

CIVIL COURT of the CITY of NEW YORK
NEW YORK COUNTY
HOUSING COURT: PART D

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METRO COURT REDEVELOPMENT
ASSOCIATES, LLP.,
Petitioner-Landlord,

L & T Index No. 65750/12

-against-

MARC RIVERIO a/k/a MARCO REVEIRO,
Respondent-Tenant,

Decision & Order

-and-

“JOHN DOE” and/or “JANE DOE”.
Respondents-Undertenants.

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Hon. Brenda S. Spears, J., H.C.:

Recitation, as required by CPLR 2219(A), of the papers considered in the review of the petitioner’s motion for summary judgment:

<u>Papers</u>	<u>Numbers</u>
Notice of Motion and Affidavits Annexed.....	1
Answering Affirmation.....	2
Replying Affirmation.....	3
Exhibits.....	4

Upon the foregoing cited papers, the decision and order on this motion is as follows:

The petitioner seeks to regain possession of the subject premises, an apartment located in a federally subsidized HUD Project-based Section 8 building, on the grounds that Marc Riverio, also known as Marco Reveiro, the tenant of record, on the grounds that it terminated its lease with the respondent because the respondent engaged in illegal activities prohibited by the lease. Specifically, the petitioner has alleged that the respondent and other occupants and/or guests were arrested in the subject apartment while engaged in the illegal use of drugs.

The respondent appeared on the initial court date and was granted an adjournment so that he could seek legal representation. On the adjourned date, the respondent appeared without an

attorney. The proceeding was ultimately adjourned for trial. The respondent's answer was deemed a "General Denial"; the respondent also sought a jury trial.

On November 15, 2012, the court *sua sponte* appointed a Guardian Ad Litem ("GAL") after ascertaining that the respondent was a client of Adult Protective Services ("APS"). After several adjournments, the proceeding was transferred to the TAP Part for a jury trial.

There were numerous adjournments, the petitioner moved for summary judgment; it is this motion that is presently before the court. For the reasons set forth herein, the petitioner's motion is granted.

Summary judgment is appropriate in summary proceedings where the moving party can establish his or her cause of action or defense by admissible evidence sufficient for the court to direct judgment in his or her favor as a matter of law. CPLR §3212(b); *Friends of Animals, Inc. v. Associated Fur Mfrs., Inc.*, 46 N.Y.2d 1065, 416 N.Y.S. 2d 790, 390 N.E.2d 298, 4 Media L. Rep. (BNA) 2503 (1979); *Evens v. Charap*, 12/18/91 N.Y.J.L.J. 23, col. 1 (Civ. Ct. N.Y. Co.). See also, *Metropolitan Life Ins. Co. v. Carroll*, 43 Misc. 2d 639, 251 N.Y.S. 2d 696 (App. Term 1964).

The lease agreement between the parties in this proceeding states that the landlord, the petitioner herein, may terminate the tenant engages in, or other his household members and guests engage in drug related criminal activity. Paragraph 23© of the HUD model lease executed by the respondent specifically provides that:

The landlord may terminate this agreement for the following reasons
(3) drug related activity engaged in or near the premises,
by any tenant, household member, or guest, and any such activity
engaged in on the premises by any other person under the tenant's control;
(10) if the landlord determines that the tenant, any member of the tenant's
household, a guest, or another person under the tenant's control has
engaged in the criminal activity, regardless of whether the tenant, any
member of the tenant's household, a guest or another person under the
tenant's control has been arrested or convicted of such activity.

Moreover, in Paragraph 13 of the lease, the respondent tenant of record expressly agrees not to use the unit for unlawful purposes or to engage in, or permit others to engage in, unlawful;

activities in the apartment, the common areas or on project grounds. See HUD Model Lease at ¶13(b) and (c), annexed as Exhibit "E" to the Petitioner's Motion.

In this case, on January 11, 2011, the New York City Police Department executed a search warrant at the subject apartment; illegal drugs and related paraphernalia were recovered by the police. The respondent herein was arrested and charged with: (1) criminal possession of a controlled substance in the seventh degree, under Penal Law 220.3 (a Class "A" Misdemeanor); (2) criminal possession of a controlled substance in the third degree, under Penal Law 220.10 (a Class "B" Felon), and; (3) criminal possession of marijuana in the fifth degree, under penal Law 221.10 (a Class "B" misdemeanor. The respondent plead guilty to criminal possession of a controlled substance in the seventh degree.

The petitioner has also presented evidence indicating that the respondent was arrested in the apartment on two additional occasions after the commencement of this proceeding. On August 31, 2011, another search warrant was executed at the apartment and the respondent was found with a bag of cocaine and drug paraphernalia. And, on March 2, 2013, the respondent was arrested in the subject apartment after the respondent sold cocaine to an undercover officer.

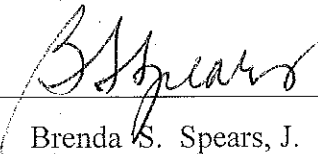
The respondent, thorough his Guardian Ad Litem, does not dispute these facts. However, the respondent has alleged that the termination notice failed to comply with HUD rules and regulations because the petitioner failed to provide the respondent with the notice in a form accessible to him in light of his disability. The respondent maintains that he has a vision impairment and that, as a result, the petitioner should have provided him with the notice in an accessible form, i.e., in Braille or in audio form.

The respondent states that the he suffers a visual disability caused as a result of insulin dependent diabetes. This visual disability affects the respondent's ability to read written material. Yet, no evidence is presented with respect to the degree of the disability; there are no letters from the respondent's doctors, other medical personnel or social service workers. The court further notes that the respondent has appeared in this case on several occasions, in the various court rooms to which the proceeding was been calendered, on his own and without any visual aide.

Moreover, the respondent submitted a pre-application questionnaire to the petitioner listing pertinent information about his particular situation, such as family composition, income, and , most importantly disabilities, if any. The respondent indicated on that form that he requires a wheelchair because of "C.P." (Cerebral palsy). At that time, he provided the petitioner with no information concerning any problems with his vision. He presents no documentation that he advised the at any time during his tenancy that his condition had changed in any way. Tthe petitioner can not be required to provide alternative service of the requisite notices if it is not made aware of the need to do so.

Thus, the court finds that the petitioner is entitled to summary judgment. The petitioner is awarded a final judgment of possession. The warrant shall issue in five days from the date hereof. In the interest of justice, execution of the warrant is stayed for 30 days. A copy of the marshal notice must be served upon the Guardian Ad Litem. The marshal must notify APS prior to scheduling any eviction.

This constitutes the decision and order of this court.


Brenda S. Spears, J.
BRENDA S. SPEARS
JUDGE, HOUSING PART

Dated: New York, New York

August 21, 2013

Counsel for Petitioner

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Respondent's Guardian Ad Litem

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