

Kelly v Williams

2022 NY Slip Op 32826(U)

August 19, 2022

Civil Court of the City of New York, Kings County

Docket Number: Index No. 98894/17

Judge: Cheryl J. Gonzales

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

Harold Kelly

Petitioner

DECISION/ORDER

Against

Index No. 98894/17

Dorothy Williams; Charla D. Williams; James A.
Williams; Carolyn Williams; Charles Williams

Respondents

Petitioner commenced this holdover proceeding on December 26, 2017 after serving respondent, Dorothy Williams, with a Ten-Day Notice of Termination which terminated her tenancy on the grounds that she was committing or permitting a nuisance in the subject apartment. Respondent, Dorothy Williams, appeared by counsel and interposed an answer dated February 26, 2018 with the following affirmative defenses: (1) petitioner's notice of termination is insufficient; (2) petitioner collected rent during the window period; (3) petitioner failed to plead the existence of a regulatory agreement governing the subject building and (4) petitioner commenced this proceeding in violation of NY CLS Real P § 223-b. Respondent later filed an amended answer dated September 3, 2019 with the following affirmative defenses: (1) petitioner's notice of termination is insufficient; (2) petitioner commenced this proceeding in violation of NY CLS Real P § 223-b, (3) breach of the warranty of habitability and (4) respondents are entitled to a reasonable accommodation. Respondent also asserted counterclaims for breach of the warranty of habitability, harassment, and attorney's fees.¹

At trial, petitioner's witness, Vanessa Cantave, the managing agent for the subject building, testified that petitioner is the owner² of the subject building which contains six units³ and is registered with DHCR⁴. Ms. Cantave explained that she is responsible for addressing any violations placed on the building. Ms. Cantave stated that she also keeps records relating to the tenants' rent, speaks with tenants regarding their issues and she works with the super and porter. Ms. Cantave testified that petitioner's wife keeps a handwritten ledger of rent payments for every apartment except for the subject apartment. Ms. Cantave added that she keeps an excel spreadsheet for the subject apartment because there are payments received from Social Services,

¹ During trial, respondent's motion to amend to answer to include a reasonable accommodation defense was granted.

² Petitioner's Exhibit #1

³ Petitioner's Exhibit #2

⁴ Petitioner's Exhibit #3

as well as payments made directly by respondent. Ms. Cantave further explained that there are a lot of missed rent payments for the subject apartment, so when she became the managing agent in 2015, she felt it necessary to create an excel spreadsheet⁵. Ms. Cantave described her procedure when a payment is made from Social Services: First, she gives the check to petitioner and she then places the stub in her file. Ms. Cantave explained that when respondent provides her with a money order, she makes a copy of the money order, gives the copy to respondent, and records the payments on her spreadsheet. According to the rent ledger, there are rental arrears of \$7,580.21 owed through June 2019⁶.

Ms. Cantave stated that she is familiar with respondent, Dorothy Williams, who resides in Apartment #1R in the subject building. Both respondent, Dorothy Williams, and petitioner signed the most recent lease renewal⁷ for the subject apartment.

Ms. Cantave testified that petitioner is her father-in-law, and she has resided in Apartment #3L of the subject building since September 1, 2017. Ms. Cantave stated that prior to residing in the building, she visited the subject building approximately 4 to 5 times per week during the previous 4 ½ to 5 years.

Ms. Cantave described the subject building as containing six units, with two units on each floor. She explained that the stoop in front of the building is used to gain access to the front door. She described the individual apartments as long, railroad style apartments where each have two doors; one door which faces the front of the building and the other door faces the back of the building. Ms. Cantave further explained that there are two doors at the front entrance of the building which are not locked, and there is a vestibule area which houses the mailboxes. There is a heavy door, beyond the area with the mailboxes, which is locked. Ms. Cantave testified that the lock on the heavy door was recently changed because it needed to be fixed, and the lock on the door is changed approximately four or five times per year because the lock becomes broken. The broken lock allows for people to enter the building freely without using a key to gain access.

Ms. Cantave testified that she began visiting the subject building approximately six years ago and noticed that there were people on the stoop having parties, drinking alcohol, smoking marijuana, smoking cigarettes, playing cards, having barbeques and just hanging out on the stoop. Ms. Cantave testified that these activities continue to date. Ms. Cantave described the scene on the stoop as “partyish” with people playing loud music from either a boom box or a vehicle parked in front, passing clear plastic cups around and people standing around. Ms. Cantave stated that she begins hearing music at approximately 4:00pm and the music can be heard in the middle of the night. Ms. Cantave added that she observes this activity on the stoop 90% of the time as she enters and exits the subject building. She also explained that this activity takes place daily during the summer.

Ms. Cantave stated that she observes respondent on the stoop at approximately 7:30am, and in the evening, there are sometimes crowds of as many as 20 people on the stoop. Ms. Cantave testified that she knows some of the people she sees on the stoop by name, and some of the

⁵ Petitioner’s Exhibit #13

⁶ Petitioner’s motion to amend the petition to date was granted.

⁷ Petitioner’s Exhibit #4

people include respondent's children, Charles Williams and Charla Williams. She is also familiar with some other individuals named Shonda, Staratia, KK, Kelly and Royster, but she was unfamiliar with other family members and friends of respondent who also hang out on the stoop. Ms. Cantave explained that the loud parties and music have occurred since she began visiting the subject apartment and continued after she became a tenant in 2017.

Ms. Cantave testified that she observed large gatherings of at least eight people taking place in front of the building on August 20, 2017, August 23, 2017, September 1, 2017, September 2, 2017, September 21, 2017, September 23, 2017 and September 29, 2017. Ms. Cantave stated that she created a log to record certain activity that occurred around the building, and she noted the incidents of activity that she observed. According to Ms. Cantave, she observed respondent taking part in the activities once or twice, but mostly observed respondent's children and their guests. Ms. Cantave also observed the same individuals leaving the front stoop and entering the subject apartment. Ms. Cantave explained that the front door of the subject apartment is left ajar, or the lock of the front door of the subject building is broken, and the individuals would enter and walk throughout the building during the night. In addition, the back door of the subject apartment is left open. Ms. Cantave observed these activities in the last six years since she began residing in the subject building.

Ms. Cantave explained that her bedroom faces the front of the building, and she can hear the music playing throughout the day. She further explained that there are times when she hears the music playing at 2:00am and other days at 5:00am, which interferes with her ability to sleep. Ms. Cantave explained that it is difficult for her to sleep when she hears the music playing very early in the morning, and she has tried calling 311 and 911 to seek relief. Ms. Cantave noted that she has filed a noise complaint, but nothing was done. Ms. Cantave testified that she also hears music playing from the back door of respondent's apartment which remains open and unlocked.

Ms. Cantave added that there is a very noxious smell that has emanated from respondent's apartment since 2018, and she knows the smell is coming from the apartment because the door remains open. Ms. Cantave explained that the smell is noticeable, and she smells it every day.

Ms. Cantave reviewed petitioner's Exhibit #5, a photograph of a shopping cart in front of the subject building, and testified that she observed one of respondent's daughters pushing the cart and she believed it belonged to that daughter. Ms. Cantave stated that the shopping cart was left in front of the subject building. Ms. Cantave reviewed petitioner's Exhibit #6, a photograph of people, and testified that she took this photograph of the people in front of the subject building in approximately spring 2017. Ms. Cantave explained that the photograph was taken while she in her vehicle.

Ms. Cantave recalled a time when she accompanied an HPD inspector into the subject apartment in approximately spring of 2016. She testified that she took a picture⁸ of the inside of the "third room" of the subject apartment, which is what is considered a living room in other apartments in the building. Ms. Cantave described the subject apartment as a one-bedroom railroad style apartment located on the first floor of the subject building, and there is a door in the front and a door at the back of the apartment. Ms. Cantave stated that the first room is the bedroom, which

⁸ Petitioner's Exhibit #8

faces the front of the building, and she stated that this room contained bags of items. Ms. Cantave described a room adjacent to the bedroom which is a large space with no wall, and she explained that this is the room in the photograph⁹ which contains two (2) mattresses. Beyond this room is a third room which also has a mattress, bed, black contractor bags full of items, a shopping cart and other pieces of furniture. In the back area of the apartment is the dining room, kitchen and bathroom which are accessible from the back door of the apartment. Ms. Cantave stated that a person living in the apartment should be able to access the entire apartment by going straight through the apartment.

Ms. Cantave stated that she has observed respondent and her family using the common area at the back of the apartment to access the inside of the subject apartment, and she believes respondents use this entry point due to the clutter throughout the apartment. Ms. Cantave described the apartment as containing mattresses along with bags and junk. Ms. Cantave testified that she observes respondent and others wearing only towels, and no clothing, walking through the common hallway to gain access to the bathroom daily. Ms. Cantave stated that she observes respondent's guests using the public area to go from the front of the apartment to the back of the apartment daily. Mr. Cantave explained that the day before her testimony, she observed respondent's husband leaving the front door of the apartment and using the common hallway to enter through the back door of the apartment.

