

**CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF BRONX: HOUSING PART O**

Index No. 801290/12

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**JAMES GREGORY**

Petitioner

**DECISION/ORDER**

-against-

**ROBERTO CRESPO, NARCO FREEDOM  
FREEDON RESIDENCE III, 411-415 E. 152<sup>ND</sup>  
STREET LLC, JAY DEUTCHMAN AND JOHN DOE**

Respondent

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**HON. JOSE RODRIGUEZ**

Petitioner commenced this proceeding by Order to Show Cause in Lieu of Petition and Notice of Petition seeking to be restored to possession of premises located at 413 East 152<sup>nd</sup> Street, Apt. 1C, Room 1R, Bunk #1, Bronx, New York (hereinafter the "subject apartment"). The subject building is owned by respondent 411-415 East 152<sup>nd</sup> Street LLC and is leased to respondent Narco Freedom, Inc. which operates the subject building as Freedom Residence III. Narco Freedom is a not for profit company that provides treatment and counseling programs (hereinafter "the program"). It is licensed by the New York State Office of Alcohol and Substance Abuse (OASAS). However, it does not have a license and is not registered to operate a transitional housing program. Respondent Robert Crespo is the facility director employed by respondent Narco Freedom. All parties are represented by counsel, except "John Doe", the alleged current occupant of the subject apartment, who failed to appear.

At the trial of this matter, petitioner testified that he has occupied the subject apartment since August 2, 2010. Petitioner moved into the subject premises after he was paroled from prison. The New York City Department of Social Services paid rent on petitioner's behalf in the

amount of \$215.00 per month, which represents the shelter allowance pursuant to Social Services' regulations for a single adult. Rent has been paid directly to Narco Freedom from August 2010 through February 2012.

Petitioner testified that on February 1, 2012 he was informed that he was not permitted to continue to occupy his residence. On the following day petitioner spoke to respondent Crespo who informed that since he had graduated from "the program" he could no longer reside in the subject apartment and would be transferred to a different facility in Brooklyn, New York which is for graduates of "the program". Petitioner informed respondent Crespo that he was not interested in transferring to a different residence. Respondent Crespo continued to deny petitioner access to the subject premises. Petitioner acknowledges that he successfully graduated from respondent's alternative treatment program but denies that he agreed to removal from the apartment without legal process. Petitioner left the residence for fear of creating a problem and subjecting himself to arrest and went to the police department. The police contacted respondent Crespo who informed them that petitioner graduated from "the program" and has refused to enter a graduate facility. Petitioner was advised to commence a proceeding in Housing Court. Petitioner's initial proceeding was dismissed due to improper service, petitioner thereafter commenced the instant proceeding.

Respondent argues that petitioner is a licensee and not a tenant. As support for this argument respondent states that the only lease in effect for the subject apartment is between the building owner and Narco Freedom. That said lease does not name petitioner as a tenant and prohibits the subletting and assigning of the premises. Therefore, respondent argues, petitioner is not a tenant and pursuant to the rules of "the program" was subject to removal without legal

process. Respondent further argues that petitioner was not forcibly removed from the premises but voluntarily surrendered possession.

The court concludes that although petitioner is not a tenant of the building's owner, there is, however, a landlord tenant relationship between petitioner and respondent Narco Freedom. Petitioner has lawfully occupied the subject apartment for thirty or more consecutive days and rent was paid on petitioner's behalf on a monthly basis. RPAPL §711 provides:

A tenant shall include an occupant of one or more rooms in a rooming house or a resident, not including a transient occupant, of one or more rooms in a hotel, who has been in possession for thirty consecutive days, or longer; he shall not be removed from premises except in a special proceeding.

The Unlawful Eviction Law NYC Admin. Code §26-521 *et. seq.* prohibits any person from evicting or attempting to evict an occupant of a dwelling unit, after thirty consecutive days of lawful occupancy, by:

(1) using or threatening the use of force to induce the occupant to vacate the dwelling unit; or (2) engaging in a course of conduct which interferes with or is intended to interfere with or disturb the comfort, repose, peace or quiet of such occupant in the use or occupancy of the dwelling unit, to induce the occupant to vacate the dwelling unit...; or (3) engaging or threatening to engage in any other conduct which prevents or is intended to prevent such occupant from the lawful occupancy of such dwelling unit or to induce the occupant to vacate the dwelling unit....

