

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK: HOUSING PART N

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RANA MANERI AND JOSEPH MANERI, :

Petitioners, :

Index No. L & T 075499/2007

-against- :

**DECISION and ORDER**

KELLI BICKMAN, :

Respondent. :

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**DAVID B. COHEN, J.:**

**Introduction**

This is a lockout proceeding brought by petitioners, Rana Maneri and her husband, Joseph Maneri, against respondent, Kelli Bickman. Petitioners allege that on or about May 16, 2007, Rana Maneri was locked out of Apartment 2 (the “apartment”) located at 19 West 8th Street, New York, New York (the “premises”) which they had rented from respondent/tenant of record Bickman.

Over a two-day period, this court conducted a trial and heard the testimony of petitioner, Rana Maneri, and respondent Bickman.<sup>1</sup> At the conclusion of trial on September 26, 2007, the court rendered a final decision orally from the bench in favor of respondent and dismissed the petition. This written opinion is intended to memorialize and elaborate upon the court's oral decision, findings and conclusions. Based upon all the evidence and in consideration of the testimony and credibility of both witnesses, the court makes the following findings of fact and conclusions of law.

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<sup>1</sup> Petitioner Joseph Maneri did not testify at trial.

### **Factual and Legal Conclusions**

To prevail in an actual eviction proceeding, petitioners must prove that the landlord wrongfully removed the tenant from physical possession of the premises (*Barash v Pennsylvania Term. Real Estate Corp.*, 26 NY2d 77 [1970]). The eviction must be the result of a physical expulsion or removal, and even if eviction is from a portion of the premises, the eviction is actual (*Scolamiero v Cincotta*, 128 AD2d 224 [3d Dept 1987], *lv denied* 70 NY2d 607 [1987]). To prevail in a constructive eviction proceeding, the petitioner need not establish a physical removal, but only demonstrate that the landlord substantially and materially deprived the tenant of use of the property through committing wrongful acts or omitting legal duties (*see Johnson v Cabrera dba South Express Courier*, 246 AD2d 578 [2d Dept 1998]).

Here, the petitioners must establish that they had a valid possessory interest in the premises and were entitled to occupancy, and that either or both of them were wrongfully evicted or locked out from the subject premises by the respondent. The court cannot consider monetary damages. The only issue before the court is whether the Maneris were wrongfully locked out and are entitled to be restored to possession.

#### **The Rental Agreement:**

The first issue to be resolved is the nature and terms of the rental agreement between the parties. There is a written agreement of sorts, and there certainly was an oral arrangement, between the parties. In either view of this rental agreement, it appears that the relationship between the parties was intended to be a roommate relationship rather than an exclusive rental on the part of petitioners.

Petitioner Rana Maneri testified that she is a licensed New York State real estate agent who sells and sublets apartments. She and her husband, Joseph Maneri, entered into a lease agreement with Kelli Bickman for the subject premises. According to her, petitioners were to have exclusive possession of the premises, and would pay rent of \$1,800/month, from March through May 2007, and thereafter, starting in June 2007, they would rent on a “month to month” basis, with Bickman giving at least 30 days' notice of termination. Maneri claimed that there was no set date of termination of the leasehold.

Maneri further claimed to have paid approximately \$750 in cash to Bickman and obtained the keys to the apartment on or about March 3, 2007, and the next day she wired another \$2,500 to Bickman's HSBC bank account from her Charles Schwab account.<sup>2</sup> She testified that she and her husband moved into the apartment on March 3<sup>rd</sup> or 4<sup>th</sup>.

Respondent Bickman testified that she is the tenant of record of the apartment, which consists of a living room, kitchen, and two bedrooms, the larger of which opens onto a deck or patio. She met the petitioners when she responded to an advertisement on Craig's List placed by Rana Maneri seeking an apartment for \$1,800/month. The parties met and, on or about March 5, 2007, Bickman agreed to rent the larger of the two bedrooms to Rana and Joseph Maneri. Respondent asserts that the rental agreement was in actuality a roommate agreement wherein the Maneris would share the apartment with her for only a three month period, commencing in March and terminating on May 31, 2007, and that Bickman would be present in the apartment about three to five days per month and would occupy the smaller bedroom.