Ms. Cantave testified that she has observed respondent's husband using the common hallway to enter the back door of the apartment while holding a jar filled with urine approximately once per month over the course of the six years she has been involved with the subject building. Ms. Cantave also stated that she observes respondent's son, Charles, respondent's daughters and granddaughter using the public hallway to access all doors connected to the subject apartment daily.

Ms. Cantave stated that respondent's daughters, Sharla and Shonda, reside in the subject apartment and she sees both of them daily. Ms. Cantave explained that she previously had a friendly relationship with both daughters. However, Ms. Cantave recalled that in July 2016, when she visited petitioner at the subject building, she had a conversation with respondent's daughter, Sharla, which resulted in the police being called because she was threatened in the presence of her young daughter. Ms. Cantave explained that she filed a complaint¹⁰ describing what occurred between her and respondent's daughter, Sharla, and she felt nervous and scared as a result of the incident. This incident, along with the fact that there are always people on the stairs when she regularly enters and exits the building, made her afraid.

Ms. Cantave testified that Latif Wright is respondent's grandson, and she last saw him at the building in approximately January 2017. She testified that she had not regularly observed him in 2015, and in 2016, she saw him more frequently toward the end of the year. Ms. Cantave stated that when she visited the building in January 2017, she witnessed police activity and learned that he shot someone in the back of the head in front of the building, which resulted in his arrest.

⁹ Petitioner's Exhibit #8

¹⁰ Petitioner's Exhibit #9

Ms. Cantave testified that she is familiar with an individual named Kelly Royster, also known as "KK", who is a family member of respondent. Ms. Cantave testified that she recalled seeing him on the stoop of the subject building often in 2018 with a boom box, drinking and smoking marijuana. She also observed him inside of the building, in the common hallways and walking to the building and into the back door of the subject apartment. Ms. Cantave recalled observing Kelly Royster handing a large amount of cash to someone rolled up with a rubber band around it and receiving a black deli bag twice during the summer of 2017. Ms. Cantave testified that the last time she observed Mr. Royster was on June 5, 2018.

Ms. Cantave reported that on June 6, 2018, the building was raided by the ATF and FBI who were looking for Mr. Royster. She recalled being awakened by ATF agents trying to gain access to the building which she granted, and she was questioned about whether she had observed Mr. Royster in the building. Ms. Cantave observed approximately 10 agents guarding the front and back doors of the subject apartment with long rifles.

Ms. Cantave testified that she is familiar with respondent's son, Charles Williams, who is also known as Snapper. Ms. Cantave explained that she has observed Mr. Williams residing in the subject apartment, and has observed him sitting on the stoop and in the hallways of the building. She explained that when she started visiting the building, she observed that he was residing in the subject apartment along with a baby. Ms. Cantave recalled observing him in the building around four to five times per week. However, she had not seen him on a regular basis in the last few months. Ms. Cantave stated that when she observed him inside of the building, he was walking in the common hallways wearing boxer shorts and a towel. Ms. Cantave testified that until 2018, she observed Mr. Williams in front of the building almost daily.

Ms. Cantave testified that on October 7, 2018, she observed a police officer taking a report while someone exited the back door of the subject apartment with a bloody nose. Ms. Cantave explained that she looked at the video from the surveillance camera and saw two men exiting the building and speeding away in a vehicle prior to the police arriving at the scene.

Ms. Cantave stated that this is not the first time she observed police activity at the building, and she explained that there has been police activity approximately five or six times per year in the last six years that she has resided in the building.

Ms. Cantave explained that sometimes there are fights that occur in the front area of the building and on the stoop which results in police activity. Ms. Cantave recalled that during the summer of 2017, there was a fight occurring on the stoop and three or four police cars came to the building. Ms. Cantave recalled another time in 2017 when the police arrived at the building and they were looking for respondent's apartment.

Ms. Cantave explained that in approximately July 2017, she observed a large group of people leaving the back door of the subject apartment fighting, and the fighting continued onto the front of the building on the stoop. Ms. Cantave recognized that some of the people fighting were respondent's family members. Ms. Cantave stated that fights occur in the summer and occur in the early morning hours between 1:00am and 4:00am.

Ms. Cantave stated that in the past six years, she also observed respondent place a large table in the front of the building to play cards, and the table is located adjacent to the stairs in the front of the building below her bedroom window. Ms. Cantave explained that these card games start in the early evening and sometimes last until 6:00am. During the warmer months, the card games take place once a week and respondent, along with her daughters, play cards.

Ms. Cantave stated that doesn't feel comfortable entering and leaving the building because of the activities that take place. She stated that she feels nervous walking in the hallway, and she does not allow her children to go into the hallway alone. Ms. Cantave explained that these activities create a safety concern for her and her family and she does not feel that the building is safe, especially since the front door is left wide open which makes it easy for anyone to gain access to the building.

Ms. Cantave testified that a former tenant, Alexandria Lloyd, resided in the subject building for approximately three years prior to vacating in approximately May 2017, which she believes was because of safety and health concerns.

Ms. Cantave testified that between December 17, 2018 or December 18, 2018 and June 2, 2019, she observed the same activity of the loud parties, drinking, smoking and hanging out on the stoop. When the weather became warm in April 2019 and May 2019, there were still parties, gatherings, drinking, smoking and hanging out inside and outside of the building.

Ms. Cantave testified that Charles Williams is respondent's son, and Carolyn Williams is someone she knows to be Shonda Williams¹¹. Ms. Cantave stated that she assumed Mr. Williams was the name of respondent's husband, but she now knows that his name is Charles Gunther¹². Ms. Cantave testified that she has never observed Charla D. Williams, Charles Gunther, Charles Williams, Carolyn Williams, Shonda Williams in a military uniform and no one has told her that any of them are in the military.

On cross examination, Ms. Cantave maintained that one of her responsibilities in managing the subject property was addressing violations. However, she is also responsible for managing the rents of the property, and she is also involved in the process of starting court cases against tenants in the building.

Ms. Cantave acknowledged that the petition in this matter is dated December 6, 2017, and the notice accompanying the petition is dated November 10, 2017. Ms. Cantave stated that she was aware that on April 4, 2017, HPD issued 10 violations for the subject apartment¹³. She also testified that petitioner sued respondent for non-payment of rent under Index Number 91146/17 after serving a rent demand dated October 2, 2017. Ms. Cantave acknowledged that the non-payment case was started less than six (6) months after HPD issued the 10 violations. Ms.

¹¹ Petitioner's motion to amend the petition to reflect that Carolyn Williams is Shonda Williams and substituting Jane Doe for Shonda Williams was granted with no objection.

¹² Petitioner's motion to amend the petition to reflect that James A. Williams is Charles Gunther and substituting John Doe for Gunther Williams was granted with no objection.

¹³ Respondent's Exhibit A

Cantave also acknowledged that petitioner did not appear in the non-payment case and the matter was dismissed.

Ms. Cantave acknowledged that a non-payment case under Index Number 69696/17 was commenced and the rent demand was dated May 5, 2017, 30 days after HPD issued the 10 violations. Ms. Cantave was not aware that petitioner began a holdover case against respondent in 2013 under Index Number 80743/13. Ms. Cantave was also not aware that HPD had issued six violations on December 12, 2012.

Ms. Cantave maintained that they were gatherings on the stoop, four to five times per week, mainly on the weekends, during the warmer months. Ms. Cantave also acknowledged that while the locks on the front door were tampered with, she did not see anyone tampering with the locks. Ms. Cantave also testified that she has observed respondent, Dorothy Williams, playing cards on the stoop.

Ms. Cantave acknowledged that respondent, Dorothy Williams, has been a tenant of the subject apartment since at least 1984. Further, Ms. Cantave stated that respondent, Charles Gunther, is a disabled person with an amputated leg.

On re-direct, and upon reviewing respondent's Exhibit A, the Open Violation Summary Report, Ms. Cantave testified that a VRA (Voluntary Repair Agreement) was opened in January 2017 and petitioner was given three months to repair the subject apartment. Ms. Cantave recalled that there were 30 violations and HPD visited the subject apartment three different times to review the repairs to correct the violations. The Violation Summary Report shows the violations which were corrected from 2008 to present. Ms. Cantave explained that some violations were issued for reglazing the bathtub, some were for signage in the vestibule, and one was for replacing the carbon monoxide and smoke detectors in the subject apartment, which have had to be replaced several times based on the report.

Ms. Cantave testified that in April 2017, HPD concluded their visits in connection to the VRA agreement and there were only four violations left to correct. However, she received six new violations for lead paint. She immediately addressed the Class C violations for lead paint, and the four previous violations¹⁴ remained. Ms. Cantave testified that it cost approximately \$7,000.00 for the lead paint removal, and two dust wipe tests were completed which cost a total of \$1,250.00.

