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2024-10-02

### MANDALAY LEASING L.P. v. ANDALL

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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF QUEENS: HOUSING PART: PART A

MANDALAY LEASING L.P.,

PETITIONER,

- against -

Index No.: L&T 319889-23  
**DECISION/ORDER**

HOWARD ANDALL  
"JOHN DOE" & "JANE DOE"

RESPONDENTS.

SUBJECT PREMISES: 98-25 HORACE HARDING EXPWY.  
APT. 12A  
CORONA, NY 11368

Present: Hon. David J. Bryan  
Judge, Housing Court

-----X  
Petitioner is represented by: Daniels, Norelli, Cecere & Tavel PC

Respondent is represented by: Queens Legal Services

-----X

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of this motion.

-----X

**Papers**

Respondent's Notice of Motion, Affirmation, Exhibits 1  
Petitioner's Affirmation in Opposition, 2

-----X

After argument on the motion, the Court decides as follows:

The underlying proceeding is a nuisance holdover wherein the petitioner terminated respondent's rent stabilized tenancy on November 10, 2023, pursuant to the alleged service of a Notice of Termination.

The basis of the nuisance as enumerated in the Notice of Termination is an alleged incident between respondent and petitioner's staff in the building on October 18, 2023. Specifically, the petitioner alleges that the respondent approached the building superintendent and three porters and threatened them with physical violence. The petitioner alleges the respondent followed the three porters through the building to the super's office falsely accusing them of entering his apartment and stealing property. The respondent allegedly pushed one of the porters and threatened him with further violence. The super then returned to his office and claims the respondent was kicking the office door, kicked over a bucket of water and again pushed

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF QUEENS: HOUSING PART: PART A

another porter and threatened violence. The petitioner contends this behavior was harassing and intimidating and interfered with the staff ability to do their job.

The respondent now moves, by his attorney, for an Order dismissing the proceeding pursuant to CPLR 3211(a)(7), because the nuisance conduct alleged involves only one incident which does not rise to the level of nuisance.

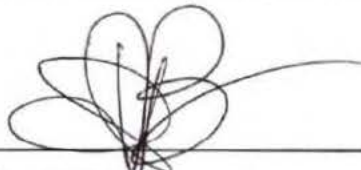
The petitioner opposes the motion arguing the conduct was continuous and amounted to five separate incidents as enumerated in the predicate notice. They also note that courts have determined that one incident is sufficient to constitute nuisance when it involves violent behavior.

Nuisance is defined as “a continuing or recurrent pattern of objectionable conduct or a condition that threatens the comfort and safety of others...” (See, *Domen Holding Co. v. Aronvich, et al.*, 1 NY2d 117, 769 NYS2d 785; *Novak v. Fishbein, Olivieri, Rozenholc & Badillo*, 151 AD2d 296, 542 NYS2d 568; *Valley Courts v. Newton*, 47 Misc2d 1028, 263 NYS2d 863. This implies that a single occurrence or a series of isolated incidents do not constitute nuisance. *Ford v. Grand Union Co.*, 240 AD 294, 270 NYS 162; *Metropolitan Life Ins. Co. v. Moldoff*, 187 Misc 458, 63 NYS2d 385. While there is no quantitative test as to how many incidents warrant a claim of nuisance, the court must weigh the relative aspects under the specific set of facts to determine if that threshold has been met. *160 West 118<sup>th</sup> St. Corp. v. Gray*, 7 Mis3d 1016(A), 801 NYS2d 238. For one incident to rise to the level of nuisance, the case law, though sparse, indicates the action must involve violent behavior and an irreparable invasion of rights. *Gray, supra*.

In the case at bar, the allegations, while concerning, lack specificity or indication of a sustained risk. The incident appeared limited in time frame, resolved without excessive effort, and there was no damage to property or person specifically or convincingly alleged. Additionally, while there is no justification for the respondent’s behavior if accurate, the events as depicted in the termination notice lack context regarding the time frame of the incident and how it was ultimately resolved since it reads more like an abbreviated tantrum. While the Court does not intend to diminish the impact or damage this behavior may have had on its victims, the notice does not sufficiently elaborate on those issues to demonstrate nuisance.

For these reasons, the Termination Notice is deemed insufficient to sustain the cause of action on which it relies. The respondent’s motion is GRANTED and the petition is dismissed.

Dated: October 2, 2024

  
\_\_\_\_\_  
Hon. David Bryan