR Docket No. IW610078S (Petitioner's Exhibit 7F) indicates Respondent signed off on a service ticket in 2021, indicating work was completed by Mr. Thompson.

Petitioner failed to establish that Respondent has refused to provide access over a course of several years (see [Lincoln Place Investor, LLC v Woldmarian, 56 Misc 3d 139](#)[A], 2017 NY Slip Op 51085[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2017]), or that Respondent has complained to DHCR while consistently refusing to allow access to Petitioner and its workers (see [Pekfo Realty, LLC v Nissim, 34 Misc 3d 129](#)[A], 2011 NY Slip Op 52304[U] [App Term, 2d Dept, 2d, 11 & 13 Jud Dists 2011]). Four unsuccessful attempts to gain access to Respondent's apartment in 2021 are insufficient to justify forfeiture of a nearly 30 year rent stabilized tenancy.

Accordingly, it is

ORDERED that the proceeding is dismissed. The clerk shall enter judgment in favor of Respondent Brunetta Watson against Petitioner dismissing the proceeding as per CPLR §411.

This constitutes the decision and order of the court.

Petitioner must retrieve its exhibits at 851 Grand Concourse, Room 409 **within 30 days** of the date of this decision/order, or the exhibits may be disposed of (see DRP-185).

Dated: April 5, 2024

Footnotes

Footnote 1: The court granted Petitioner's oral application to amend the petition to reflect the name of the new managing agent as Juliana Gonzalez.

Footnote 2: Petitioner's Exhibit 7D (DHCR Docket No. GS610228S).

Footnote 3: Petitioner's Exhibit 7G (DHCR Docket No. HT610079OR).

Footnote 4: Petitioner's Exhibit 7H (DHCR Docket No. JM610023RO).

Footnote 5: Petitioner's Exhibit 7E (DHCR Docket No. HW610074S).

Footnote 6: Petitioner's Exhibit 7I (DHCR Docket No. IW610004NC).

Footnote 7: Petitioner's Exhibit 7F (DHCR Docket No. IW610078S).

Footnote 8: Petitioner's Exhibit 7B (DHCR Docket No. IW610077S).

Footnote 9: Petitioner's Exhibit 7C (DHCR Docket No. JT610044OR). This exhibit does not contain the results of Petitioner's application to restore the rent.

Footnote 10: Petitioner's Exhibit 7A (DHCR Docket No. JR610062S).

Footnote 11: Petitioner's Exhibit 5

Footnote 12: Petitioner's Exhibits 17A, 17B, 17C.

Footnote 13: Petitioner's Exhibit 16 (Petitioner emailed the videotape to Respondent and the court).

Footnote 14: Petitioner's Exhibit 8

Footnote 15: Petitioner's Exhibits 12, 13, 14, 15.