Ms. Cantave testified that in January 2016, there was a non-payment case commenced against respondent for outstanding rent from late 2015¹⁵.

Ms. Cantave reviewed the Notice of Termination¹⁶ for the instant case and explained that the second page included details regarding the nuisance behaviors dating back as far as 2015. Ms. Cantave testified that while she did not create the legal document, she kept a log of the activities beginning in late 2015.

¹⁴ Petitioner's Exhibit #14

¹⁵ Petitioner's Exhibit #15

¹⁶ The Court took judicial notice of the Notice of Petition, Petition, Affidavit of Service and Notice of Termination.

On re-cross examination, Ms. Cantave testified that she spoke to HPD in approximately December 2017, and there were 30 violations in the subject apartment. Ms. Cantave explained that the Class C violations were closed, but the violation report reflected that the correction was overdue. Ms. Cantave acknowledged that of the 10 violations, which were issued by HPD in April 2017, there were four still outstanding. Ms. Cantave testified that she was not aware that there were 12 open violations for the subject apartment¹⁷, but she believed that this list of violations included violations which were cleared and new violations which were recently issued.

On re-re-direct, Ms. Cantave explained that the violations for the lead paint were certified late because the HPD inspector visited the subject apartment to observe the repairs which were completed. A door entryway was corrected, but that was not the correct door. The work was completed, but HPD had to return to the building to inspect.

Petitioner's witness, Devon Robinson, testified that for three and a half years, he has resided in Apartment #2R, which is located on the second floor at the subject building. Mr. Robinson explained that he is employed as an IT professional, and he coaches basketball and volleyball. He testified that he works every day during the week and leaves the building between 7:00am and 11:00am and sometimes arrives back at the building between 3:00pm and 6:00pm.

Mr. Robinson explained that he enters and leaves the building through two brown doors outside of the building which leads to the gray steel door inside of the building. Mr. Robinson explained that the steel door leads into the building, and the door is usually unlocked. He added that the grey door has a lock, but the door often remains unlocked. Mr. Robinson stated that he has observed that the strike of the door was unscrewed once per month, and it takes time for the building maintenance person to find the screws to put them back into the strike. Mr. Robinson also testified that he has observed the steel door propped open with items such as a screwdriver so the door would remain open. Mr. Robinson stated that he does not place these items by the door to prevent it from locking, and when he observes the items blocking the door, he removes it. However, removing the item doesn't facilitate the locking of the door because the screws have been removed which prevent the door from locking.

Mr. Robinson testified that there are six apartments in the building, with two apartments on each floor. Mr. Robinson described the building as having one staircase that leads out to the front of the building. Mr. Robinson explained that respondent resides on the first floor on the right side. Mr. Robinson stated that respondent's apartment is visible to him, and he has observed people entering and exiting the subject apartment. Mr. Robinson testified that he has observed respondent and an individual, whom he knows as Mr. Williams, as well as others he could not identify, wearing only a towel, in their underwear, or wearing inappropriate clothing while walking in public spaces of the building. He explained that he observes this activity almost every morning. Mr. Robinson stated that he was not sure whether respondent was married, and Mr. Williams could either be her partner or another family member.

¹⁷ The Court took judicial notice of MDL328; the violation report for the subject premises as of June 3, 2019.

Mr. Robinson stated that between two and three times per week, when he leaves the building in the morning, he observes Mr. Williams wearing shorts and he is sometimes not wearing a shirt, walking in the public hallway towards the back of the apartment, and he observes him carrying a jar with liquid inside, which he believed could be urine.

Mr. Robinson explained that there are four steps at the entrance of the building that are approximately four feet by four feet, and he has observed approximately five to 12 people on the steps when he arrives home from work between four and five days per week. Mr. Robinson stated that in 2018, there would be approximately 5 to 12 people on the steps Monday to Thursday during the spring and summer. On the weekends, there are approximately 20 people, and there is usually a party or barbeque taking place where people are sleeping, hanging out, drinking items out of a paper or plastic bag, smoking, eating and playing music. Mr. Robinson stated that when he walks his dog, the dog attempts to eat the chicken bones that are left on the ground.

Mr. Robinson testified that he does not observe respondent outside, but he does see her husband among the people present. Mr. Robinson stated that he also observed some of the same individuals inside the subject apartment approximately once or twice per month from 2015 to 2018. Mr. Robinson also stated that he has observed people "passed out" on the outside steps that he uses to enter the apartment building.

Mr. Robinson stated that the large crowds made it impossible to enter the building. Mr. Robinson explained that since the front steps are the only way to enter the building, and they occupy the front steps, he would say "excuse me" so he could pass, but they wouldn't move to allow him easy entry. Mr. Robinson testified that this is annoying to him because he is tired of having to "climb" over people, his dog is in danger because of the chicken bones left on the ground and the loud music at night makes it hard for him to sleep. Mr. Robinson testified that between 2015 and 2018, there was loud music playing mostly on the weekend and although his apartment faces the rear of the building, he can still hear the music which plays until 3:00am or 4:00am. Mr. Robinson testified that although he and his dog are disturbed by the loud music, he has not called the police to make a complaint.

Mr. Robinson testified that he has observed the police at the building. He recalled that a few months prior to his testimony in 2018, there was a raid by the ATF. Mr. Robinson recalled that the raid occurred very early in the morning, between 4:00am and 5:00am, and there was banging at his door. Upon answering the door, he was told to stay inside of his apartment, which he did until he left for work around 8:00am. Mr. Robinson explained that this occurrence was annoying to him because he was awakened out of his sleep.

Mr. Robinson testified that there is a foul, nauseating odor which emanates from the subject apartment, an odor he has smelled ever since he began residing in the building. He stated that every time he passes the subject apartment, he smells the nauseating odor and it is consistent each day that he passes the subject apartment. Mr. Robinson testified that as a result of the odor, he does not invite friends or family to his apartment because he doesn't want them to have to smell it, and his guests have to pass the subject apartment to get to his apartment. Mr. Robinson also testified that his family helped him move into his apartment, but they asked that he not

invite them back to his apartment because they do not like the smell coming from the subject apartment.

On cross examination, Mr. Robinson testified that he resides in his apartment with Kiara Peeples, who is petitioner's granddaughter. Mr. Robinson also testified that he is familiar with Vanessa Cantave and her son, who is petitioner's grandson. Mr. Robinson acknowledged that he began residing in the building during the summer of 2015, and he testified that there was partying in spring 2015. Mr. Robinson stated that he was aware of these activities because he visited the building during the spring of 2015.

Mr. Robinson acknowledged that he works Monday to Friday, not on the weekends, and he walks past the subject apartment once in the morning and once in the afternoon, except for times when he walks past the apartment in the evening when he walks his dog. When asked about how long he is present on the first floor, Mr. Robinson conceded that he does not stay on the first floor 24 hours per day, seven days per week or 365 days a year to notice the foul odor emanating from the subject apartment.

Mr. Robinson conceded that while he observed someone walking with a jar on the first floor, he did not know the contents of the jar. Mr. Robinson also confirmed that he did not observe respondent, Dorothy Williams, outside on the stoop during the gatherings. Mr. Robinson explained that while he observed individuals with drinks in paper and plastic bags, he did not know what was in those drinks. Mr. Robinson also conceded that while he believes the locks on the front door were tampered with, he did not observe anyone tampering with the locks.

Mr. Robinson explained that Vanessa Cantave resides on the third floor of the building and he speaks to her approximately two or three times per week, but he did not discuss this case with her.

On re-direct, Mr. Robinson maintained that he walks past the subject apartment multiple times per day and he smells the foul odor emanating from the subject apartment each time.

Mr. Robinson explained that he came to court to testify not because of a subpoena or money but because respondent makes living in the building difficult due to the smell from the apartment, the door being unlocked, the loud music and there are safety concerns.

On re-cross, Mr. Robinson recalled the ATF raid and explained that the ATF individuals knocked on his door and inquired about whether he knew or observed an individual with whom he was not familiar. Mr. Robinson stated that he did not know anything, and he was instructed to stay inside of his apartment. Mr. Robinson also testified that the parties and loud music occur mostly during the springtime and summertime between Friday and Sunday.

Petitioner's witness, Kiara Peeples, petitioner's granddaughter, testified that she has resided in Apartment #2R in the building for approximately five and a half years, and she resides with Mr. Devon Robinson and her dog. Ms. Peeples testified that she leaves work around 7:45am and returns home between 4:30pm and 5:00pm Monday through Friday, and this has been the same for the five and a half years that she has resided in the building. Ms. Peeples added that she is a

teacher, and her hours may change during the summertime, but she consistently works Monday through Friday.

