CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS: HOUSING PART D

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REGO REALTY, LLC — Index No. LT-310197-23/QU

Petitioner-Landlord, — **DECISION/ORDER**

-against-

JEFFERY GOODFRIEND, ET AL.

Respondent(s)-Tenant(s).

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Present: Hon. Logan Schiff
Judge, Housing Court

Decision and Order after Hearing

The court's Decision/Order on Petitioner's request for a final judgment of possession against Respondent for breach of the parties' probationary stipulation following an evidentiary hearing is as follows:

RELEVANT FACTUAL AND PROCEDURAL HISTORY

Petitioner filed the instant nuisance holdover petition against Jeffery Goodfriend (hereinafter Respondent) on June 9, 2023. Attached to the petition were a notice to cure dated March 8, 2023, and a notice of termination dated May 2, 2023, which indicated that Respondent's tenancy in the rent stabilized unit was terminated due to Respondent's vandalism of other apartment doors and locks, as well as his use of threats and racial slurs towards the on-site building superintendent, interfering with the health, safety, comfort, use, and enjoyment of other residents and building staff.

On October 12, 2023, the parties executed a probationary stipulation. In entering into this agreement, Respondent, a senior citizen, was not represented by counsel notwithstanding the court's referral to the Universal Access to Counsel Program and to JASA Legal Services for the Elderly. The essence of the agreement, found in paragraph two, states:

> "2. Without admitting any wrongdoing, Respondent agrees to refrain from engaging in any of the conduct alleged in the underlying predicate notices (notice to cure and notice of termination) including but not limited to damaging the doors/locks of other apartments at the Subject Building, fighting with other tenants of the Subject Building, and/or engaging in harrassive *[sic]* behavior towards other tenants and the staff/agents of the Subject Building. Respondent or his guests shall not breach the quiet enjoyment of the Subject Building or make the building less enjoyable to live in by engaging in a nuisance type behavior, by engaging in a course of conduct to the annoyance, inconvenience[,] discomfort[,] or damage of others thereby interfering with the comfort or safety of others residing in or working at the Subject Building (ie nuisance/objectionable conduct)."(NYSCEF Doc. 6 at 1).

The stipulation further states that Respondent is to refrain from engaging in any of the abovementioned conduct for a twelve-month period, commencing on October 12, 2023, and ending on October 13, 2024. In the event that Petitioner believed Respondent breached the terms of this agreement within the probationary period, paragraphs four through seven allowed Petitioner to restore the case to the court's calendar by motion seeking a hearing to determine if a breach had occurred and, if the court so found, to "grant Petitioner *all appropriate relief* including but not limited to the forthwith issuance of a warrant of eviction against Respondent" (*id.* at 2-3 [emphasis added]). Paragraph twelve of the agreement concludes "no breach shall be deemed de minimis" (*id.* at 3).

On September 9, 2024, Petitioner filed a motion seeking to restore the case to the calendar for a hearing to determine whether Respondent violated the October 2023 stipulation and seeking a final judgment of possession in favor of the Petitioner. Petitioner's attached affidavit stated that Respondent, on September 1, 2024, was captured on video "intentionally damaging" the superintendent, Jose Nunez's vehicle by punching the driver-side mirror and rear passenger door (NYSCEF Doc. 8 at 6-7). According to the Petitioner, "[t]hese punches and strikes resulted in significant damage to Mr. Nunez's car including but not limited to the breaking of Mr. Nunez's

driver side mirror" (*id.* at 7). Petitioner further alleged Respondent opened the vehicle's gas tank and rested a heavy wooden headboard on the car, resulting in "damage to the paintwork and body" of the vehicle (*id.*). Petitioner argues that, because the parties entered into a stipulation stating no behavior is to be deemed de minimis, the appropriate relief in this instance of clear violation is a final judgment of possession for Petitioner.

By order dated November 24, 2024, this court granted Petitioner's motion to extent of setting the matter down for a hearing for purposes of determining the appropriate relief.

HEARING

An evidentiary hearing on the matter commenced on November 7, 2024, and continued on December 5, 2024. During this hearing, Mr. Nunez testified that he has been the superintendent of the subject premises for the past fifteen years. During this time, he testified that has not had an incident with any of the other tenants in the building; however, he testified that his relationship with Respondent devolved, and in 2023, he endured interactions with and received voicemails from Respondent full of curses and racially disparaging remarks. He stated that on September 1, 2024, he was working in the shop at the subject building. When he came out, he found his license plate was lifted upwards, the gas cap was unscrewed and left open, and that the mirror had been broken. He testified that he immediately reviewed the on-site security footage and identified Respondent as the party responsible. Mr. Nunez testified that he called the 112th police precinct, and that Respondent was arrested for the incident that day. He finished by stating his worry that Respondent would damage his car again.

