

**NEW YORK CITY CIVIL COURT
NEW YORK COUNTY: HOUSING PART O**

565 TENANTS CORP.,

Petitioner,

-against-

Index No. L&T 073913/06

DECISION/ORDER

JAN ADAMS,

Respondent.

After a hearing held on November 16 and December 8, 2006 (digitally recorded), and a conference held on December 15, 2006 (court reporter).

Gerald Lebovits, J.

To settle this nuisance holdover proceeding, respondent agreed in a two-attorney so-ordered stipulation dated July 31, 2006, to a final judgment and a forthwith warrant of eviction with a two-year probationary period promising to do and not to do a variety of things.

One thing respondent promised was as follows: “Resp. shall not permit his dogs to defecate or urinate in the apt. common halls or elevator, or lobby and/or if same occurs shall promptly properly clean so as to avoid issuance of any odor. If Resp. or any authorized individual is in Apt said clean-up to be done immediately.”¹ As to any violation of any key part of the stipulation, including any violation of the above-quoted provision, the stipulation provided that “No violation shall be deemed de minim[i]s and applied with zero toler[a]nce.”²

Claiming that respondent violated the probationary stipulation in September 2006, petitioner served a marshal’s notice in October 2006. Respondent then moved by order to show cause to vacate the marshal’s notice and secured a stay. On the return date, the parties consented to a compliance hearing for the court to determine whether respondent allowed a dog to defecate in his apartment without cleaning it immediately. This decision follows the compliance hearing.

Three witnesses testified for petitioner: Kevin Logan, a building porter; Patty Marcus, the building manager; and Ramon Arce, the superintendent. The court finds them wholly credible. Three witnesses testified for respondent: Marie Mar, respondent’s attorney; Valerie

¹1. The court assumes that “the apt. common halls or elevator” means “the apartment, the common halls, or the elevator.”

²2. Although this provision literally means that all violations will be tolerated at least a little (“No violation shall be . . . applied with zero toler[a]nce”), the court interprets it as the parties intended: that no violation will be tolerated.

Rivera, respondent's girlfriend who often stays in the subject premises; and respondent himself. The court credits their testimony as well.

Based on the testimony, the court makes the following findings of fact and conclusions of law.

Respondent and Rivera went on vacation to Aruba on August 22, 2006. Respondent returned on September 13, 2006, and Rivera returned a few days later. Petitioner's agents knew when he left and when he came back. The day respondent and Rivera left for Aruba, respondent brought his two dogs, an elderly Afghan and a now-deceased King Charles Spaniel, to his veterinarian. On August 18, 2006, before they went to Aruba, their apartment was professionally cleaned.

On September 5, 2006, while they were in Aruba, building personnel, who were on respondent's deck performing authorized maintenance, saw dog feces in the apartment through the deck's glass door. On September 9, 2006, the building manager took photographs, admitted into evidence, of the feces. The feces was on the floor at the top of the stairs of respondent's duplex penthouse apartment in a place visible to anyone going to respondent's bedroom. The feces, according to the uncontradicted testimony, emanated from the Afghan and represented one defecation that respondent and Rivera did not see before they went to Aruba.

Respondent does not recall seeing the feces when he returned from Aruba on September 13, 2006. He concedes, however, that he might have seen it upon his return from Aruba on September 13 and states that if he did see it, he cleaned it immediately. Petitioner offered no evidence that the feces remained in his apartment after September 13.

From this, the court concludes—not with great confidence but on the balance of probabilities—that respondent's Afghan defecated once as respondent was leaving for vacation, that neither he nor Rivera saw it then, and that respondent cleaned it as soon as he returned. He could not have removed his Afghan's one defecation while he was on vacation and his dogs were at the veterinarian's office, when petitioner's agents saw it. Respondent thus satisfied the stipulation's requirement that if he or an authorized person were in his apartment when his dog defecated, the feces would be cleaned immediately.

Accordingly, respondent's motion to vacate the marshal's notice is granted, and respondent is restored to the July 2006 stipulation. (*Cf. Hotel Cameron, Inc. v Purcell*, 2006 WL 3489046, 2006 NY Slip Op 09035 [1st Dept, Dec. 5, 2006, mem].)

This opinion is the court's decision and order.

Dated: December 15, 2006

J.H.C.