Ms. Peeples explained that there are two separate doors in the front of the building. The first door opens without a key, and there is a second door next to it that can open if you need more space. The mailboxes are in the vestibule, and there is a steel door which requires a key to open in order to enter into the building. Only the second metal door requires a key and the door is sometimes locked. Ms. Peeples explained that during the summer months, there is a silver piece where the lock would be located which is missing sometimes and while the lock is still on the door, there is nothing to keep the door locked because it is broken. Ms. Peeples testified that in 2018, the lock had been broken for about seven to eight months out of the year. Ms. Peeples stated that a locksmith had come to repair the lock, and she knows when the lock is fixed because she receives a new key. She recalled receiving two to three new keys in 2018, but she was not certain about 2016 and 2017. Ms. Peeples testified that she has not observed anyone break the lock.

Ms. Peeples stated that respondent's railroad apartment has two doors: one door faces the front of the building and the other door faces the back of the apartment. Ms. Peeples explained that there is another apartment on the first floor along with respondent's apartment. There is a staircase approximately three or four feet away from respondent's apartment, which is the only staircase that leads to the stoop that can be used to enter and exit the building. Ms. Peeples described the stoop as having approximately four or five steps. Ms. Peeples explained that she uses these steps when she enters and exits the building.

Ms. Peeples stated that her experience living in the building has not been pleasant because of respondent and her family. Ms. Peeples testified that she observes Mr. Williams every morning, and he sometimes wears house shorts with a towel hanging over him. Ms. Peeples observes him with his walker leaving the front door of the respondent's apartment, walking through the common hallway, and going to the other door of the apartment. Ms. Peeples explained that respondent's front door is closest to the main entrance and she has observed that there is something blocking the doorway inside the apartment.

Ms. Peeples testified that other individuals who visit the subject apartment use the common hallway to gain access to the subject apartment. Ms. Peeples recalled seeing respondent's daughter, Shonda Williams, a son, another daughter who is known as "Bullet" and guests using the rear entrance door. Ms. Peeples stated that for the last five years she observes Mr. Williams and a son known as "Snapper" walking through the public hallway dressed in shorts approximately once or twice per week.

Ms. Peeples explained that respondent's daughter, Bullet, has a walker which is sometimes located in the hallway or outside on the porch of the building. Further, Mr. Williams', whose leg was amputated, has a prosthetic leg which is left in the hallway or in the porch area approximately once or twice per week.

Ms. Peeples testified that in the afternoons during the months of April to October/November 2018, she has observed Mr. Williams outside on the stoop with his friends drinking, smoking,

socializing and laughing. Sometimes they sit on amazon boxes. Ms. Peeples testified that from January 2018 to March 2018, she observed people inside of the hallway of the building and sitting on the steps in front of the building.

Ms. Peeples explained that the activity on the stoop is dependent upon the weather: If it is raining or cold, no one is on the stoop. If it is warm, there are people on the stoop. Ms. Peeples testified that during the summer of 2018, and during the warm months since 2013, there are bigger gatherings on the stoop with 10 or more people outside. There are sometimes card tables and there are children and adults outside. Ms. Peeples testified that this usually occurs on the weekends during the summer and sometimes two or three times during the week. Ms. Peeples testified that she recognizes some of the people present like Shonda Williams and respondent, but there are many people she does not know. Ms. Peeples stated that she observes these individuals eating food either from nearby restaurants or food someone cooked, drinking alcohol, and she sees alcohol bottles, food wrappers and plates on the stoop of the building in the morning after the parties.

Ms. Peeples testified that she has observed people holding Hennessey bottles, pouring the Hennessey into cups and people drinking Hennessey. Ms. Peeples also observed soda and juice bottles in the same area. Ms. Peeples stated that there are times she smells food being cooked for the gatherings emanating from respondent's apartment. She testified that she can smell fried fish, bacon and eggs, macaroni and cheese and collard greens because someone is always coming in and out of the subject apartment and the front door remains open. Ms. Peeples testified that the front door to the building is usually broken, and people walk through the front door of the building to gain unencumbered access to the subject apartment. Ms. Peeples explained that she also smells marijuana, and she has witnessed people rolling marijuana and holding little baggies of marijuana. After the parties, Ms. Peeples observes the small baggies left on the stoop.

Ms. Peeples also testified that there is loud music playing from speakers that have lights with different colors which sits on the stoop. Ms. Peeples believed the music was controlled by a phone because she did not observe any wires outside. This music plays every time there is a party outside and it begins around 6:00pm and continues playing until 2:00am or 3:00am. Although her apartment is in the rear of the building, she still hears the music. Ms. Peeples testified that she will try to turn the volume up on her television or turn her music up to try overpowering the music playing from the party to no avail. Ms. Peeples recalled that the last time she heard the loud music was in October 2018. Ms. Peeples testified that in approximately 2015 or 2016, she called the police to complain about the noise because there was an argument between petitioner, respondent and respondent's husband. Ms. Peeples stated that the police came up to her apartment, received her statement, went to the subject apartment, received their statement, prepared a report and left the building.

Ms. Peeples testified that she is annoyed and embarrassed by the activities that take place in the building. She explained that her building is known for having the large group of people outside having parties and making noise. Ms. Peeples explained that she has a dog, and she has to watch what the dog eats from the ground after the parties because of the leftover food on the ground. In addition, her dog is also small and when he approaches the party, he won't move which requires her to lift her 25-pound dog to get past the people during the parties. Ms. Peeples explained that

if Mr. Williams or his friends see her trying to gain access to the building, they will move out of the way to let her pass. However, if there are other people whom she is unfamiliar standing in front of the building, they won't move and she has to slide or scoot over them. Ms. Peeples explained that she has friends and family who don't visit the building because of these activities.

Ms. Peeples testified that she has observed the police at the building, most recently during the summer of 2018. Ms. Peeples explained that there was police activity early in the morning around 5:00am or 6:00am, and they were looking for someone. Ms. Peeples recalled seeing two police officers dressed in dark colors inside the common hallway. A neighbor answered questions they asked, and the officers were only there for three or four minutes. There was another time police were present in the building. Ms. Peeples recalled that the police were looking for another person and entered the common hallway to ask questions. Ms. Peeples recalled being asked if she knew of a person, to which she answered that she did not, but she added that the person might be located in the subject apartment. Ms. Peeples explained that she felt annoyed and scared after these events.

On cross examination, Ms. Peeples testified that she has resided in the subject building for approximately six years, and she was not aware that respondent has resided in the building since the late 1970s. Ms. Peeples explained that when she leaves the building between 7:00am and 8:00am, and returns between 4:30pm and 5:00pm, she exits the building and sees Mr. Gunther, respondent's husband, walking or standing in the vestibule. Ms. Peeples stated that she was aware that Mr. Gunther is disabled, has an amputated leg, uses a walker, and receives daily home health aide visits.

Ms. Peeples acknowledged that she observes activity on the stoop which includes people playing cards, but she has not seen respondent present during these activities. Ms. Peeples acknowledged that she has not observed respondent playing card games. Ms. Peeples explained that the activity on the stoop is seasonal and occurs mainly on the weekends.

Ms. Peeples stated that there are times that the smell of food being cooked travels from respondent's apartment, and acknowledged that the smell of the food is good.

Ms. Peeples acknowledged that she has not observed the front door of the building being tampered with, but she has experienced the aftermath of the tampering. Ms. Peeples maintained that she received a new key approximately two or three times in 2018 because the front door lock was changed. Ms. Peeples stated that she received a new key on one occasion in 2017.

On redirect, Ms. Peeples explained that in addition to the food odors from the subject apartment, there are times she smells marijuana and a pungent odor which she could not identify but it did not smell nice. Ms. Peeples added that the foul odor can be smelled coming from the subject apartment daily.

Petitioner's witness, Sergeant Forrest Hirsch, testified that he is a Sergeant with the NYPD assigned to the Intelligence Division stationed in the 81st precinct. Sergeant Hirsch testified that as a Field Intelligence Officer, he is responsible for taking part in investigations, both short term

and long term, into firearms, narcotics and gang activity. Sergeant Hirsch testified that the 81st precinct is located in Bedford Stuyvesant.

Sergeant Hirsch testified that he is familiar with the subject building because when he was first assigned to the 81st precinct shortly after becoming the supervisor in 2013, this building came to his attention as a result of community complaints of drug use. Sergeant Hirsch testified that starting in 2013, he has walked and driven by the subject building in an unmarked police car. Sergeant Hirsch testified that he walked by the building in 2015 two or three times per day, five days per week, well over a hundred times that year, and also in 2016. Sergeant Hirsch testified that in 2017, his job focus changed, and he was no longer involved in the street narcotics unit, but he would still drive or walk down the street frequently. From 2013 to 2015/2016, Sergeant Hirsch testified that he worked with his team of officers – Williams Sitzman, Courtney Wallace, Mallory Truman, Tanisha Facie and Jerry Cassiola. In 2018, the only people who were part of his team as of 2018 were Courtney Wallace and Mallory Truman.

