

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS: HOUSING PART Q
ARIS CRESCENT LLC.

Petitioner-Landlord,

Index No. L&T 60891/2015

-against-

ORDER

MOHAMMED ABO-ZEID
MOHAMMED SOLIMAN

Respondent-Tenants,

“JOHN DOE” & “JANE DOE”

Undertenants.

Hon. Clifton Nembhard

Petitioner moves this Court for an order restoring this proceeding to the Court’s calendar for a compliance hearing and seeks a final judgment of possession and warrant of eviction. The underlying proceeding was a holdover petition in which petitioner alleged that respondent was permitting a nuisance under Rent Stabilization Law 2524.3(b), in that he maintained his apartment in a cluttered and unsanitary manner, failed to cooperate with access for extermination, and failed to prepare his apartment for proper extermination. Respondent Soliman no longer resides in the apartment.

The parties, both represented by attorneys, entered into a stipulation of settlement on October 15, 2015, in which respondent agreed to conduct a “heavy-duty” cleaning of the premises and prepare the apartment for extermination by November 5, 2015. Additionally, respondent consented to allowing at least three extermination treatments during the month of November 2015 with 72 hour notice and thereafter, on the 3rd Saturday of every month. The stipulation provided for a two year probationary period, through October 2017, wherein respondent was required to maintain the apartment in an uncluttered and sanitary condition and prepare it for consistent monthly extermination. A further provision allowed for the restoration of the proceeding should respondent substantially violate the agreement with the hearing strictly focused on whether respondent “maintained his apartment in a reasonably uncluttered and sanitary condition and ready for effective monthly extermination.”

In their motion, petitioner now alleges that while they were able to gain access in November for 3 extermination treatments, the apartment was not de-cluttered and prepared for extermination. Specifically, respondent was required to empty his kitchen cabinets to allow the exterminator to fully address and eradicate the infestation. Petitioner alleges respondent failed to do this for the November treatments. Petitioner then sent his super, Stanley Novotny, to the

subject premises on December 17, 2015 to take pictures of the conditions within the apartment (attached to petitioner's motion as exhibit "C"). At the hearing, Mr. Novotny testified that these photos accurately depicted the condition of the apartment on December 17, 2015 as well as the usual state of the apartment on the prior visits he has made to the apartment on the November 2015 access dates and during the course of this proceeding.

Petitioner also called his exterminator, Richie Bono, to testify. Mr. Bono claimed that on every occasion he has been at the subject premises, including on the November 2015 access dates, it has been severely cluttered with items as well as food products and the kitchen cabinets, drawers and surfaces were also cluttered and not prepared for extermination. He explained that the condition of the apartment hindered him from providing effective treatment and he was unable to access many parts of the apartment because of the clutter. He alleged that the roach condition can never be fully eradicated if the apartment remains in said condition. He further testified that this roach problem requires him to provide continuous treatment to apartment C4, which is directly below respondent's apartment and apartment B4, despite the fact they were unoccupied for several months until mid December 2015. He claims he did not gain access on January 16, 2016, which was a regularly scheduled extermination date according to the stipulation, because no one answered the door when he arrived at the premises. On cross examination, Mr. Bono acknowledged that there has been an improvement in the infestation but it has not been eradicated. The tenant in apartment C4 was called and testified that he does observe roaches in his apartment and sometimes chooses to sleep elsewhere.

Petitioner also called their real estate broker, Eleni Moustakis, who testified that she services petitioner's entire complex which is comprised of eight buildings. She claims that the complex is clean and very well maintained. She alleged that she has had a difficult time renting out the vacant apartments in close proximity to respondent's apartment, specifically C-4 and B-4, because roaches were evident when she showed the apartments. She asserted that she had not seen roaches in any other apartments or buildings in the complex. On cross examination, Ms. Moustakis admitted she did not have the expertise to determine where the roaches originated from.