The court then heard testimony from Respondent. He testified that he is 76 years-old and relies on $1,250.00 a month from Social Security for his income. He testified that he had a stroke ten years ago and needs a pacemaker for his heart. Respondent stated that he has lived in the

apartment for 30 years and within that time, he has not had a prior issue with the building or staff prior to this superintendent. He testified that he originally asked for his kitchen to be repaired, and that, in June 2023, he filed a repair case due to Petitioner's nonresponse to his request. That action was discontinued in November 2023, and Respondent testified he believes the instant case was brought as retaliation for bringing the case for repairs. He further stated that, in June 2023, a conversation between himself and Mr. Nunez regarding the repairs in the kitchen became heated and he called Mr. Nunez a liar. As to the incident in question, he stated he was in the process of moving possessions out of a storage locker to save money. Respondent admitted to touching the vehicle, bending the license plate, and opening the gas tank, but stated that he was angry because he believed the superintendent had deliberately parked the vehicle in a manner that would make it difficult for him to move his belongings. Respondent did concede on cross examination that there was little room for the superintendent to park elsewhere. He testified that he was arrested because of the incident. He also acknowledged that he could have handled himself better and was sorry the whole situation occurred.

The court also received physical evidence during this hearing: notably photos of the vehicle after the incident showing a bent license plate cover, the driver's side mirror with a chip in the plastic cover, and of the vehicle itself, albeit with no discernable paint damage; the security footage of Respondent's purported vandalism where Respondent is seen leaning a large headboard against the vehicle, hitting the driver side rear door lightly with his fists, flipping the driver's side mirror in and out, and opening the gas tank; a copy of the police incident report introduced by Petitioner characterizing the incident as involving property damage for less than $250.00; and a repair estimate for the damage to the mirror of $700.00. The court reserved decision at the end of the hearing to determine the appropriate relief.

ANALYSIS AND DECISION

The court finds that Respondent is in breach of the October 2023 stipulation, which barred conduct contained in the predicate notice, including but not limited to damaging the property of others and engaging in behavior that constitutes harassment of staff or agents of the subject building. The evidence establishes that Respondent breached paragraph two of the stipulation by pulling up on the superintendent's license plate in such a manner that caused damage to the license plate cover and license plate. However, the court does not find that Petitioner established the damage to the superintendent's mirror was caused by Respondent, as nothing in the video reflects any action by Respondent that would have chipped the mirror in the manner alleged by Petitioner.

Having concluded that Respondent breached the probationary stipulation, the court must determine the appropriate remedy. Stipulations of settlement are generally favored and not lightly cast aside (*Hallock v State of New York*, 64 NY2d 224, [1984]). A stipulation is a contract (*Matter of Banos v. Rhea*, 25 N.Y.3d 266, 276 [2015]), and as with other contracts, courts generally construe provisions in a stipulation strictly where a sophisticated party is both the drafter and the party seeking enforcement (*see id.*; *see also Croman v Wacholder*, 2 A.D.3d 140, 143 [App. Div. 1st Dept 2003]; *East Eleventh St. Assocs. v Breslow*, [App Term, 1st Dept 1997]). Here, the stipulation, unquestionably drafted by Petitioner's counsel, provides that, upon breach, the court is to impose the "appropriate remedy," including but not limited to a judgment of possession. While the agreement contemplates a judgment of possession as one possible remedy, it does not mandate it, so, it is the court's view that the parties left the court with discretion to fashion the appropriate remedy.

Upon due deliberation, considering all the evidence and testimony, the court finds the appropriate relief is to extend the probationary period within the stipulation for one year and to