Sergeant Hirsch explained that he was responsible for conducting enforcement activity and other kinds of surveillance. Sergeant Hirsch stated that he and his team would sometimes exit their vehicles to have a presence on the block, especially if the block was very crowded, to get the crowd moving along. Sergeant Hirsch testified that he has observed groups consisting of a minimum of five people and upwards of 40 people outside of the subject building and they were smoking marijuana constantly on the stoop. He also observed open containers of alcohol all over the place, loud music, arguments, children playing outside and people walking their dogs. Sergeant Hirsch explained that Saratoga Park is right across the street.

Sergeant Hirsch explained that his purpose in being there was because of the high volumes of people. During the spring and fall of 2015, he observed that a group of people congregated outside, sitting on the stoop, and spilling out onto the sidewalk. This did not occur during the winter months, when he only observed groups of approximately five to 10 people. Sergeant Hirsch observed the same type of activity in 2016, but he explained that he walked or drove by the subject building two or three times per day, four times a week. Sergeant Hirsch testified that in 2016, he observed numerous people sitting and standing on the stoop, being loud and boisterous, and he also observed open containers of alcohol, and the smell of marijuana filled the block. Sergeant Hirsch testified that as soon as the individuals saw he and his team, they ran inside into an apartment on the first floor. Sergeant Hirsch explained that he would see the individuals go into the entrance of the building, and he also had access to the surveillance cameras on his cell phone which allowed him to see inside the hallway and which apartment they were going into.

Sergeant Hirsch explained that Ms. Cantave approached him about problems she was experiencing in the building. She signed up for the Clean Halls Program, and she installed her surveillance cameras which were wi-fi capable on his phone. Sergeant Hirsch stated that she provided the 81st precinct with the username and password so they could observe the activities she observed. Sergeant Hirsch explained that the app was downloaded and once entering the username and password, the camera system could be viewed wirelessly from any location. The different camera feeds in the hallways, the front of the building and throughout the building.

Sergeant Hirsch explained that looking into his phone, he was able to see the video that the camera records.

Sergeant Hirsch explained that in 2016, he drove by the address and he viewed a large group of people outside. He parked up the block a short distance away from the people sitting on the stoop and turned on the camera app on his phone. He watched the people on the stoop in real time from a short distance away, just around the corner, less than a full city block away. He knew the video from the camera app and what he observed in-person was contemporaneous and not prerecorded.

Sergeant Hirsch testified that the people ran into the apartment on the right-hand side of the building on the first floor. He explained that he observed the people running with his own eyes, and then when he viewed the footage from the camera system, he could see them running through the front door, go to the right and enter the apartment door.

Sergeant Hirsch testified that he visited the subject building less in 2017, and only visited approximately two to three times per week. Sergeant Hirsch explained that the activity in front of the subject building was busier during the summertime, where people were staying out later and participating in the gathering, playing loud music, consuming alcohol and using marijuana. Sergeant Hirsch recalled that during times when he left his vehicle, the crowd would scatter with people entering the building, or moving to a different part of the block. Sergeant Hirsch testified that in 2017, he observed activities from the camera app on his telephone and he observed people gathering on the stoop, consuming alcohol, rolling and smoking marijuana cigars. Sergeant Hirsch stated that the crowds sat the entire length of the stoop. Sergeant Hirsch explained that if the police came onto the block to clear it, the people returned to the same area approximately 45 minutes later, or a little bit longer.

Sergeant Hirsch testified that in 2018, he only walked or drove by the subject building once per week because his duties and responsibilities drastically changed. Also, in 2017 to 2018, there was an NCO neighborhood assistance program which assigned two police officers strictly to one sector of the precinct and that unit was responsible for handling most of the community complaints.

Sergeant Hirsch testified that one of the individuals who was present at one of the parties on the stoop was Charles Williams, and he is also known as "Snapper" on the street. Sergeant Hirsch recalled that during his work in the 81st precinct, Mr. Williams was one of the individuals added to the posters of gang members as being a self-admitted member of a gang. Sergeant Hirsch explained that Mr. Williams was one of the main individuals outside on the stoop. Sergeant Hirsch recalled that Mr. Williams was arrested on October 30, 2015 and at his arrest, Mr. Williams stated that he resided at the subject building. Sergeant Hirsch recalled that he was arrested for a marijuana offence; then he began resisting arrest and was brought to the precinct.

Sergeant Hirsch testified that during the summer of 2013, he observed these same activities nightly, especially Thursday through Saturday night.

On cross examination, Sergeant Hirsch testified that he has not met respondent, arrested her or observed her committing any illegal activity. Sergeant Hirsch also stated that he does not know respondent's husband. Sergeant Hirsch testified that he knew respondent was a tenant but did not know how long she has been a tenant.

Sergeant Hirsch stated that beginning in 2013, he observed people gathering on the stoop, during the summertime from Thursday to Sunday, which is when the largest groups of people were outside smoking marijuana. Sergeant Hirsch acknowledged that when he visited the building, some people went inside the subject building, but he did not follow them inside the building. Sergeant Hirsch stated that he followed the people who scattered outside to arrest them, and the arrests would take place down the block from the subject building.

Sergeant Hirsch acknowledged that between 2015 and 2016, his presence at the building decreased, but during the times when he visited, Sergeant Hirsch observed the same large numbers of people on the street. Sergeant Hirsch also stated that from 2016 to 2018, he spent less time at the building.

Sergeant Hirsch acknowledged that he was present for the arrest of Mr. Williams on October 30, 2015 but was not present for the other arrests in the building. Sergeant Hirsch also testified that Mr. Williams' arrest on October 30, 2015 occurred on the block, and not inside the subject building.

In response to a subpoena, Ms. Alexandria Lloyd appeared to testify as petitioner's witness. Ms. Lloyd testified that she is not related to petitioner, and she resided in the subject building in the past five years pursuant to a lease. Ms. Lloyd testified that prior to moving out of the subject building, she informed petitioner that she was going to move. Ms. Lloyd explained that petitioner lived in the apartment below her apartment, and she spoke with petitioner often, and also sent text messages to Vanessa Cantave. Ms. Lloyd testified that she moved out of the subject building because she moved into an apartment with her girlfriend.

Ms. Lloyd testified that when she resided in the building, she did not speak to respondent, Dorothy Williams. Ms. Lloyd stated that there is a stoop located at the front of the subject building which has approximately five steps. Ms. Lloyd added that she observed barbeques and birthday parties often during the summer months, but not at all during the winter months. During the spring and fall, the parties took place when it was warm outside. She usually observed approximately seven or 10 people present for those parties. Ms. Lloyd testified that she observed the parties in the evenings. Ms. Lloyd explained that the music playing outside of the building was noisy and sometimes kept her up at night, but she music did not wake her up at night. Ms. Lloyd testified that the parties took place during the summertime for all the years she resided in the subject building.

Ms. Lloyd testified that the building had an odor, and she believed the odor came from the old carpeting in the building. Ms. Lloyd stated that there were a lot of spills on the carpet, and the carpet smelled very sour. Ms. Lloyd explained that the carpet is located on the steps of the first floor and was in place throughout the fourth floor.

Ms. Lloyd testified that she had not observed police in the building, but she did see police outside of the building, and she assumed that the police were present because of a noise complaint.

Ms. Lloyd recalled that Mr. Harold and Ms. Ann lived in the apartment under her apartment, and she did not remember anyone else from the building. Ms. Lloyd stated that at the time she lived in the building, Ms. Cantave did not live in the building. Ms. Lloyd testified that there were times that she observed people in the building whom she did not know, and there were sometimes people Mr. Harold and Ms. Ann hired to do work in the building.

Ms. Lloyd explained that the main reason she moved out of the subject building was because she moved into an apartment with her girlfriend. Ms. Lloyd explained that she came to court to testify because she received a letter from petitioner's attorney which mentioned holding her in contempt of court. Ms. Lloyd testified that she never received a notice or subpoena to testify on any other day.

On cross examination, Ms. Lloyd acknowledged that she did not recall the exact time she resided in the subject building and that she never had a conversation with respondent, Dorothy Williams.

Ms. Lloyd acknowledged that she observed barbeques and birthday parties occurring in front of the subject building during warm months, and that while there were times it was noisy, the noise never woke her up at night. Ms. Lloyd also stated that she never called the police to complain about the loud music. Ms. Lloyd acknowledged that there were times people were in her apartment that she did not know, but it was because petitioner arranged for them to be there.

Ms. Lloyd stated that during the winter, or when it was cold, there was no activity in front of the building. Ms. Lloyd also stated that she assumed that the smells in the building were because of old carpeting, or a locked closet door which was situated near her apartment door on the fourth floor.

