

<b>Horseshoe Realty, LLC v Meah</b>
2015 NY Slip Op 31881(U)
October 15, 2015
Civil Court of the City of New York, New York County
Docket Number: L&T 59692/2014
Judge: Sabrina B. Kraus
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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK: HOUSING PART R

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HORSESHOE REALTY, LLC, X

Petitioner-Landlord

**HON. SABRINA B. KRAUS**

-against-

**DECISION & ORDER**  
**Index No.: L&T 59692/2014**

JAHED MEAH  
145 Orchard Street, Apt. 3  
New York, NY 10002

Respondent-Tenant

“JOHN DOE” and/or “JANE DOE”  
NIMA YAMINI

Respondents-Undertenants

\_\_\_\_\_  
X

**BACKGROUND**

This summary holdover proceeding was commenced by **HORSESHOE REALTY, LLC**, (Petitioner) against **JAHED MEAH** (Respondent) the rent-stabilized tenant of record, and **NIMA YAMINI** (Yamini) seeking to recover possession of 145 Orchard Street, Apt. 3, New York, NY 10002 (Subject Premises) based on the allegation that Respondent has sublet the Subject Premises to Yamini and engaged in profiteering in connection with said sublet.

**PROCEDURAL HISTORY**

Petitioner issued a Notice of Termination dated March 10, 2014, asserting that Respondent sublet the Subject Premises to Yamini for a period commencing January 2014, and continuing to through and including the date of the notice, and that Respondent collected \$1200

per month during this period, when the legal rent for the Subject Premises is \$724.40. The petition is dated March 26, 2014, and the proceeding was initially returnable on April 8, 2014.

On the initial court date, the proceeding was adjourned on Petitioner's request, because Petitioner was not ready for trial. A trial date was set for May 9, 2014. On May 9, 2014, Respondent failed to appear, and the court (Katz, J) proceeded with an inquest. At the inquest, Petitioner discontinued the proceeding as against the undertenants and obtained a judgment of possession as against Respondent.

Respondent made an *ex parte* application to the inquest court to vacate the default by order to show cause on May 12, 2014, Respondent stated he had failed to appear because he was sick and further stated "They did not send me 1 months rent. They sent last month with this month." The court declined to sign the order to show cause, finding that the application lacked merit.

On May 16, 2015, Respondent returned to court and again made an *ex parte* application for the court to sign an order to show cause and vacate the default judgment. Respondent asserted that he had been very sick on the court date, and that he had not been subletting to Yamini, but that Yamini was his roommate. Judge Kaplan signed the order to show cause and it was returnable on May 28, 2014. Petitioner failed to appear on that date, the motion was adjourned to June 17, 2014, and a post card was sent to Petitioner to appear. On June 17, 2014, the motion was denied by the court (Katz, J), who found that Respondent had failed to assert a meritorious defense.

On July 10, 2014, Respondent again moved to vacate the default judgment. Respondent again asserted he had been ill and cited *First Hudson Capital LLC v Seaborn* (54 AD3d 251) for

the proposition that profiteering against a roommate, rather than subletting, did not support a cause of action for eviction and therefore that he had asserted a meritorious defense. Judge Stoller signed the order to show cause indicating that he viewed it either as a motion to reargue or as a motion to extend the stay on the eviction. The motion was denied on the return date of July 21, 2014, based on Respondent's failure to appear in support of the motion.

On the same date, Respondent again made an application for the court to sign a fourth order to show cause, asserting the identical claims and adding that he had been late in appearing for his court date earlier that day because he was fasting for religious reasons. The motion was denied by the court on the return date of July 30, 2014, who noted that the identical arguments had already been rejected by the court in a prior ruling.

Respondent appealed the June 17, 2014 order denying his request to vacate the default.

The warrant of eviction issued August 26, 2014.