order $250.00 restitution be paid by Respondent to Petitioner for the benefit of the superintendent for the damage to his car (*see Sumet 1 Assocs., L.P. v Cascarano*, Civ. Ct. Queens County, Sept. 25, 2014, Lansden, J. index No.68214/12). In reaching this conclusion, the court has considered the duration of Respondent's rent-stabilized tenancy, of which there is a strong public policy against needless forfeiture thereof (*see Dubor Assoc. v Richburg*, 50 Misc 3d 13 [App Term, 2d Dept 2d, 11th, 13th Jud. Dists, 2015]; *Matter of Vega v Franco*, 277 AD2d 131, [2000]; *Tri Cruger Realty, LLC v Masterson*, 36 Misc 3d 145[A] [App Term, 1st Dept 2012]; *160 W. 118th St. Corp. v Gary*, 32 Misc 3d 1, 926 NYS2d 799 [App Term, 1st Dept 2011]). The court also considers Respondent's age, health, and professed willingness to comply with further orders (*Matter of Prospect Union Assoc. v. DeJesus*, 167 A.D.3d 540, [App Div. 1st Dept 2018]; *see also Matter of Strata Realty Corp. v. Peña*, 166 A.D.3d 401 [App. Div. 1st Dept 2018]), as well as the de minimis nature of the breach based on the evidence observed by the court as well as the police report identifying less that $250.00 in property damage (*see Dubor Assoc. v Richburg, 50 Misc 3d 13* [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2015]; *see also Winthrop Realty, LLC v Menal*, 21 Misc 3d 141[A][App Term, 2d Dept, 2d & 11th Jud Dists 2008]; *see also J & H Mgt. Corp. v W.W.R.S Automotive Inc.*, 7 Misc 3d 134[A] [App Term, 2d Dept, 2d & 11th Jud Dists 2005]). As such, the court believes the appropriate remedy for Respondent's breach is to extend the probationary stipulation and offer Respondent a final opportunity to comply.

The fact that the agreement contains a "no breach is de minimis clause" does not compel a different conclusion. First, the court has already determined the agreement afforded it the discretion to fashion the appropriate relief upon breach. Second, it is well settled that enforcement of stipulations is subject to the sound supervision of the court, which is at liberty to disregard technical language regarding de minimis breach (*Boston Rd. Brooklyn, L.P. v Steptoe*, 2017 NY

Slip Op 51782(U) [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2017] citing *Malvin v Schwartz*, 65 AD2d 769 [1978], *affd* 48 NY2d 693 [1979]; *Harvey 1390 LLC v Bodenheim*, 96 AD3d 664 [App Div 1st Dept 2012]). Stipulations of settlement are subject to the same principles of contract construction as out of court agreements, including the tenet that a substantial forfeiture occasioned by a trivial or technical breach is disfavored (*Hotel Cameron, Inc. v Purcell*, 35 Ad3d 153,155, [App Div 1st Dept 2006]); *see e.g. Winthrop Realty, LLC v Menal*, 21 Misc 3d 141[A][App Term, 2d Dept, 2d & 11th Jud Dists 2008]; *J & H Mgt. Corp. v W.W.R.S Automotive Inc.*, 7 Misc 3d 134[A] [App Term, 2d Dept, 2d & 11th Jud Dists 2005]). This is especially true where the stipulation is being enforced against a pro se Respondent, and where Petitioner could be made whole by other relief (*see Solack Estates v Goodman*, 102 Misc 2d 504 [App. Term, 1st Dept. 1979], *affd* 78 AD2d 512, [1980] ["While the cases mention as examples of such good cause -- collusion, mistake, accident, fraud, surprise – [citations omitted] the discretion of a court is not that closely confined. The court should act if it appears that the stipulation is unduly harsh or unjust and the parties may be returned to their former status."] quoted in *2247 Webster Ave. HDFC v Galarce*, 62 Misc 3d 1036 [Civ Ct, Bronx County 2019]).

Accordingly, the court orders as follows:

The parties' probationary stipulation is modified and extended to January 22, 2026. All other terms of the agreement will remain in full force and effect through the duration of the agreement. The deadline for Petitioner to move to restore this matter for a hearing upon a subsequent breach is January 31, 2026.

Respondent is ordered to pay $250.00 as restitution to Petitioner within 90 days for the benefit of its superintendent to make him whole for the damage Respondent caused. Further, Respondent is expressly cautioned to refrain from any conduct stated in paragraph 2 of the original

stipulation and is to also refrain from and vandalism to the property of other employees and residents of this building. The court encourages Respondent to avoid all contact with the superintendent given his demonstrated inability to control his behavior.

Should Respondent fail to timely pay the $250.00, or should he continue conduct himself in a manner breaching this order or paragraph 2 of the parties' stipulation of settlement, Petitioner will be allowed, by Order to Show Cause, to seek the appropriate relief, including a judgment of possession and a money judgment of $250.00, with this court.

Respondent is cautioned that this is the final opportunity to comply with this agreement, and that any further default of paragraph 2 or this order will be strictly construed against him and may result in his eviction and the forfeiture of his 30-year, rent stabilized tenancy.

Petitioner is to file and serve notice of entry of this decision by January 24, 2025.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated: January 21, 2025
Queens, New York

HON. LOGAN J. SCHIFF