Petitioner rested, and respondent moved for an order of judgment pursuant to CPLR 4401 asserting that petitioner failed to meet its prima facie burden of proving nuisance as a matter of law. Respondent argued that the standard for a nuisance case is a repetitive, ongoing pattern of behavior that creates a disturbance and annoyance that impacts the safety and well-being of petitioner and the other tenants in the building, or of the tenants themselves. A mere annoyance by itself is not enough to sustain a nuisance cause of action. Respondent argued that there is case law specific to New York City that states that the threshold of annoyance in a city like New York City needs to be high. That higher threshold must be surmounted in order for the evidence presented in a case to amount to a nuisance.

Respondent argued that the termination notice was heavily reliant upon criminal conduct indictments, criminal prosecutions, arrests, and there are allegations of federal conspiracy cases which have rightfully not been admitted into evidence. These activities did not occur in the subject apartment nor was there any connection made to the subject apartment. As a result, petitioner has not made his prima facie case.

Respondent argued that three out of the four witnesses have direct ties to petitioner, as Vanessa Cantave's son is petitioner's grandson, Kiara Peeples is petitioner's granddaughter and Devon Robinson is the partner of Kiara Peeples.

Respondent maintained that there was testimony about the locks being tampered with, but no one testified to observing respondent, Dorothy Williams, or anyone connected to the apartment tampering with the locks. This conclusory evidence does not meet any prima facie standard. Evidence of the clutter in the apartment is in the form of one picture inside the subject apartment which showed a bed in the middle of the floor with no clutter. Petitioner's witness testified that this photo was taken by Ms. Cantave on the one occasion when she visited the subject apartment. Respondent argued that the testimony regarding the foul smells which emanate from the subject apartment only establishes that the foul smell is present during the couple of minutes that each of the witnesses walked past the subject apartment. However, petitioner's witness, Ms. Lloyd, testified that the foul smells came from old carpeting in the building and from a closet on the fourth floor at the time she resided in the building, and not from respondent's apartment. Respondent also argues that the Notice of Termination listed approximately 20 days when gatherings on the stoop took place, but there was no testimony of specific dates from any of petitioner's witnesses. Petitioner's witness, Devon Robinson, stated on cross examination that the gatherings on the stoop were simply a stoop where people hang out in Brooklyn. There were no criminal arrests, no criminal indictments or anything to support the allegations of smoking marijuana on the stoop. Petitioner's witness, Sergeant Hirsch, testified that as he approached the building, people started running into the building, but he did not follow anyone or make any arrests. In addition, the activity has decreased over the past few years. Ms. Lloyd testified that she observed barbeques and parties but did not testify about observing fights, and the parties only occurred on the weekends during the summer months.

Respondent argued that there was no evidence that any of the individuals named as respondents in this proceeding are those present at the gatherings and there is no evidence that the gatherings on the stoop are tied to the subject apartment. Respondent argued that respondent has been a tenant of the subject apartment since 1984. In addition, respondent's husband, Charles Gunther, is disabled, has an amputated leg, walks with a walker and has a home health aide who visits him daily.

Petitioner contends that respondent is not only responsible for her actions, or inactions, but is also responsible for the actions of her guests and visitors to the apartment, and petitioner has proven its prima facie case.

Petitioner stated that there was testimony from three tenants and a Police Officer regarding the parties taking place at the stoop with up to 20 people eating food, drinking alcoholic beverages, smoking marijuana, leaving food remains on the stoop, with loud music being played until 2:00am or 3:00am. Petitioner's witness, Ms. Peeples, testified that the loud music could be heard all night long and while she did not call the police, the loud music interfered with her sleep.

Petitioner also stated that witnesses testified that they experienced trouble getting into and out of the building and none of the tenants invited friends or family members to their apartment. These conditions impacted their lives and respondents should not be permitted to take over the building. In addition to the activities, there were threats made to the witnesses, fights that were observed, police officers coming and going through the building on numerous occasions, DEA agents with long guns entering and leaving the building. Petitioner contended that Mr. Gunther, who is incorrectly named in this proceeding, is an occupant of the subject apartment, and he has been observed walking around the building every day in a towel, sometimes carrying a jar of urine. Further, respondent's son, Charles, who is also known as Snapper, is an occupant of the subject apartment and the police were looking for him on one occasion.

Petitioner also stated that there was testimony regarding the odors emanating from the subject apartment that were described as pungent and horrible because of the doors to the apartment constantly being open. In addition, one witness testified about the clutter inside of the apartment which led her to believe this to be the reason why people were using the common hallway to go from one door to the other.

Moreover, petitioner argued that Ms. Lloyd seemed to have developed amnesia on the stand for reasons he believed the court was aware of as well.

The court reserved decision on the motion.

Respondent's witness, Amera Hopkinson, testified that she is employed as a Home Attendant at Tri-Med Home Care Agency, and she has been the certified home attendant for Mr. Williams since April 2018.

Ms. Hopkinson explained that for an individual to have a home health aide, the person has to have the doctor assess what assistance the person needs. Then, the doctor reaches out to their insurance provider to receive approval. Once approved, the agency assigns someone to the individual.

Ms. Hopkinson explained that Mr. Williams is disabled, diabetic, has a prosthetic leg and uses a cane. Ms. Hopkinson testified that she works with him Monday through Friday from 9:00am to 1:00pm, and she sometimes works until 2:00pm. When she is at the subject apartment, she assists with meal preparation, light housekeeping, she assists Mr. Williams with washing his leg and back, and she accompanies him to the laundromat, the supermarket, the corner store and other places to complete daily errands as well attending doctor's appointments. Ms. Hopkinson explained that she must keep the area where his leg was amputated clean by using water and alcohol every day. Ms. Hopkinson explained that Mr. Williams' doctor's appointments are every other month, and he visits a doctor in Queens to check his heart. Ms. Hopkinson testified that Mr. Williams attends these appointments by commuter benefits through Uber. Ms. Hopkinson explained that his daughter takes care of the transportation by contacting Uber and Medicaid or his disability pays for the trip. Ms. Hopkinson added that she attends these appointments with him, and she waits for him while he is visiting the doctor, and she is required to be with him wherever he goes.

Ms. Hopkinson also testified that they don't go out unless it is to a family function or an appointment.

On cross examination, Ms. Hopkinson stated that she began working with Mr. Williams in April 2018 and she was not familiar with the building prior to this time. Ms. Hopkinson acknowledged that she works until approximately 1:00pm to 2:00pm from Monday to Friday, and she is not present in the evenings or on the weekends. She is also present year-round, unless she takes vacation.

Respondent, Dorothy Williams, testified that she is 64 years old, she moved into the subject building in 1976 and she has never lived anywhere else. Ms. Williams testified that she resides in the subject apartment with her son, Charles Williams, her daughter, Charla Williams, her granddaughter, Starasia Williams, and her husband, Charles Gunther, who is 68 years old. Ms. Williams believed that her rent was \$170.00 per month in 1976, and her rent is now \$370.00 per month.

Ms. Williams testified that she is familiar with petitioner and she met him in approximately 1985 or 1986, and their relationship was alright. Ms. Williams stated that their relationship changed, and they ceased communicating with each other when petitioner took her to court for overcrowding in approximately 2002 or 2003. Ms. Williams testified that there was an altercation between she and petitioner in approximately 2002 or 2003 when he was completing work in the apartment which led to petitioner physically assaulting her.

Ms. Williams described that her apartment is a railroad apartment that contains two and a half bedrooms and two bathrooms. Ms. Williams explained that she can walk through the apartment to get from one side to the other, and there are two doors to enter and exit the apartment. Ms. Williams explained that both doors connect to the common hallway outside. Ms. Williams explained that the back door of the apartment is located near the kitchen, and the front door is closer the bedrooms. She also explained that one of the bedrooms faces the outside of the building. Ms. Williams explained that the front of the apartment has two windows, and the back has two windows, and the kitchen has a window which overlooks the back yard.

Ms. Williams explained that she sometimes walks through her apartment to get from the front to the back, and she sometimes uses the common hallway. Ms. Williams explained that she is able to walk through the rooms in her apartment and nothing prevents her from walking inside of the apartment. Ms. Williams explained that she is able to open both doors to her apartment that lead to the hallway and there is nothing obstructing her passage into or out of the apartment.

Ms. Williams testified that Mr. Gunther was prescribed a urinary catheter which he uses at night after he has removed his prosthetic leg, and there is a tube and bag connected to it. Ms. Williams explained that in the morning, he takes the bag to the bathroom which is located at the other end of the apartment near the kitchen area. Ms. Williams explained that Mr. Gunther exits the front door of the apartment, walks through the hallway to the back door to enter the apartment where the bathroom is located. Ms. Williams explained that there are approximately four steps to the

door and then he is able to walk into the hallway, and he uses his cane or walker to assist him. Ms. Williams surmised that Mr. Gunther goes into the hallway instead of walking inside of the apartment because there may be better access for him going through the hallway. Ms. Williams explained that Mr. Gunther uses a cane and he has a problem with his leg, so it is better for him to go through the hallway.

