SYRACUSE CITY COURT
STATE OF NEW YORK COUNTY OF ONONDAGA

INDEX NO. 06/01942
CIVIL PART/LT

ROLLING GREEN ESTATES,

Plaintiff,

vs.

DECISION

MONICA SIMPSON,

Defendant.

DECISION after Trial before LANGSTON C. McKINNEY, City Court Judge, on the 20th day of June, 2006.

APPEARANCES:

For the Plaintiff: **GEORGE F. HILDEBRANDT, ESQ.**
300 Crown Building
304 S. Franklin Street
Syracuse, New York 13202

For the Defendant: **LEGAL AID SOCIETY OF MID-NEW YORK, INC.**
472 South Salina Street, Suite 300
Syracuse, New York 13202
BY: LEWIS LIEBLER, ESQ.

DECISION

Petitioner Rolling Green Estates commenced this holdover summary proceeding to evict respondent from her fully subsidized apartment. Petitioner maintains that respondent is holding over beyond the expiration of the lease, which lease was unilaterally terminated by petitioner after respondent violated its terms by leaving bags of refuse in the common areas of the building on February 14, 2006 and March 29, 2006. At issue is whether respondent's conduct entitles petitioner to terminate the tenancy and thereafter recover possession of the leased premises.

Exhibits

Based upon the evidence adduced at a hearing on the petition, the court determines that the petition should be dismissed.

By its terms, the lease may be terminated upon a tenant's "material non-compliance" with its terms (¶ 23 [c] [1]). The phrase "material non-compliance" is defined in the lease to include one or more substantial lease violations or repeated minor violations which disrupt the livability of the project or which adversely affect the health or safety of any person (¶ 23 [d] [1] and [2]). Other provisions in the lease specifically direct tenants to dispose of their garbage and refuse in dumpsters located on the site. Garbage is not to be left in the common areas of the building (¶ 10 [b] [6]; Rules and Regulations #9).

Petitioner proved by a preponderance of the credible evidence that on two separate occasions respondent failed to properly discard the trash from her apartment. The first of these two incidents occurred on February 14, 2006, when petitioner's maintenance personnel found two large bags of trash in the basement of respondent's apartment building. Upon questioning by the maintenance workers, respondent admitted that the bags of trash were indeed hers and must have been mistakenly discarded there by a friend who had helped her clean up after a party. A second event occurred a few weeks later on March 29, 2006, when a bag of trash containing a discarded envelope addressed to respondent was found in a common area of respondent's building.

Plaintiff's proof also established that trash left by tenants in the common areas of the complex presents an intolerable problem. During the three-hour period of those

days that maintenance personnel are regularly assigned to work in respondent's building, they are required sometimes to spend the entirety of their time removing improperly discarded trash from the common areas of the building. Without a doubt, tenant behavior that contributes to that problem must rightfully be curbed.

In the absence of any direct proof of the disruptive impact of respondent's particular conduct on other tenants, however, this court is reluctant to rule that the lease supports a finding that respondent's leaving bags of trash in common areas on two occasions entitles the landlord to terminate the lese prematurely. It is noteworthy that the lease does not cloak such conduct with the "zero tolerance" urgency that it appears to accord to other offensive conduct that is specifically enumerated in paragraph 23(c). By the provisions of that section, a single incident of certain behavior (*e.g.*, violent criminal activity, or drug-related criminal activity on or near the leased premises) is specifically enumerated as a material non-compliance that entitles the landlord to prematurely terminate the lease. The court is equally reluctant to find that respondent's unquestionably objectionable conduct amounts to "repeated" violations so as to be deemed material non-compliance with the lease of such magnitude as to support premature termination of the lease. "Two incidents cannot, as a matter of law, be considered to constitute repeated violations of the rental agreement" (**North Shore Plaza Assoc. v. Guida**, 117 Misc2d 778, 781). More incidents would be required in order for the appropriate level of persistent non-compliance to be reached.

The parties agreed to all the terms of the lease, including those terms that govern its premature termination. During the short time respondent has been a tenant in the building, she left her trash in the common areas on at least three occasions, two of which formed the basis for this proceeding. Any additional violations of the lease or rules, however, when coupled with those that form the substance of this proceeding, may provide petitioner an appropriate basis to terminate her tenancy. Respondent should conduct herself accordingly.

Plaintiff's summary eviction proceeding is dismissed.

ENTER
DATED: September 6, 2006

HON. LANGSTON C. McKINNEY
City Court Judge

Syracuse City Court

505 S. STATE STREET, SUITE 270
SYRACUSE, NY 13202

LANGSTON C. MCKINNEY
JUDGE

(315) 671-2766
Fax: (315) 671-2747

November 13, 2006

FILED & ENTERED
Syracuse City Court

DATE: 11-13-06

Lucia A. Sander
Lucia A. Sander, Chief Clerk

George F. Hildebrandt, Esq.
300 Crown Building
304 S. Franklin Street
Syracuse, New York 13202

Lewis Liebler, Esq.
Legal Aid Society of Mid-New York, Inc.
472 South Salina Street, Suite 300
Syracuse, New York 13202

RE: **ROLLING GREEN ESTATES v. MONICA SIMPSON**
Index No. 2006/01942 LT

Counselors:

This is a motion by petitioner to amend the pleadings pursuant to CPLR 3025 (c) to amend the pleadings to conform to the evidence. Petitioner also moved in the alternative to set aside the court's decision and direct judgment in favor of petitioner pursuant to CPLR 4404 (b). Respondent opposed the motion.

Pleading amendments may be allowed "during or even after trial" (**Dittman Explosives, Inc. v. A.E. Ottaurino**, 20 NY2d 498, 502), absent prejudice (**Ward v. City of Schenectady**, 204 AD2d 779, 781). "Prejudice has been defined as a special right lost in the interim, a change in position, or significant trouble or expense that could have been avoided had the original pleading contained the purposed amendment (citations omitted)" (*id.*).

Petitioner's motion to amend its pleadings to include the April 13, 2005 incident is granted. Respondent failed to demonstrate sufficient prejudice to warrant denial of the relief.

Exhibit 4

The court's September 6, 2006 decision denying petitioner's relief noted that more than two "incidents would be required in order for the appropriate level of non-compliance to be reached." The evidence at trial demonstrated three occasions when respondent left her trash in the common areas. The court found that these incidents on February 14, 2006, March 27, 2006 and April 3, 2006 did not establish sufficient minor violations to warrant termination of the lease. Respondent was warned to modify her *future* conduct. "Any additional violations of the lease or rules" may, when taken together with the violations that form the substance of the initial proceeding be enough to support a basis for eviction.

In short, under the facts of this case, *all* of respondent's prior conduct relating to her leaving her trash in the common areas on February 14, 2006, March 27, 2006 and April 3, 2006 did not provide sufficient basis to establish a finding of repeated minor violations which disrupt the livability of the project or the health or safety of any person in violation of the lease provisions.

Petitioners's motion to set aside the decision to dismiss the petition is denied.

This letter constitutes the decision and order of the court.

Very truly yours,

LCM:kmw

LANGSTON C. McKINNEY
City Court Judge