Petitioner's agent, Constantine Papamichael also testified. He alleged that the prior tenants in apartments B-4 and C-4 vacated their apartments because of the roach problem. He explained that the apartments in this complex are in high demand and easily filled when vacated. He believes the infestation is caused by the condition in which respondent keeps his apartment and it is affecting his ability to successfully operate his business. On cross examination, petitioner admitted he did not have any personal knowledge about the condition of the apartment during the November and December 2015 exterminations or as to whether the roaches originate from respondent's apartment.

Respondent, Mohammed Abo-Zeid, opposes this motion and denies the allegations contained therein. Respondent lives in this studio apartment with his wife and three children. He testified that he completely emptied the kitchen for extermination on the November 2015 dates and applied gels and sprays himself. He claimed that he did indeed prepare the apartment for the

exterminations that were done in November 2015 by clearing out the kitchen cabinets and surfaces as well as de-cluttering the livingroom and bathroom. In support of his testimony, respondent produced pictures he took of his apartment on January 9, 2016 and later in January (respondent's exhibits "B" and "C") which he testified were an accurate depiction of the condition of his apartment. He explained that although they were taken in January 2016, they reflect how the apartment was prepared for the November and December 2015 exterminations. He admitted it takes him and his wife days to prepare the apartment for extermination. He claimed petitioner's pictures showed items out and around the apartment because they had to empty cabinets for extermination. He also claimed that sometimes his children take things out and do not return them to their place. On redirect, he claimed he still had 2 days to prepare the apartment when the super took his pictures on December 17 since the exterminator was coming December 19.

Petitioner holds that in light of the events testified to above and evidence presented, respondent has substantially breached the stipulation as well as violated Rent Stabilization Law 2524.3(b) by permitting a nuisance which has resulted in substantial damage to the premises. Additionally, petitioner argues that the appropriate relief would be the granting of a final judgment of possession and the issuance and execution of the warrant of eviction.

Petitioner cites *Hotel Cameron, Inc. v. Purcell*, 35 A.D.3rd 153, to support its position that respondent is not entitled to an opportunity to cure. In that case, a tenant breached a two year probationary stipulation and the warrant was not stayed. The Appellate Division upheld the reasoning of the lower Court by stating, "respondent's loss of possession of the premises was not a "forfeiture" but" .. merely the contracted-for consequences of tenant's own failure to do that which {he} promised to do", *Purcell*, p. 156. The Court also noted that the breach was not de minimis nor minor in nature.

Respondent's attorney argues that, in the event the Court finds a breach occurred, a post-hearing opportunity to cure is appropriate given the circumstances and the fact that respondent is a long term resident and elderly.

This Court finds that there has been a substantial breach of the stipulation and petitioner is therefore granted a final judgment of possession. Petitioner and their witnesses testified credibly about the condition of respondent's apartment and how it is hindering the ability to effectively treat and ultimately eradicate the roaches. Petitioner's exterminator and super testified credibly that respondent failed to do a heavy duty cleaning of the apartment before the multiple treatment dates in November 2015 though they still attempted to provide treatment. Respondent claimed that his apartment more closely resembled the pictures he took himself in January 2016 when the November treatments were done. He attempted to justify petitioner's December 17 pictures by claiming his children did not put items back in their place after use and also that he had 2 more days until the next treatment date of December 19, 2015 to straighten up. These explanations are weak and improbable at best. It is not likely that respondent would be capable of preparing the apartment for treatment in 2 days in light of the condition it was in as depicted in the

December 17 photos. The pictures clearly depict a space that not only cannot accommodate its contents, but also one that is unsanitary and possibly hazardous to its occupants. This Court is concerned with respondent's attempt to justify the clutter by saying his kids did not return items to their place after use. This indicates that respondent may be underestimating the seriousness of this proceeding and the possible consequences of non compliance.

