

Ocean Gate LP v. Coleman, L&T 52564/15

April 5, 2017

- Civil Court, Kings County, Housing Part A
- L&T 52564/15
- Judge Daniele Chinae
- For Plaintiff: Petitioner was represented by: Gutman, Mintz, Baker & Sonnenfeldt, LLP.
- For Defendant: Respondent was represented by: Barbara Michalska, Esq. and Alexandra Dougherty, Esq. of CAMBA Legal Services.

Cite as: Ocean Gate LP v. Coleman, L&T 52564/15, NYLJ 1202782776549, at *1 (Civ., KI, Decided March 6, 2017)

CASENAME

Ocean Gate LP, Petitioner-Landlord v. Erma Coleman,
Respondent-Tenant

Decided: March 6, 2017

DECISION AND ORDER PROCEDURAL HISTORY

*1

This nuisance holdover proceeding was commenced in January 2015. On January 30, 2015 the parties settled the proceeding with a stipulation including an eighteen-month probationary period during

which respondent agreed "not to commit or permit to be committed any acts similar in nature to the acts described in the notice to terminate in this proceeding. [Nuisance — throwing objects from balcony, loud music, harassment, knocking on doors, etc]." (the "probationary stipulation")

INSTANT MOTION

Petitioner's brought the instant motion, returnable July 29, 2016, claiming the respondent breached the probationary stipulation by permitting a fire in the apartment on June 16, 2016. The fire was allegedly started inside the apartment, in or near the front hall closet, and petitioner alleges that the respondent admitted that her grandchild started the fire. The motion seeks a judgment of possession and a warrant of eviction. It was adjourned for respondent to meet with counsel. On the return date, respondent appeared by counsel and filed opposition to the motion. The proceeding was adjourned several more times for additional motion practice. On February 17, 2017, the court conducted a hearing on the narrow issue of whether the fire in the apartment amounted to a breach of probation warranting a judgment of possession and relinquishment of the leasehold.

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FACTS

Petitioner presented two witnesses at the hearing. Moravia Bernadin, an employee of Safewatch Security, which contracts with petitioner to provide security services, who testified that he was called to the building by a guard on duty reporting a fire. When he arrived at the building the fire trucks were already there and he was able to see smoke billowing out of one of the building windows. After the fire department was done, he was able to go upstairs to view the damage. He testified to smoke and water

damage. He had no personal knowledge of what caused the fire and had never been in respondent's apartment.

Next, Gregory Butler testified. He is an employee of petitioner, he deals with repairs. He has been in respondent's apartment before and testified that he respondent's closet does not have an interior light or any electrical wiring running into it. The witness also testified that the respondent told him that her grandchild must have started the fire because only she and the children were home at the time. Mr Butler also testified to water and smoke damage to the hallway, and significant smoke and water damage to the apartment.

Respondent credibly testified that she has no idea how the fire started and assumes it was her grandchildren because she was in her bedroom at the time of the fire and they were in the living room; the youngest sleeping, the other watching TV — having just been given an asthma treatment. Respondent became alarmed when she saw her grandson walking with a cup. She asked him what he was doing, as he was supposed to be resting in the living room. He indicated he needed water. She followed him out to the kitchen. She noticed that some rolls of toilette tissue, still in its packaging, were smoldering near the closet. She was getting water to put it out when it combusted, igniting the items in the closet. At that point, she decided it best to just get out of the apartment. She opened the door and removed her grandchildren to a neighbor's apartment; the neighbor called 911 to alert the fire department. Respondent testified that she thinks one of her grandchildren may have lit something off the stove, where a pot of rice and beans was cooking, and somehow dropped it on the rolls of toilette tissue because she did not think a spark or flame could fly unaided from the stove to the toilette paper. She admitted that there were no lights or other wiring in the closet prior to the fire. She also testified that the children are never left in the apartment unsupervised, and were not alone in the apartment on the *3 day of the fire. Respondent also disputes the extent of the damage to the

apartment and the hallway, intimating some of the damage was caused by petitioner, not the firemen. The fire department records, though subpoenaed, were not available on the day of the hearing.

DECISION

Petitioner's motion is denied. None of the testimony elicited indicates how the fire is like the behaviors prohibited by the probationary stipulation. The testimony elicited at trial fails to demonstrate that the fire was intentional, or the result of negligence or recklessness on the part of respondent. Nothing in the testimony indicates that the fire was started with the intention of damaging the petitioner's property or harming the neighbors. In its post-trial memorandum, petitioner likens the fire to throwing things from the balcony — one of the prohibited behaviors — because both are dangerous to the other tenants. While the court agrees that both fire and falling objects are dangerous conditions, the court is not convinced that the fire qualifies as a breach of the probationary stipulation. The stipulation limits itself to harassing and annoying behavior, i.e. banging/kicking neighbors' doors, playing loud music, throwing things from the balcony and verbal abuse, all of which are intentional acts. The fire, by all credible accounts, was an accident.

The court does not believe that this accident rises to the level of nuisance, nor is it a breach of the probationary stipulation requiring the issuance of a judgment of possession or relinquishment of the leasehold.

Since more than eighteen months have elapsed since execution of the probationary stipulation without breach, the case is dismissed with prejudice as satisfied. Parties may pick up exhibits in Part B, room 409, during regular court hours, within the next 30 days. If they are not picked up, they will be disposed of per court directive.

This is the decision and order of the court. A copy shall be mailed to the parties.

Dated: March 6, 2017

New York, NY