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<sup>2</sup> Bickman denies having ever received the full amount of rent from petitioners in any given month.

Maneri disputes Bickman's contention that this was a roommate agreement and produced several documents which allegedly support her claims. Far from helping the petitioners' case, these documents support Bickman's contention that, at most, their agreement was a "roommate" contract for a limited duration.

As proof of the alleged agreement between petitioners and respondent, Maneri produced a handwritten, unsigned document (Pet. Ex. 1) dated March 3, 2007 purporting to be a receipt written by Bickman for \$300 cash towards a \$1,000 returnable deposit, and indicating rental of the subject premises to Rana and Joseph Maneri for three months -- March, April and May 2007. The document includes a stated rent of \$1,800/month, with a \$1,000 returnable deposit, and indicates that utilities of approximately \$100/month are to be "split." That "split" in and of itself indicates a roommate agreement. The document says nothing about the lease continuing past May 31, 2007. The document also contradicts Maneri's testimony that she initially paid Bickman approximately \$750 in cash.

Maneri's claim to have a lease agreement which runs beyond May 31, 2007 is also contradicted by her own statements in her verified petition, which she signed and swore to as truthful and correct "under the penalties of perjury." Paragraph 4 of the verified petition alleges an oral agreement with respondent wherein Maneri was permitted to occupy the premises "through May 31, 2007." The petition makes no mention of any claimed interest in or occupancy of the premises beyond the end of May 2007.

The second document is a handwritten, unsigned document (Pet. Ex. 2) in which Bickman provided Ms. Maneri with what appears to be the "house rules" of the tenancy, for example, instructing Maneri to get the mail and leave it in what Bickman describes as "my room". That

document also indicates that utilities - water, gas, and electricity, usually between \$70 - 100/month, “will [be] split according to usage (you 3/4 - me 1/4?).” Again, these notations by Bickman referencing her “room” and proposing to share the utilities based upon usage indicate an understanding that the apartment was to be shared simultaneously by petitioners and respondent.

The third document is a pre-printed, typewritten document (Pet. Ex. 7) entitled “Roommate Contract,” dated March 20, 2007, evidencing that Bickman’s intent was to enter into a “roommate” agreement to share the premises with the Maneris.<sup>3</sup> The lease term stated is from March 5, 2007 through May 31, 2007, at a rent of \$1,800/month. Although Bickman’s signature appears on the last page of the document, Maneri testified that she never signed *and returned* the document to Bickman. On a photocopy of the document (Pet. Ex. 6), there is an illegible signature on the line below Bickman’s which was crossed out by Maneri.<sup>4</sup>

If the roommate contract had been fully executed between the parties, or was otherwise valid, it would clearly evince a roommate agreement; and if not, then all the credible information and evidence surrounding the oral agreement also indicates it is a roommate agreement. Therefore, whether written or oral agreement, the parties entered into a “roommate” contract in which they agreed to share the premises for a duration of only three months – March, April and May 2007.

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<sup>3</sup> Only Rana Maneri’s name is listed as a party to this agreement.

<sup>4</sup> Maneri acknowledges crossing out the writing on the signature line on the last page but asserted that she does not remember what was written and then crossed out.

## **The Lockout:**

The crux of the issue is whether the Maneris have met their burden of proof that they were illegally locked out of the apartment. The court concludes that petitioners did not. Maneri testified that:

1) On Monday, May 14, 2007, she left apartment to get coffee and Bickman's friend locked her out.

