

**CIVIL COURT of the CITY of NEW YORK  
NEW YORK COUNTY  
HOUSING COURT: PART N/P**

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BARTON MARK PERLBINDER, STEPHEN  
PERLBINDER, BERNARD WEST, WILLIAM WEST,  
BRUCE BERGER, MICHAEL BERGER and  
MARTIN BERGER, Tenants-in-Common  
d/b/a MARBRU ASSOCIATES,  
Petitioner,

**L & T Index No. 80407/07**

-against-

MRS. ANTHONY NAPOLETANO,  
a/k/a TERI NAPOLETANO  
a/k/a TERI LUBIN,  
Respondent.

**Decision & Order**

-----X  
Hon. Brenda S. Spears, J., H.C.:

Alleging that the respondent breached her rent-stabilized lease by keeping or harboring a dog without its written permission, the petitioner/landlord herein commenced the instant holdover proceeding seeking to regain possession of the subject premises. The petitioner has contended that the respondent has been harboring the dog in question since about May 21, 2007. The petitioner further claims that it initially learned about this dog on or about May 31, 2007.

The respondent has not denied that she has a dog. However, she claims that she has had this particular dog for more than three months prior to service of the notice to cure and, as a result, the petitioner has waived its right to maintain this action.

This three-day trial commenced before this Court on November 28, 2007. The managing agent and two doormen appeared on behalf of the petitioner. The managing agent testified that the respondent has been a tenant for several years pursuant to a lease, and the Rules and Regulations Rider annexed thereto, that contains a clause prohibiting dogs or animals without the landlord's express written permission. She further testified that the superintendent had given her a handwritten memorandum prepared by one of the building doormen which indicated that the respondent was seen

at the subject premises with the dog in question on or about May 21, 2007. This witness stated that it was this memorandum that precipitated the instant proceeding.

The doorman who prepared the memorandum also testified. He stated that his work hours are from 4PM to Midnight. He knew the respondent and was aware that she had a small dog for several years. He further stated that he was knew that this dog had been sick and that it had subsequently died. He stated that the first time he saw the respondent's new dog was on or about May 21, 2007, the date he wrote the memorandum. With respect to this memorandum, he stated that he had been asked to pass on complaints about dogs to the superintendent.

A second doorman also testified. According to this witness, he worked as a doorman at the subject building from 8AM to 4PM, Tuesdays through Saturdays. He stated that he would see the respondent almost every morning when she left the apartment building to walk the dog. He also stated that she usually walked the dog in the afternoon as well. He was aware that her old dog was sick, but he did not recall when the old dog died. He did recall seeing this dog some time in the Summer of 2007.

The superintendent testified as well. He was aware that the respondent had a dog, but stated that he did not learn that she had gotten a new dog until he received the memorandum from the doorman. He does not live in the building and while he stated that there had been general complaints about the respondent's dog, he did not recall any specific problems and he had no personal knowledge of any such problems. He stated that he had been in the apartment to make repairs but had no recollection about seeing the dog or dog paraphernalia.

The respondent and a friend testified on respondent's behalf. The respondent's friend stated that she had known the respondent for several years and that the respondent had always owned a dog. The witness visited the respondent in her home at least once each week. And, according to this witness, she often walked the dog when the respondent was too ill or tired to do so. This witness stated that the respondent's prior dog, a Bichon, was about 14 years old and that the dog had been very sick. The dog died at the end of January 2007. At the end of February or in early March 2007, she and the respondent went to a pet store on Lexington Avenue, which

she believed was called "Pets on Lex", and the respondent purchased another dog. This dog was the same breed as the previous dog.

The respondent testified that she moved into the subject building with her husband about 35 years ago. The lease was originally signed by her husband, but since his death in 1980, the lease has been in her name. The respondent stated that she has always had a dog and the last dog she had, before the dog at issue in this case, was sick and died at the age of 14 at the end of January. She further stated that she bought a new dog of the same breed in early March 2007. She brought the dog home from the pet store and entered into the building through the front door. She stated that the doorman saw her enter the building with the dog.

She claimed that she could not take the dog out for the first two to three weeks after she brought it home because of the inoculations it received from the veterinarian. However, after that period of time, the respondent stated that she, or her friend, walked the new dog twice each day: once between 8:30 AM and 9 AM and a second time in the mid-afternoon, usually before 4 PM. She further stated that she had to go through the front door to the building each time she left, and then returned, and that she always went past the doormen on duty. Finally, the respondent stated that superintendent had been in her in March and April of 2007 and that there were bowls with dog food and other pet paraphernalia out in the open in the apartment.

.While harboring a pet where there is a "no pet-clause" lease provision in the lease is substantial violation of the lease, NYC Admin Code §27-2009.1 (b), requires that a landlord to commence a holdover proceeding within three months of the date the landlord or its agents become aware of the violation. Failure to do so constitutes a waiver. See, e.g., *Starrett City, Inc. v. Jace*, 137 Misc. 2d 328, 524 N.Y.S. 130 (App. Term 1987).

A review of the facts in this case lead the Court to conclude that here, the petitioner has acquiesced to the presence of respondent's new dog. The Court finds the testimony of the respondent and her witness credible as to the health of the previous dog, its death, and when the present dog was purchased and when it entered into the subject premises. There is no credible evidence before this Court that the

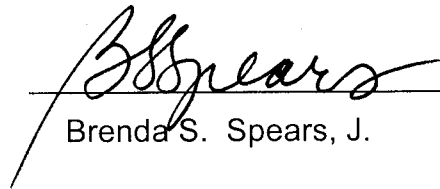
respondent made any effort to hide the fact that she had gotten a new dog in late February or early March 2007, more than 90 days before the "Notice to Cure", dated June 4, 2007.

The doormen's testimony does not require a different result. Both were aware that the respondent had a dog and that the dog had gotten sick. The doorman on duty during the time the respondent said she walked the dog admitted that he saw her almost every day and that she walked the dog every day. As stated, he was aware that the initial dog had gotten sick and had died. However, he stated that he did not really remember when he saw the new dog, but believed that it was in the Summer of 2007.

Moreover, the fact that one of the doormen advised the superintendent that he first saw the new dog on or about May 21, 2007 does not mean that was the first time petitioner's employees were made aware of the fact that the respondent had a new dog. This doorman's work schedule was such that he was on duty during a time when the respondent did not usually walk the dog. Similarly, the superintendent admitted that he had been in the respondent's apartment in April and May, but could not remember whether or not he had seen the dog.

Thus, the Court finds that the respondent had the new dog for longer than three months before the petitioner commenced this proceeding and that harbored this pet openly and notoriously. The petitioner having waived its right to commence the instant proceeding, this petition is dismissed.

This constitutes the Decision and Order of this Court.

  
Brenda S. Spears, J.

Dated: New York, New York  
February 29, 2008