

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: PART Q

JENNIFER CHAN

Petitioner,

Index No. 70914/2011

-against-

JOMARIE ORTIZ

DECISION AND ORDER
AFTER TRIAL

Respondent,

DAVID VASQUEZ,
"JOHN DOE" AND "JANE DOE"

Respondents-Undertenants.
_____X

INEZ HOYOS, J.H.C.

In this holdover proceeding petitioner seeks a final judgment of possession against respondents. Petitioner was represented by counsel and respondent Jomarie Ortiz appeared pro se. Respondent David Vasquez, Jane and John Doe did not appear in the proceeding. The court held a trial on August 9, 2011, August 16, 2011, September 14, 2011 and September 20, 2011. The court notes that Respondent Jomarie Ortiz did not file a written answer. The court deems respondent Ortiz's answer to be a general denial.

Petitioner Jennifer Chan, managing agent Ramona Alonzo, Sargent Chan and Detective John Edgar testified at trial for petitioner. Respondent Ortiz did not testify at trial and did not call any witnesses to testify on her behalf.

Respondent Ortiz's lease ended on April 30, 2011. At the end of the term petitioner

commenced this proceeding asserting that petitioner chose not to renew the lease pursuant to paragraph 3 of the Work Advantage Program lease rider dated April 12, 2011 based upon tenant's "materially not complying" with the terms of the lease. Petitioner asserts that following conduct constitutes a material non-compliance with the terms of the lease.

1-not paying the last two months of tenants' required contribution to the monthly rent

2-having additional adult occupants residing in the apartment, including and not limited to David Vasquez, and the tenant's adult sister and her children and the tenant's adult brother and his brother's wife and children.

3-the arrest of respondent and her boyfriend David Vasquez for the sale and the distribution or use of illegal narcotics: to wit: marijuana.

4-the destruction of the front entrance door frame to the subject premises.

Respondent Ortiz enrolled in the NYC, Department of Homeless Services, Work Advantage Program and obtained this apartment through the program. On April 12, 2010, the parties Jennifer Chan and Jomarie Ortiz signed a lease for the apartment and a rider provided by the Work Advantage Program which states: "the program tenant shall have the right, provided that the program tenant has materially complied with the terms of the lease, and this rider and continues to receive Work Advantage Payments or is able to pay without the Work Advantage Payment, to renew the lease for an additional one (1) year period at the same rent." (See Paragraph 3 of the Work Advantage Program Rider to the Apartment Lease). Petitioner asserts that since respondent Ortiz has not materially complied with the lease, petitioner is not obligated to enter into another one-year lease renewal with respondent.

Managing agent Ramona Alonzo testified that she signed the lease with respondent Ortiz

at the Work Advantage Program. The current rent is \$1070.00 per month. The Work Advantage Program pays \$1020.00 per month and respondent's portion is \$50.00 per month. She testified that there is currently \$ 550.00 outstanding in rental arrears due through September of 2011 which represents \$50.00 per month of respondent's share for March 2011 through September of 2011. She testified that she is the mother of the owner and that she resides in the first floor apartment of the subject building and that the tenant resides on the second floor. She testified that the front entrance door to respondent's apartment was broken due to a fight between respondent and her boyfriend, David Vasquez. She testified that respondent Ortiz currently resides with their boyfriend, respondent David Vasquez which is in violation of the lease. She testified that in May of 2011 her and family had a baby shower for a family member. She testified that the party commenced at 6 p.m. There was dancing and music and that around 1 a.m. there was around 38 friends and family members in front of the house and in the hallway of the building. She testified that when respondent Ortiz was entering the building around 11 p.m. she made a statement to one of their guest and called that individual "a fat bitch."

She testified that the members of the family and guest were upset by the comment. After a period of time there was a discussion between respondent Ortiz, the guests and petitioner. She further testified that several cars started to circle the block and several men came out of the cars swinging the bats, and stated, "Are you having trouble with my boy, David Vasquez?" The police were called, the men left and no one was arrested.

Petitioner Jennifer Chan testified that she is the owner of the premises. She testified that there have been several incidents involving respondent Ortiz and respondent Vasquez. She testified that at the baby shower in May of 2011 respondent made a derogatory statement to her

aunt calling her a "fat bitch." The police were called after several cars circled the house and several men came out of the cars swinging bats. Although they did not make any threats, petitioner testified that they were afraid and believed that one of the individuals may have been carrying a gun. The police were called and responded. Ms. Chan acknowledged that there were no arrests. Petitioner testified that on another occasion, respondent Jomarie Ortiz and respondent David Vasquez were arrested at the subject premises for possession of cocaine and marijuana.

Sargent Chan testified that he works for One Police Plaza and that he was responsible for obtaining certified copies of the arrest paperwork for the arrest of the respondents on March 26, 2011. Petitioner introduced into evidence all the certified documents relating to the arrest made of the respondents, which included the criminal complaint which states that respondents Jomarie Ortiz and David Vasquez were charged with Criminal Possession of a Controlled Substance in the Seventh Degree and Unlawful Possession of Marihuana on March 26, 2011 at 30 Dodworth Street, Apt 2, Brooklyn NY.

Detective John Edgar testified that he arrested respondents Jomarie Ortiz and David Vasquez after receiving a radio call to respond to the location of 30 Dodworth Street, Apt 2. He testified that he entered into the apartment and observed in plain view 7 ziplock bags of cocaine and one ziplock bag of marihuana inside the apartment. He testified that he performed a field test of the cocaine and marihuana recovered and the substance tested positive for cocaine and marihuana. He testified that he also recovered the sum of \$ 1,291.00 in the apartment. He testified that respondent Ortiz told the him that the drugs were not her and that respondent Vasquez told him they were his but that he would speak to his lawyer about it.

Respondent Jomarie Ortiz did not testify and did not call any witnesses on her behalf.


The court finds that petitioner has established its prima facie case in this proceeding. Respondent did not testify and did not establish a defense to the proceeding. The testimony clearly establishes that respondent did not materially comply with the lease and as such, petitioner is not obligated to renew the lease. Petitioner's credible witnesses testified that respondent was arrested with her boyfriend in the apartment in which she currently resides for possession of marihuana and cocaine and charged with Criminal Possession of a Controlled Substance in the Seventh Degree and Unlawful Possession of Marihuana. These charges are currently pending in Criminal Court and the case is expected to proceed to trial in November of 2011. Petitioner's credible witnesses testified that respondent resides in the premises with David Vasquez and that she had other individuals reside in the premises in violation of the last paragraph of the lease (handwritten portion). Further, petitioner's credible witnesses testified that the front entrance door to the apartment was broken as a result of a fight between respondent and her boyfriend, respondent, David Vasquez.

As such, petitioner is awarded a final judgment of possession against respondents, warrant to issue forthwith, the execution of the warrant is stayed until November 30, 2011. This stay is granted in the interest of justice, as respondent Ortiz has 3 children and is pregnant and is condition upon respondent payment of the outstanding arrears of respondent's portion of \$ 550.00 due through September 30, 2011 and of October's rent, respondent's portion of \$ 50.00 by October 31, 2011. Respondent is required to pay the use and occupancy of November's rent, respondent's portion of \$50.00 by November 10, 2011. Further, petitioner can restore the proceeding and seek the acceleration of the warrant, if during the stay, there is any other similar alleged material non-compliance of any of the lease terms or rider by the respondents. Upon

default, warrant to execute upon service of the Marshal's Notice.

This is the order and decision of the court, copies of which are being mailed to all parties.

Dated: October 20, 2011



J. H. C. Hoyos, J.H.C.