Ms. Williams testified that she has not tampered with any of the locks on the front door of the building nor has she observed anyone who lives with her tamper with the locks.

Ms. Williams testified that she sometimes sits on the stoop of the building, or sits in a chair in the yard, during the summertime on the weekends between Friday and Saturday, but not on Sunday. Ms. Williams explained that she only sits outside in the evening, sometimes around 6:00pm until approximately 10:00pm or a little later until 12:00am or 1:00am. Ms. Williams stated that she does not play music, consume alcohol or use drugs while she sits on the stoop, and she has not observed fights break out on the stoop.

Ms. Williams reviewed respondent's Exhibit C, HPD building violation information, and testified that there were repairs needed to abate lead and repair water damage to the kitchen floor by the sink. Ms. Williams explained that the kitchen floor is weak because of the water damage¹⁸. Ms. Williams explained that she has called 311 in the past regarding repairs in her apartment, when she needed a kitchen sink, and she received one. Ms. Williams explained that petitioner would not give her a kitchen sink, but he did after she called 311.

Ms. Williams recalled that after the work was completed in her apartment, petitioner filed a case against her in which she understood that petitioner claimed that she was a nuisance. Ms. Williams testified that she believed petitioner wanted her to leave the apartment so he could receive more money in rent or move his family into the apartment. Ms. Williams stated that mostly petitioner's family resides in the building.

Ms. Williams testified that if she were to be evicted, she did not know where she could move to since all of her children have their own families.

On cross examination, Ms. Williams testified that she moved into the subject building in 1976 and her monthly rent was approximately \$177.00, and her current monthly rent is \$377.00. Ms. Williams recalled that petitioner became her landlord in approximately 1980 or 1985, and he has raised the rent every two years with her lease renewals. Ms. Williams explained that she currently resides with her daughter, Charla Williams, her granddaughter, Starasia Williams, and her husband, Charles Gunther. Ms. Williams stated that her granddaughter has resided in the subject apartment for 23 years.

Ms. Williams described the subject apartment as a railroad and the front of the apartment faces the front of the building. Ms. Williams explained that when walking into the apartment, one would enter through the living room, next there are two bedrooms, a kitchen and the bathroom. Ms. Williams stated that there are two beds in the middle room and one bed in the next bedroom. Ms. Williams stated that there are no mattresses on the floor in the living room or in the kitchen.

¹⁸ Violation Number 12824038 was issued by HPD on December 26, 2018 as a Class B violation.

Ms. Williams explained that there are times when her husband walks outside of the apartment and into the hallway from one door of the apartment to the other because he believes it is faster to go through the door to get to the kitchen. He can walk through the house, but he chooses to walk through the hallway. Her granddaughter also keeps a lot of shoes and sneakers in the floor. Ms. Williams explained that in the morning, her husband empties his urinal, and he walks through the hallway because it is convenient for him because he walks with a cane.

Ms. Williams explained that there are times she observes other people outside of the building as she is sitting outside, but there haven't been parties with 10 to 15 people. Ms. Williams acknowledged that she did have parties for the Fourth of July or a birthday but that was it. Ms. Williams acknowledged that she has played cards with her daughter and nieces in the yard and beside the stoop on Fridays and Saturdays during the spring and summer. Ms. Williams added that she doesn't drink alcohol.

Ms. Williams stated that there are times when her husband sits outside on the stoop with his friends, and there are times when he and three or four of his friends sit inside a friend's car, sometimes twice a week during the summer. Ms. Williams stated that she and her husband are usually not outside on the stoop at the same time, and her husband returns to the apartment around 9:00pm. Ms. Williams stated that while some people smoke cigarettes, no one smokes marijuana and she has never smelled marijuana in front of the building. Ms. Williams denied cooking food to feed people outside of the building. Ms. Williams acknowledged that sometimes her daughter and niece may eat Chinese food in the yard or outside in the front of the building while they are playing cards. Ms. Williams denied that garbage is left in front of the building, and she stated that everyone cleans up after themselves because there are garbage cans right in the front. Ms. Williams stated that she does not play music or radios from outside, and sometimes she hears music being played from cars belonging to people who are not related to her. Ms. Williams acknowledged that sometimes her daughter's friend visits and plays music in her car while she is sitting in front of the building on the weekends. Ms. Williams stated that her daughter and her friend may sit in the car for a few hours with the music playing music around 9:00pm, but the music is not loud. Ms. Williams explained that she can hear the music because she is sitting outside when the music is playing from the car.

Ms. Williams denied witnessing fights in front of the building in the past five years. Ms. Williams recalled a time when the police came into the building looking for her nephew, Kelly Royster, in June 2018 and she recalled seeing the letters, ATF, on their vests. Ms. Williams recalled that there were approximately six or seven agents carrying shot guns and rifles, but they did not stay in the building very long. Ms. Williams did not know why they were looking for him and she did not ask why they were looking for him.

Ms. Williams stated that in the last five years, she only saw the police at her building in June 2018. Ms. Williams acknowledged that on September 22, 2019, her husband told her the police were outside of the subject building, but she was inside of her apartment when the police were outside, and she did not see them. Ms. Williams recalled that when her husband came into the apartment from outside, he told her that someone threw a bottle at him, and she believed that he

did not know who threw the bottle. Ms. Williams reviewed petitioner's Exhibit #15, a copy of the police report dated September 22, 2021, and acknowledged that the document indicates that the alleged person who threw the bottle at her husband was an acquaintance. Ms. Williams stated that her husband probably knew who the person was but she does not know who it was. Ms. Williams later recalled that her husband said it was someone named "Whiteboy", but he didn't tell her until later on after the incident. Ms. Williams added that the police did not return to the building after the September 22, 2019 incident to speak with her husband, and no one from the District Attorney's office came to the building after the incident.

On redirect, Ms. Williams explained that she did not see the police in the building on September 22, 2019 and her husband was a victim in the incident which occurred on September 22, 2019.

Ms. Williams acknowledged that her husband uses a cane to walk, and sometimes carries the jar with urine in the hallway because her granddaughter has shoes and sneakers on the floor, and he does not want to trip. Ms. Williams stated that it is safest for him to use the hallway. Ms. Williams also stated that her husband has a prosthetic leg.

Pursuant to CPLR 4401, a motion for judgment as a matter of law is appropriate where the trial court finds that, upon the evidence presented, there is no rational process by which the fact trier could base a finding in favor of the nonmoving party. *Szczerbiak v. Pilat*, 90 N.Y.2d 553, 556, 664 N.Y.S.2d 252, 254 [Ct of Appeals, 1997] citing *Blum v Fresh Grown Preserve Corp.*, 292 NY 241, 54 N.E.2d 809 [Ct of Appeals, 1944]. In considering the motion for judgment as a matter of law, the trial court must afford the party opposing the motion every inference which may properly be drawn from the facts presented, and the facts must be considered in a light most favorable to the nonmovant. *Id.*

Petitioner commenced this action alleging that respondent is committing and/or permitting a nuisance in the subject rent stabilized apartment. Rent Stabilization Code § 2524.3 (b) states that a tenant is committing or permitting a nuisance when "*the tenant engages in a persistent and continuing course of conduct evidencing an unwarrantable, unreasonable or unlawful use of the property to the annoyance, inconvenience, discomfort or damage of others, the primary purpose of which is intended to harass the owner or other tenants or occupants of the same or an adjacent building or structure by interfering substantially with their comfort or safety.*" 9 NYCRR § 2524.3 (b) (emphasis added).

A nuisance involves conduct that is recurring, frequent, continuous, or extremely dangerous, which constitutes an unreasonable or unlawful use of the property to the annoyance, inconvenience, discomfort or damage of others that has the primary purpose of intentionally harassing the landlord, other tenants or occupants by substantially interfering with their comfort or safety. *Ankamah v. Abusi*, NYLJ, Mar. 20, 2019 at 31 citing *Domen Holding Co. v. Aranovich*, 1 NY3d 117, 769 N.Y.S.2d 785 [2003]. Nuisance imports a continuous invasion of rights and a pattern of continuity or recurrence of objectionable conduct. *Id.* citing *Frank v Park Summit Realty Corp.*, 175 A.D.2d 33, 34, 573 N.Y.S.2d 655 [1st Dept 1991], *mod on other grounds* 79 N.Y.2d 789, 579 N.Y.S.2d 649 [1991].

Further, for activity to constitute a nuisance, the activity must interfere with a person's interest in the use and enjoyment of the land. *Id.* (see Restatement Second of Torts § 821D; see also *Copart Indus. v Consolidated Edison Co. of N.Y.*, 41 N.Y.2d 564, 568, 394 N.Y.S.2d 169, [1977]).