2) On Monday, May 14th, in the evening after going to work, she went to the emergency room at St. Elizabeth's Beth Israel Hospital. She was arrested near the hospital on the evening of May 14<sup>th</sup> or the morning of May 15<sup>th</sup>. The police wanted to talk to her about the apartment and about "stealing money" from Bickman and Alex Miranda ("Miranda"), a man to whom Maneri admitted trying to sublet the apartment. Maneri was arrested and charged with grand theft for taking money from Miranda for the rental of Bickman's apartment.

3) On Wednesday, May 16<sup>th</sup>, after being released from custody, she went back to the premises with a police escort and could not get into the apartment. The police officers told Maneri that Bickman had made a complaint and if Maneri used her key to enter the apartment, she would be arrested. Maneri was refused access to the apartment and was threatened not to return.

4) On Thursday, May 17<sup>th</sup>, Maneri went back to the premises during the day and her keys did not work.

Thus, Maneri has variously claimed to have been "locked out" on several different occasions spanning a four-day period from May 14 to May 17, 2007. Her testimony with respect to the lockout was confused at best.

Maneri's claim to having been locked out is undermined by her inability to tell a coherent

story as to when and how she discovered the alleged lockout, as well as by the fact that her verified petition makes no mention of returning to the subject apartment and trying to use her keys and finding that they did not work. Instead, the verified petition claims that on or about May 16th, Rana Maneri was “threatened” with arrest by a police officer “if”she went back to the apartment. Petitioner signed and verified the truth of the contents of her petition “under the penalties of perjury.”

Moreover, advice from a police officer to stay away from one’s alleged victim in a pending felony criminal case is not the legal equivalent of a “lockout.”

Maneri alleged that Bickman changed the locks to the apartment although she does not claim to have witnessed such event nor did she produce any independent witness, such as the police officer(s) who accompanied her, to corroborate her testimony. As noted, however, Maneri also testified that she was locked out on several different occasions -- May 14<sup>th</sup>, 16<sup>th</sup> and finally, on the 17th of May -- but never definitively establishing to the court's satisfaction that a lockout actually occurred. In the face of such contradictory testimony, which is in conflict with the allegations of the verified petition, the court cannot reliability credit Maneri’s testimony. Accordingly, the court finds that Maneri has not met her burden to establish even a prima facie case that she was in fact locked out.

Bickman, on the other hand, testified unequivocally that she never locked petitioners out of the apartment and never changed the locks to the apartment for the duration of the Maneris' tenancy, which terminated on May 31, 2007. Bickman testified that, shortly after the roommate arrangement commenced, she became aware that Rana Maneri had attempted to sublet her apartment, first to an individual named Scott Dillinger (“Dillinger”) and later to Miranda and his friends. Bickman

testified that she returned to the apartment on or about May 10<sup>th</sup> and was herself locked out by Rana Maneri, and was only able to reenter with the intervention of the police. On May 12th, Bickman testified that she discovered two advertisements on Craig's List posted by Rana Maneri on that same date seeking to rent the apartment and asking four to seven months' cash rent in advance.<sup>5</sup> Bickman recognized the descriptions and photograph of the apartment on the Internet as her own. She maintained that she never gave petitioners the right to sublet the apartment and that they were aware that they could not do so.

As to the specifics of the alleged "lockout," Bickman testified that she was present in the apartment with Rana Maneri on May 13, 2007 when two young men arrived at her door with luggage in hand: Alex Miranda and another individual named "Kenneth." Rana Maneri had rented the apartment to them and had taken \$12,000 from them (\$4,000 each from the two young men and a third individual who had not yet arrived). While Maneri and the two young men went out and talked on the back deck, Bickman listened to their conversation and managed to convey to the young men that she held the lease to the apartment and not to give Maneri any money as it was not her apartment to rent, at which point Maneri picked up her handbag and walked out of the apartment and did not return, leaving Bickman alone with the two young men who had just arrived at her apartment. Bickman then called the police who came and prepared a written report of the incident. As a result, Rana Maneri was charged with a "scheme to defraud" for taking approximately \$12,000 (\$4,000 each from Miranda and his two friends) to rent Bickman's apartment.<sup>6</sup>

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<sup>5</sup> Photocopies of the two advertisements (Resp. Ex. D and E) in evidence contain Rana Maneri's email address for responses.

