

CIVIL COURT OF THE CITY OF NEW YORK
RICHMOND COUNTY: HOUSING PART Y

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BALTIC COMPANY,

INDEX NO. L&T 51603/13

Petitioner-Landlord,

-against-

**DECISION/ORDER
AFTER TRIAL
HON. MARINA CORA MUNDY**

SHARI KURTZ,

Respondent-Tenant,

JOAN LOCKHART a/k/a MANNY LOCKHART,
"JOHN DOE" and/or "JANE DOE",*

Respondents-Undertenants.

* First and/or last name of Tenant(s) and/or Undertenant(s)
being fictitious and unknown to Petitioner, Person intended
being in possession of the Premises herein described.

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HON. MARINA CORA MUNDY, J.H.C.

After trial, the Court makes the following findings of fact and conclusions of law:

The instant Holdover proceeding was commenced by Petitioner seeking a possessory judgment in connection with Respondent's tenancy at 1950 Clove Road, Apt. 722 a/k/a Unit 166, Staten Island, New York ("Premises"). Petitioner alleges that Respondent Shari Kurtz ("Kurtz") violated paragraphs 13 and 23 of the parties' Lease agreement by permitting Respondent Joan Lockhart ("Lockhart") to reside in her unit without Petitioner's written approval and commit unlawful activities at the premises that threaten residents' health, safety, or right to peaceful enjoyment of the Premises. Respondent denies that she breached the Lease.

Petitioner established its *prima facie* entitlement to a judgment of possession. The parties,

by Counsel, stipulated on August 6, 2013 to admission into evidence of various documents supporting Petitioner's request for a judgment of possession, to wit, the Deed (Exhibit A), the Multiple Dwelling Registration (Exhibit B), the Richmond County Criminal Court file bearing Docket Number 2013RI001393 against Respondent Joan Lockhart for allegations reflected in this summary proceeding (Exhibit C) including his guilty plea (Exhibit D), the Housing and Urban Development (HUD) Lease dated March 1, 2010 between Respondent Shari Kurtz and Baltic Petitioner Company (Exhibit E) and subsequent recertifications (Exhibit F), the pleadings in the Court file (Exhibit G), and letter from Respondent Kurtz' Counsel dated April 9, 2013 (Exhibit H).

Petitioner also established, by additional evidence and testimony, that Respondent breached the parties' Lease by permitting Lockhart to come to the building and engage in unlawful activity, specifically intentional tampering with, and destruction of, various security cameras located throughout the building. Petitioner established that this activity lead to Lockhart's arrest on February 19, 2013 wherein he was charged with Criminal Mischief in the 4th Degree, Penal Law 145.00(1), a misdemeanor, and was convicted of Disorderly Conduct, a violation, on June 4, 2013. Restitution was made as part of the sentence.

This evidence is corroborated by the testimony of New York Police Department (NYPD) Detective James Butler currently at the 121st Precinct . He testified that, on February 19, 2013, while stationed at the 122nd Precinct, he arrested Respondent Lockhart at the Premises as a result of complaints concerning damage to surveillance cameras. Upon information conveyed by the Staten Island Warrant Team, Lockhart was hiding in the closet at Apartment 722 when brought in. Detective Butler testified that Lockhart admitted at the time of arrest that he stayed at 1950 Clove Road, Apt. 722 and that he cut the wires because he did not like that there was a camera outside of his apartment. Detective Butler signed a written statement signed by Lockhart (Exhibit

D) in the former's presence wherein the latter referred to the Premises as "my apartment".

Lockhart testified on his own behalf, denying that he lived or stayed at the subject Premises and representing that he currently resided in Astoria. He testified that he had friends who lived in the building and that he would come to visit those friends over the last ten (10) years. He admitted that he had married Kurtz about nine (9) years ago but that they had become estranged very soon thereafter and that he had never resided at the subject Premises notwithstanding their relationship. At the time of arrest, he was in Kurtz' apartment to obtain his computer that he had left there. He left then came back again to ask Kurtz to borrow her car. He was unhappy that she denied this request and entered the apartment without her permission. He testified that he fell asleep in a room on the second floor of Kurtz' duplex without her knowledge or permission. He hid under boxes in the bedroom when he heard the police at the 7th floor door and remained there until the police found him.

Kurtz corroborated Lockhart's testimony somewhat, testifying that she has lived alone at the Premises for this entire year and that, while only divorced this past January, she never lived with Respondent Lockhart. During their marriage, he occasionally came, uninvited, to her apartment looking for money or to borrow her car. She testified that Lockhart came to her apartment on the day of his arrest to retrieve his computer that he had left there and to borrow her car, the latter of which requests she denied.. She let him in at the 6th floor of the duplex. She testified that she had a bad foot and could not go upstairs to ascertain that he actually remained there upon retrieving his computer. She became aware of his presence there when he was arrested in the apartment.

On August 14, 2012, Kurtz obtained a Criminal Court Order of Protection against Lockhart expiring on August 13, 2013. It was not a stay-away Order but rather an Order to refrain from stalking, assault, harassment and threatening, *inter alia*, Kurtz. Respondents did not offer evidence

that Lockhart was arrested for violation of this Order or that Kurtz obtained an extension or another Order granting a stay-away. It is clear that Respondent Kurtz did not actively seek to keep Lockhart away from her apartment.

Testimony that Lockhart kept a computer at the Premises, stated that same was his apartment in his statement used in the criminal case as well as his presence inside the apartment at the time of his arrest, in violation of an Order of Protection that Respondent Kurtz clearly did not seek to enforce, support a finding that she violated the parties' Lease by permitting Lockhart to stay at the Premises. That Kurtz did not permit Lockhart to tamper with the camera or was unaware of such act does not mitigate her violation of that provision of the Lease allowing termination of the tenancy based on criminal acts of a tenant's Guest (Paragraph 23c).

Therefore, the Court grants a final judgment of possession in favor of Petitioner against all Respondents, issuance of the warrant of eviction forthwith, execution stayed through and including December 31, 2013 for Respondents to vacate the Premises. Upon default in timely vacatur on or before December 31, 2013, the warrant of eviction shall execute by service of the Marshal's notice. Insofar as the remaining Respondents did not appear in this action, this Court deems the trial an Inquest against all remaining parties.

The foregoing constitutes the decision and order of this Court.

Dated: October 24, 2013



HON. MARINA CORA MUNDY
JUDGE, HOUSING COURT