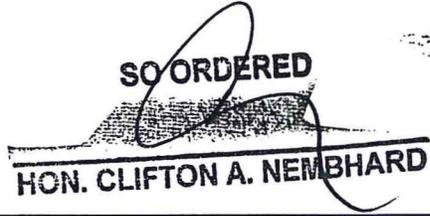
However, even in a nuisance proceeding, this Court does have discretion to grant an opportunity to cure before ordering an eviction. The opportunity to cure provided by RPAPL 753(4) has been applied to summary eviction proceedings based on allegations that the tenant is a nuisance as well as to proceedings based on lease violations, at least where the type of activity complained of is curable. See *Lexington Ave. Properties v. Charrier*, 1/29/86 N.Y.L.J. 11, col. 4 (App. Term 1st Dept.), *Lincoln Terrace Assocs. v. Snow*, 11/28/83 N.Y.L.J. 5, co. 3 (App. Term, 1st Dept.). In *169 Realty LLC. v. Wolcott*, 4/22/02 N.Y.L.J. 29, col. 3 (Civ. Ct. Kings Co.) The landlord was required to provide an opportunity to cure to the tenant who allegedly amassed so much refuse and debris that "the door to the apartment could not be opened more than one foot," and refused to allow the landlord access to the apartment to repair a leak that affected a neighbor below. In consideration of the evidence adduced at trial, the situation as described in *Wolcott* is more severe than the case at bar. Although the pictures do depict a very cluttered condition that looks unsanitary and could inhibit effective extermination treatment, the apartment, does not appear to be cluttered with refuse and debris, but rather overstuffed with excessive belongings and food products made more problematic by the fact that five people are living in this relatively small studio apartment, 3 of whom are pre-teen and teenage girls.

The Court distinguishes this situation from the facts of *Purcell* wherein the nuisance arose intrinsically from the tenant himself and could not be cured other than by the removal of the tenant. The nature of the nuisance was the threatening behavior of the mentally ill tenant. Respondent breached the stipulation by threatening an employee and tenant. This breach was considered substantial and demonstrated respondent's continued pattern of aggressive antisocial behavior. The stipulation included a judgment and warrant of eviction which could execute upon service of a Marshal's notice if respondent failed to comply with the terms which required him to refrain from the above behavior. The breach in *Purcell* occurred post-judgment wherein the only remedy was execution of the warrant. The stipulation before this Court did not include a judgment, the issuance of a warrant of eviction, nor execution of such as the result of a breach. While petitioner has shown that respondent has failed to comply with the stipulation, the direct remedy for such was not issuance and execution of the warrant. Specifically, the stipulation entitles the petitioner to request "appropriate relief including judgment of possession" upon a substantial breach.

As such, this Court deems the entrance of a judgment of possession to be the appropriate relief. The warrant of eviction to issue in ten days. Execution of the warrant of eviction is stayed to and including October 31, 2018 provided respondent comply with the following conditions; 1) Respondent must consistently and continuously maintain the premises in a sanitary and uncluttered manner. The attached photos represent the *minimum* standard by which the apartment must be maintained. 2) Respondent must provide access to petitioner and/or their

agents on the 3rd Saturday of every month commencing April 16, 2016 and continuing through October 2018 for as long as petitioner deems necessary through stay date, unless there is a holiday or legitimate emergency, then the date must be rescheduled during the same month. 3) In addition to the regularly scheduled extermination dates, respondent must give petitioner access once a month on 72 hours notice for inspection of the premises, commencing after April 16, 2016 and continuing through the stay date, unless there is a holiday or legitimate emergency, then the date must be rescheduled during the same month. 4) Respondent must comply with printed instructions from petitioner's exterminator regarding preparation of the apartment for extermination.

Upon failure of respondent to comply with the above conditions through the stay date of October 31, 2018, petitioner may execute the warrant of eviction after service of a marshal's notice on respondent and his attorney. Upon compliance with this decision through October 31, 2018, the judgment and warrant will be vacated and petition dismissed.

SO ORDERED

HON. CLIFTON A. NEMBHARD

Dated: March 23, 2016

Hon. Clifton Nembhard