On September 4, 2014, Respondent again moved for the court to sign an order to show cause vacating the default judgment, Respondent repeated earlier assertions and added that Yamini had been in possession for less than 30 days, that funds had been returned to Yamini and a copy of the written agreement between Yamini and Respondent was annexed. The court (Cohen, J) declined to sign the order to show cause.

On October 29, 2014, the Appellate Term granted Respondent's motion for a stay pending appeal [2014 NY Slip Op 8819(U)]. On December 2, 2014, Petitioner's motion to vacate the stay was granted pursuant to a conditional order requiring Respondent to pay past due use and occupancy and perfect his appeal by the March 2015 term [2014 NY Slip Op 91451(U)]. On March 26, 2015, The Appellate Term reversed Judge Katz' order, vacated the default and

remanded the matter to Civil Court for further proceedings [47 Misc3d 127(A)]. The Appellate Term held that Respondent had raised a meritorious defense by asserting that Yamini was a roommate, rather than a subtenant.

On April 30, 2015, Petitioner moved for an order restoring the proceeding to the calendar for trial. On said date, counsel for Respondent appeared, and the motion was granted by the court (Milin, J) to the extent of restoring the proceeding to the calendar on June 10, 2015, and giving Respondent until May 20, 2015 to file an answer or move for other relief.

On June 10, 2015, Respondent moved for an order dismissing the proceeding or alternatively for leave to file an answer. On June 29, 2015, the court (Milin, J) issued an order denying the motion to dismiss, finding that the predicate notice was valid and directing Respondent to file an answer excluding the defenses already ruled upon by the court. The proceeding was restored to the calendar on July 28, 2015.

On July 28, 2015, Respondent filed an answer asserting a general denial and that Yamini was a roommate and not a subtenant.

On September 17, 2015, the proceeding was transferred to Part X for assignment to a trial judge. On October 15, 2015, the proceeding was assigned to Part R for trial. The trial took place and the court reserved decision.

#### **FINDINGS OF FACT**

Petitioner is the owner of the 145-147 Orchard Street, New York, New York, pursuant to a deed dated June 30, 1996 (Ex 1). There is a valid MDR on file with HPD (Ex 7). The original tenant of record for the Subject Premises was Kalandar Meah, pursuant to a written lease dated July 17, 1996 (Ex 5-A). Meah's wife and Respondent's mother, Asia Meah, became the

succeeding tenant of record, pursuant to a renewal lease dated July 1, 1998 (Ex 5-B). Asia Meah died on September 12, 2011, and Respondent succeeded to her tenancy, as evidenced by the last lease renewal between the parties, which is dated June 22, 2012, and ran for a two year period, through and including September 30, 2014 (Ex 5-D).

The parties stipulated that the legal regulated rent for the Subject Premises is \$724.40 per month. This is also reflected in the annual registrations for 2013 and 2014 (Exs 3B & 3C)<sup>1</sup>.

In or about December 2013, Respondent placed an ad on Craig's List to rent a room in the Subject Premises. Yamini responded to the ad and agreed to rent one bedroom at the rate of \$1100 per month and to pay \$100-200 extra per month for internet. The parties entered into a written agreement (Ex A) dated January 11, 2014, which acknowledged receipt of \$300 towards a security deposit of \$1166, and provided that the balance of security and first month's rent would be paid by February 1, 2014. The agreement further provided :

I, Nima Yamini, agree to roommate with Jahed Meah at 145 Orchard Street # 3 for the duration of six months. If I Nima Yamini leave before the six months my security deposit will be forfeited. I Nima Yamini also understand that any damages incurred during my six month (sic) will be deducted from my security deposit.

Yamini gave Respondent a bank check for the balance of the first month's rent and security, totaling \$2,032.00 on or about January 28, 2014 (Ex 6). Respondent negotiated the check the following day.

Yamini moved into the Subject Premises in late January. Yamini and Respondent did not get along at all. Respondent kept late hours, and Yamini frequently complained about

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<sup>1</sup> A annual registration for 2015 at a higher rent was marked for identification, but withdrawn by Petitioner after the stipulation.

