

At a term of the Appellate Term of the Supreme Court
of the State of New York for the 2nd & 11th Judicial Districts

DEC - 7 2007

HON. MICHELLE WESTON PATTERSON, J.P.
HON. JOSEPH G. GOLIA
HON. ARIEL E. BELEN, JJ.

NOVEMBER 8, 2007 TERM
2006-01795 K C

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DOV GLICK, INC.,

Appellant,

-against-

Lower Court #
87385/04

TERESA CUEVAS,

Respondent,

-and-

“JOHN DOE” AND “JANE DOE”,

Undertenants.
-----X

The above named appellant having appealed to this court from a **FINAL JUDGMENT** of the **CIVIL COURT, CITY OF NEW YORK, KINGS COUNTY** entered on **JUNE 6, 2005** and the said appeal having been **submitted** by **MERYL L. WENIG, ESQ.** counsel for the appellant and **NO BRIEF SUBMITTED** for the respondent and due deliberation having been had thereon; it is hereby,

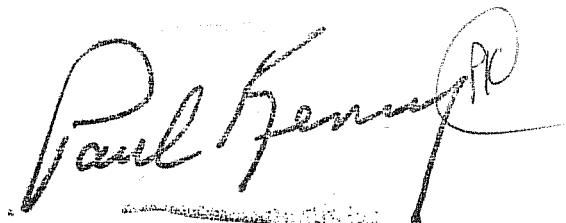
ORDERED AND ADJUDGED that the final judgment is reversed without costs and the matter remanded to the court below for entry of a final judgment awarding possession to the landlord, with issuance of the warrant stayed until 10 days after service upon the tenant of a copy of the final judgment with notice of entry, during which time the tenant may cure the complained of condition.

Weston Patterson, J.P., Golia and Belen, JJ., concur.

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PAUL KENNY
CHIEF CLERK
APPELLATE TERM

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM : 2nd and 11th JUDICIAL DISTRICTS

-----X

PRESENT : WESTON PATTERSON, J.P., GOLIA and BELEN, JJ.

-----X

DOV GLICK, INC.,

Appellant,

-against-

NO. 2006-1795 K C

DECIDED

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TERESA CUEVAS,

Respondent,

-and-

"JOHN DOE" AND "JANE DOE",

Undertenants.

-----X

Appeal from a final judgment of the Civil Court of the City of New York, Kings County (Marcia J. Sikowitz, J.), entered June 6, 2005. The final judgment, after a nonjury trial, dismissed the petition in a holdover summary proceeding.

Final judgment reversed without costs and matter remanded to the court below for entry of a final judgment awarding possession to landlord, with issuance of the warrant stayed until 10 days after service upon tenant of a copy of the final judgment with notice of entry, during which time tenant may cure the complained of condition.

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After terminating tenant's lease on the ground of nuisance, landlord commenced this holdover proceeding (see Rent Stabilization Code [RSC] [9 NYCRR] § 2524.3 [b]), alleging that tenant maintains and uses a washing machine in her apartment, which machine has an illegal hookup. In particular, landlord claimed, and the proof at trial established, that the water supplies to the washing machine were not protected by an adequate air gap or vacuum breakers, as required by section P104.12 (a) of Reference Standard 16 of title 27 of the Administrative Code of the City of New York (the Plumbing Code). Landlord's plumber testified that the purpose of the vacuum breakers is to protect the potable water supply in the event of a backup. Landlord's proof further showed that the machine's discharge waste pipe did not have an air break into an open standpipe with a two-inch trap, as required by section P104.12 (b) of the Plumbing Code. Landlord's plumber testified that a two-inch trap was required to prevent overflows. No incidents of contamination or of overflow were alleged or proven. In tenant's defense, tenant's plumber testified that the required vacuum breakers were installed (after the lease was terminated) and that a two-inch trap was not required because the sink into which the washer discharged acted as a "laundry tray", which, under section P104.13 of the Code, only required a waste outlet one and one-half inches in diameter.

Sections P104.12 and P104.13 provide, in pertinent part, as follows:

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"P104.12 Automatic Clothes Washers.

(a) The water supplies to an automatic clothes washer shall be protected against the hazards of contamination by means of an adequate air gap or a vacuum breaker.

(b) The discharge waste pipe of domestic clothes washers shall be provided with an air break by spilling the discharge into an open standpipe that is provided with a 2 in. trap. The trap shall be properly vented or connected to an indirect waste pipe that may be common to other automatic clothes washers located in a common laundry room.

* * *

P104.13 Laundry Trays. — Each compartment of a laundry tray shall be provided with a waste outlet at least 1 ½ in. in diameter."

Contrary to tenant's claim, tenant's washer is governed solely by section P104.12, and the machine's hookup remains out of compliance with this section because the discharge is not spilled into an open standpipe that is provided with a two-inch trap. Moreover, tenant failed to have the vacuum breakers installed prior to the termination of her lease, although no cure opportunity was provided.

A nuisance is "a condition that threatens the comfort and safety of others in the building" (Frank v Park Summit Realty, 175 AD2d 33, 35 [1991], mod on other grounds 79 NY2d 789 [1991]; see generally Copart Indus. v Consolidated Edison Co., 41 NY2d 564, 568 [1977]; McFarlane v City of Niagara Falls, 247 NY 340 [1928]; 12 Broadway Realty v Levites, 44 AD3d 372 [1st Dept 2007]). In the

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circumstances presented, landlord established that tenant's washing machine hookup constituted a threat to the safety and comfort of the other tenants (see generally State of New York v Fermenta ASC Corp., 238 AD2d 400 [1997]). Thus, landlord was entitled to a final judgment of possession. However, under the circumstances herein, tenant should be afforded an opportunity to cure a nuisance pursuant to RPAPL 753 (4) (see 4G Realty LLC v Vitulli, 2 Misc 3d 29 [App Term, 2d & 11th Jud Dists 2003]; London Terrace Assoc. v Snow, NYLJ, Nov. 28, 1983 [App Term, 1st Dept]). Accordingly, the matter is remanded to the court below for entry of a final judgment awarding landlord possession and staying issuance of the warrant for 10 days after service upon tenant of the final judgment with notice of entry, during which time tenant may cure the complained of condition.

Weston Patterson, J.P., Golia and Belen, JJ., concur.