

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF KINGS: HOUSING PART O

x. Index No. 97207/13

311 LINCOLN PLACE INVESTOR LLC,

**DECISION/ORDER**

Petitioner,

Present:

-against-

MELETE WOLDMARIAN et al.

**Hon. GARY F.  
MARTON**

Respondent.

x

Petitioner's counsel

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Respondent's counsel

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Respondent moves for relief from the post-trial decision and order dated February 13, 2014. The motion is denied. A warrant may issue forthwith without stay of execution, but such issuance shall be without prejudice to an application for relief pursuant to RPAPL § 753(1).

The above-captioned proceeding is a holdover predicated upon respondent's alleged chronic refusal to grant petitioner access to the premises to make repairs. Markings on the court file jacket show that the proceeding was first returnable on October 29, 2013, that respondent did not appear and the proceeding was adjourned to December 4, 2013 for an inquest, that respondent appeared on that date and the proceeding was adjourned to December 18, 2013 so that respondent might seek to retain counsel, that on December 18, 2013 the proceeding was adjourned to January 23, 2014 for trial, and on that date the scheduled trial was adjourned to February 6, 2014.

After a trial on that date, the court held that petitioner had proved a prima facie case and that respondent had not proved a defense. In its February 13, 2014 decision and order the court found, among other things, "that respondent intentionally and repeatedly refused to grant petitioner access to the premises to make repairs, thereby endangering the health and safety of other tenants in the building and preventing petitioner from securing the reinstatement of a suspended subsidy of the rent for the premises" and that "respondent has not since November 7, 2013 offered to petitioner specific dates on which it might have access to the premises."


Respondent argues that RPAPL § 753(4) provides her with a right to a 10 day period to cure. The court disagrees; the wrongful behavior by respondent, which includes "endangering the health and safety of other tenants in the building," is not curable. See, e.g., *259 West 12<sup>th</sup> LLC v Grossberg*, 89 AD 3d 585 (1<sup>st</sup> Dep't, 2011) where the court held that certain leasehold violations are not curable such that they trigger the 10 day period to cure.

In light of this result, the court finds it unnecessary to address petitioner's argument that respondent's request for a period in which to cure is both untimely and no more than another empty gesture because she does not offer specific access dates or suggest any time at all when she would make the premises available.

The court will mail copies of this decision and order to the parties.

Dated:

Brooklyn, NY  
March 28, 2014



Gary F. Marton