The installations of new locks, denial of access, forcible entry and deprivation of personal property without benefit of any legal process constitutes wrongful eviction. *Romanello v. Hirschfield*, 98 A.D.2d 657, 470 N.Y.S.2d 328 (1<sup>st</sup> Dept., 1983) *aff'd* as modified 63 N.Y.2d 613, 479 N.Y.S.2d 519 (1984); *3855 Broadway Laundromat, Inc. v. 600 West 161 Street Corp.*,

156 A.D.2d 202, 548 N.Y.S.2d 461 (1<sup>st</sup> Dept., 1989). The imposition of an “elaborate, cumbersome and unpredictable procedure” for access following the changing of locks as well as failing to make keys available to the tenant after changing the locks constitutes an illegal lockout. *West Broadway Glass Co., v. Namaskaar of Soho, Inc.*, 11 Misc. 3<sup>rd</sup> 144A, 819 N.Y.S.2d 852 (App. Term 1<sup>st</sup> Dept. 2006); *Riverbay Corp. v. Dawson*, N.Y.L.J. June 20, 1991 p. 25, c. 4 (App. Term, 1<sup>st</sup> Dept.). Inducing occupants into leaving and then preventing their return constitutes an illegal lockout. *Hoskey v. Rivera*, N.Y.L.J. December 4, 1996, p.97, Col. 5 (Civ. Ct., Kings County); Petitioner having occupied the subject apartment in excess of thirty (30) days could not be removed except in a special proceeding.

Abandonment of an apartment has been defined as the “intent to abandon and engaging in some act or failure to act that indicates that the tenant no longer has an interest in the premises.” (See, Scherer, *Residential Landlord-Tenant Law*, § 2:111; *Bay Park Two v. Campionio*, NYLJ, September 23, 1992, at 26, col 4.). Surrender is defined as “a tenant’s relinquishment of possession before the lease has expired, allowing the landlord to take possession and treat the lease as terminated.” (See, *Blacks Law Dictionary*, 7th Ed.). It must be established that two facts concurrently exist: (1) Intention to abandon or relinquish, and (2) some overt act or some failure to act which carries the implication that the owner neither claims nor retains any interest in the subject matter of the abandonment. The burden of proving an abandonment or surrender is on the party seeking to establish it or relying upon such abandonment or surrender. *Sam & Mary Housing Corp. v. Jo/Sal Market Corp.*, 100 A.D.2d 901, 474 N.Y.S.2d 786 (2<sup>nd</sup> Dept., 1984). *Gill v Central Queens Properties Corp.*, NYLJ, June 27, 2001, at 20, col 4. (App Term, 2<sup>nd</sup> Dept.); *Johnson v. Manning*, NYLJ, November 16, 1988, at 21, col 2, (App Term, 1<sup>st</sup> Dept.);

*Mitchell v. City of New York*, 154 Misc.2d 222, 584 N.Y.S.2d 277,(Civ.Ct., Bx. Cty.1992).

The court concludes that petitioner could not be removed except after a special proceeding was commenced and a warrant of eviction has been issued against petitioner. Petitioner did not abandon or surrender possession of the subject apartment and was unlawfully locked out. The court makes no findings regarding the regulatory status of petitioner's occupancy as that issue is not before the court.

Accordingly, it is the finding of this court that petitioner was improperly lockout of the subject apartment.

Therefore, it is **ORDERED** that the petitioner be restored to possession of the subject apartment forthwith.

It is **FURTHER ORDERED** a Judgment of Possession be entered in favor of petitioner and against respondents.

It is **FURTHER ORDERED** that respondent allow entry to the petitioner forthwith, restore the petitioner to possession. In the event that entry is denied petitioner may retain the services of a locksmith and change the locks in order to gain entry to the subject dwelling unit.


In the event that respondent fails to allow the petitioner entry to the subject apartment pursuant to this Order and a forcible entry is required, the New York City Police Department is hereby directed to assist petitioner to re-enter the apartment.

It is **FURTHER ORDERED** that the respondents shall in no manner interfere with the forthwith restoration to the subject apartment by the petitioner.

Damages are reserved for a plenary action.

The foregoing constitutes the decision and order of the Court.

Dated: Bronx, N.Y.  
March 6, 2012

  
HON. JOSE RODRIGUEZ  
JUDGE, HOUSING COURT

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HON. JOSE RODRIGUEZ  
Judge, Housing Part