In addition, it should be noted that not every annoyance will constitute a nuisance (*Id. citing 2 Dolan, Rasch's Landlord and Tenant--Summary Proceedings* § 30:60, at 465 [4th ed]). Further, to constitute a cause of action for nuisance, it is imperative that the conduct affect other residents in the building (see *In the Matter of Sumeti Associates v. Rany Irizarry*, 103 AD3d 653, 959 NYS2d 254 [2nd Dept, 2013]).

Petitioner commenced this holdover proceeding on December 26, 2017 after serving respondents with a Ten (10) Day Notice of Termination on November 10, 2017 which alleged that respondents were committing and/or permitting a nuisance in the subject apartment.

At trial, petitioner's witnesses maintained that respondent was familiar with all the individuals who were observed gathering on the stoop who were smoking marijuana, eating food (much of which was left on the ground following the party), playing loud music and drinking alcoholic beverages. Petitioner's witness, Sergeant Hirsch, testified about his interactions with the subject building, and the nature of his work from 2015 until 2018 when he was assigned to observe the subject building beginning in 2015, and he similarly testified about the large gatherings which took place on the stoop of the subject building. Sergeant Hirsch testified about the multiple times he visited the subject building and the large gatherings he observed. While Sergeant Hirsch testified that respondent, Charles Williams, was one of the main individuals observed on the stoop, and he was arrested for marijuana possession, Sergeant Hirsch had not met respondent, Dorothy Williams, or observed her engaging in any illegal activity.

Petitioner did not present any evidence to substantiate the claims that respondents were in any way connected to the alleged activities taking place in the front of the building. Petitioner's only witness to testify about the identity of the individuals on the stoop was Ms. Cantave who testified that she knew that some of the individuals included respondent's children, Charles Williams and Charla Williams and other people named Shonda, Starasia, KK, Kelly and Royster, but she was unfamiliar with other individuals who she assumed were family members and friends of respondent.

The complaints regarding the activity on the stoop, use of illicit substances and loud music were issues which were directly related to those occupying the stoop, and petitioner failed to connect these individuals to the named respondents to show that respondents authorized and had control over the individuals and allowed them to engage in any of this behavior. Petitioner did not provide evidence to support a finding that respondents were the organizers of these gatherings or that respondent was responsible for granting access to the building to any of the individuals who were present on the stoop. Although petitioner's witnesses, three of whom were related to petitioner, testified that some of the named respondents were present on the stoop on some occasions, and petitioner's witnesses observed respondents playing card games on other occasions, this testimony alone is insufficient to attribute the responsibility for these activities to

any of the named respondents, including respondent, Dorothy Williams, who has resided in this building since 1984.

Petitioner's witness, Ms. Cantave, provided a photograph¹⁹ of individuals congregating outside of the subject building and petitioner's witnesses testified about videos which were taken which showed the activity, but this alleged video footage was not entered into evidence. Petitioner also did not present evidence or testimony of police reports concerning any of these alleged activities. Moreover, it should be noted that petitioner provided no evidence to establish that respondent would "*leave the front door to [her] apartment open and blare loud music in the hallway, every day, at all hours.*"²⁰

Petitioner's witnesses testified that respondents tampered with the lock on the front door of the building which resulted in the lock having to be repaired and new keys being given to the tenants on multiple occasions. However, petitioner did not produce evidence to sufficiently establish that respondent and/or respondent's family have "*continuously broken the front door locks to the building*"²¹ or that respondent and/or respondent's family have "*tampered with the cameras installed in the common areas*"²².

Petitioner's witnesses testified to the foul odor which emanates from the subject apartment and respondent has done "*nothing to abate noxious and unpleasant odors*"²³. However, Ms. Lloyd, petitioner's witness, testified that the entire building had an odor, and she believed the odor came from the old carpeting in the building. Ms. Lloyd testified that there were a lot of spills on the carpet, and the carpet smelled very sour.

Petitioner did not produce evidence to establish that respondent and/or respondent's family have "*annoyed and harassed other tenants of the building, the landlord and his wife, and property manager through verbal threats and erratic behavior*"²⁴. The Notice of Termination alleges that respondent's have threatened and harassed petitioner and petitioner's family. However, petitioner did not present any credible evidence to substantiate these allegations. In addition, there was no testimony from Annie Manuel regarding respondent's "*granddaughter (who lives with [her]) verbally threatening*"²⁵ her by calling her names or testimony regarding respondent's grandson using illicit substances in the subject building²⁶.

Petitioner also did not provide any evidence to establish that respondent, or respondent's family "*continuously disrupted the safety of others in the building with fighting (both physically and verbally) in the apartment, the common hallways and front stoop*"²⁷. Ms. Cantave testified that in approximately July 2017, she observed a large group of people leaving the back door of the subject apartment fighting, and the fighting continued onto the front of the building on the stoop

¹⁹ Petitioner's Exhibit #6

²⁰ See Petitioner's Notice of Termination

²¹ See Petitioner's Notice of Termination

²² See Petitioner's Notice of Termination

²³ See Petitioner's Notice of Termination

²⁴ See Petitioner's Notice of Termination

²⁵ See Petitioner's Notice of Termination

²⁶ See Petitioner's Notice of Termination

²⁷ See Petitioner's Notice of Termination

and recognized that some of the people fighting were respondent's family members. However, apart from her self-serving testimony, there were no police reports, videos or other evidence produced to substantiate these claims.

Moreover, while Sergeant Hirsch testified to observing the arrest of respondent, Charles Williams, on October 30, 2015 for possession of marijuana, one arrest does not account to a recurring, frequent, continuous or extremely dangerous behavior which constitutes an unreasonable or unlawful use of the property (*see Tri Cruger Realty, LLC v. Masterson*, 36 Misc3d 145A [App Term, 1st Dept., 2012]). Further, this arrest did not take place in the subject apartment, was not connected to any of the activities listed in the Notice of Termination and petitioner did not present any evidence that Mr. Williams engaged in any illegal activity in the subject apartment.

Petitioner's witnesses testified to observing respondent Mr. Gunther, who is Dorothy Williams' husband, walking around in shorts or a towel while holding onto a jar with liquid in it walking through the common hallway. However, petitioner did not present any evidence of photographs or video footage nor is there any evidence that Mr. Gunther's use of the public hallway to access the apartment was improper or prohibited. In addition, petitioner failed to establish that these activities were committed for the primary purpose of intentionally harassing petitioner or the other occupants of the building. *Domen Holding Co. v. Aranovich*, 1 NY3d 117, 769 N.Y.S.2d 785 [2003].

Petitioner's witnesses also testified to observing what was described as "clutter" in respondents' apartment which they believed was the reason some individuals use the common hallway to gain access to the apartment. There was testimony that each of the six apartments in the building have two doors; one at the front and one at the back, and petitioner's conclusion was that the only reason respondents used the doors was to gain access to the apartment as a result of clutter and overcrowding which prevents them from walking through the apartment. Further, petitioner alleged that respondent and her family "*permit and allow rotting food, garbage and vermin to accumulate in the apartment*"²⁸. Petitioner presented one photograph²⁹ allegedly showing bags and mattresses in the subject apartment to establish that there was sustained clutter in the subject apartment. However, this one photograph did not establish that the apartment remains cluttered and overcrowded daily with items and food. Moreover, the one photograph did not show evidence of food remains or vermin. Notably, there was a consensus among all parties that respondent, Charles Gunther, was disabled, walked with a cane and had a prosthetic leg.

The testimony of the witnesses related to petitioner was largely self-serving without any other evidentiary support. The testimony of Sergeant Hirsch did not conclusively connect the behavior petitioner alleged to respondent, and the testimony of the non-related witnesses did not specifically corroborate the testimony of petitioner's relatives.

Petitioner did not prove that any of the named respondents engaged in any recurring, frequent, continuous or extremely dangerous activities **for the primary purpose of** intentionally harassing petitioner or the other occupants of the building. *Domen Holding Co. v. Aranovich*, 1 NY3d 117,

²⁸ See Petitioner's Notice of Termination

²⁹ Petitioner's Exhibit #8

769 N.Y.S.2d 785 [2003] (emphasis added). There was no corroborating evidence to establish many of the claims noted in the Notice of termination and testimony regarding certain allegations were rebutted by one of petitioner's own witnesses.

There is a high threshold of proof required to warrant the relief of an eviction in a nuisance holdover (*see Domen Holding Co. v. Aranovich*, 1 NY3d 117, 125, 769 N.Y.S.2d 785 [Ct of Appeals, 2003]) and petitioner has failed to meet their burden of establishing nuisance as a matter of law.

Based on the foregoing, respondent's motion is granted, and the petition is dismissed.

This constitutes the decision and order of the court.

Dated: Brooklyn, New York
August 19, 2022


HON. CHERYL J. GONZALES

Cheryl J. Gonzales, JHC