Respondent making too much noise during the week, which led to altercations between the parties.

Both Respondent and Yamini testified that their agreement was only for Yamini to rent a bedroom in the Subject Premises and that Yamini would also have use fo the bathroom and kitchen and living room. There were two other bedrooms in the Subject Premises. When Respondent was not present, Yamini testified he kept those rooms locked.

In February, Respondent and Yamini got into a fight that required the police getting involved. Yamini decided to leave the Subject Premises because he no longer felt safe there. Petitioner provided Yamini with use of apartment 2, at 147 Orchard Street, which Yamini occupied without payment of rent. As of March 14, 2014, Yamini was still in occupancy of said premises and listed it as his address of record in a Small Claims Proceeding he filed against Respondent on said date.

Yamini had tendered a check to Respondent for February rent, which Respondent never cashed and which Respondent returned to Yamini. Respondent testified he also returned the \$300 cash to Yamini, Yamini denies this.

Hector Ossa (Ossa), is the building manager and has an ownership interest in the subject building. To the extent that Ossa testified that he never gave Yamini an apartment to stay in, but only gave him a room in the basement for a few days, the court does not find Ossa's testimony credible.

Yamini is a real estate agent and discussed potential business transactions with Ossa, but never obtained an exclusive from Ossa for the rental of any properties.

## DISCUSSION

§ 2525.7 (b) of the Rent Stabilization Code provides that a tenant may not charge a roommate more than the roommate's proportionate share of the legal regulated rent, and that the charging of a rental amount that exceeds the roommate's proportionate share shall be deemed a violation of the Code.

The Appellate Division, First Department has held that a tenant's violation of this provision does not constitute a basis for the landlord to commence an eviction proceeding (*First Hudson Capital, LLC v Seaborn* 54 AD3d 251).

§ 2525.6(b) of the Rent Stabilization Code provides that the rental charged to a subtenant may not exceed the legal regulated rent by more than 10%, and only by 10% if the sublet is for a fully furnished apartment. § 2525.6(f) further specifically provides that an owner may terminate the tenancy of a stabilized tenant who sublets in violation of the applicable provisions.

The primary disputed fact at trial is whether the agreement between Respondent and Yamini constituted a sublet or was an agreement for Yamini to be Respondent's roommate. The court finds based on a preponderance of the credible evidence at trial, that the agreement was not for a sublet, but was for Yamini to share the Subject Premises with Respondent as his roommate. There was no evidence at all that Yamini was given exclusive possession of the Subject Premises. Both Yamini and Respondent testified that they both occupied the Subject Premises during the relevant period. Yamini, who was Petitioner's prime witness, testified that he only rented one room in the Subject Premises and that Respondent was in occupancy with him at the same time. In fact it was their simultaneous occupancy of the Subject Premises, and their inability to peacefully live together that led to the fights about noise, and to the dissolution of the relationship

between the parties. The fact that Yamini claimed he typically saw Respondent at 2 or 3 am in the morning, does not change this outcome, nor does Ossa's testimony that he did not see Respondent around for the one month period. Moreover, Ossa's testimony in this regard was credibly contradicted by Respondent's friend and neighbor Daniella Ortolano.

### CONCLUSION

Based on the foregoing, the court finds that Petitioner failed to establish by a preponderance of the credible evidence that Respondent sublet the Subject Premises in violation of §2525.6(b) of the Rent Stabilization Code, and the petition is dismissed.

This constitutes the decision and order of the Court.<sup>2</sup>

Dated: New York, New York  
October 15, 2015

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Sabrina B. Kraus, JHC

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<sup>2</sup> Petitioner may pick up Exhibits within thirty days of the date of this decision from Window 9 in the clerk's office on the second floor. After thirty days, the exhibits may be shredded in accordance with administrative directives.