<sup>6</sup> At trial, both petitioner and respondent had testified that the pending criminal case against Rana Maneri was still open and ongoing.



Bickman further testified that she never changed the locks nor excluded petitioners from possession and maintained that Maneri voluntarily left. When Maneri's brother, Michael Hendricks, came with a letter from his sister to collect her belongings, on or about May 16th , Bickman allowed him in. When Rana Maneri returned about a week later, escorted by two police officers, she retrieved some belongings and then left. Bickman allowed her in at that time and had not changed the locks.

Even if Rana Maneri's testimony had clearly established the elements of a lockout, the court does not credit that testimony and, rather, credits Bickman's testimony that she never changed the locks nor excluded Maneri from possession during the period of the rental agreement, which ended May 31, 2007. The court further credits Bickman's testimony that she returned to her apartment on or about May 10<sup>th</sup> and was herself locked out by Maneri, and that it was only with the aid of police who were called to the scene that Bickman was able to reenter her own apartment.

**Credibility:**

The court may consider the credibility of the witness in evaluating the weight and strength of the petitioner's case and the respondent's defenses. With respect to credibility, suffice it to say that Rana Maneri's testimony was not credited by this court in most salient details. Her testimony was not forthright and direct but was confused, equivocal, imprecise on details, evasive, and for the most part, inaccurate.

Ms. Bickman, on the other hand, had the presence and demeanor of a truthful and forthright witness throughout her testimony, and the court credits that testimony.

Maneri has testified in a completely inconsistent fashion on any number of occasions in this

proceeding. To cite just a few examples:

1) Although Maneri claims to be a licensed real estate agent since 2004, she did not file her lockout petition until approximately a month after the alleged lockout.<sup>7</sup> She claims to have made an oral agreement with Bickman and accepted documents without protest which, according to her, did not truly reflect their agreement. It is incomprehensible that a sophisticated real estate professional would conduct her business affairs in this fashion.

2) Maneri gave conflicting testimony regarding the nature of her relationship and real estate dealings with Dillinger and Miranda.

3) Maneri gave confusing and contradictory testimony regarding whether she had any other residences or leased premises at the time she rented the apartment from respondent. In fact, Maneri was impeached in her testimony that she held no other lease at the time as it appears that she leased an apartment at 27 Sickels Street in Manhattan. She also testified to having rented a room in her three-room apartment in Bushwick to Dillinger.

4) Maneri claims to have made various payments to Bickman as rent for the apartment. The evidence submitted by Maneri consists of various documents pertaining to her Charles Schwab brokerage account (Pet. Ex. 3 and 5). She admitted on cross-examination that none of the documents establish conclusively that money was wired from her account into Bickman's HSBC account. These documents were merely requests or "authorizations" for transfers, not confirmations of completed transfers, except in the case of one document which indicates a transfer but does not show the recipient's account. Thus, the court is unable to conclude based on the documents presented whether in fact any transfers of funds were made from Maneri's account to Bickman's account.

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<sup>7</sup> Ms. Maneri's verified petition was signed on June 16, 2007.

Maneri could have presented the appropriate records from her Charles Schwab account but did not.

5) It is incredulous that Maneri, a licensed real estate agent, would continue to make wire payments on the subject premises after she allegedly discovered, within a week or two after moving in, that the apartment had “no heat” and was infested with bedbugs so badly that she was forced to move to a hotel and to seek medical attention.

6) As noted, Maneri has told the court several different versions of the alleged lockout, none of which the court finds credible.

7) Finally, the evidence establishes that on or about May 12, 2007, Rana Maneri advertised Bickman’s apartment for rent on Craig’s List as if she, Maneri, was the true owner and had the authority to do so, in an apparent attempt to victimize other unsuspecting individuals. Maneri gave conflicting and incredible testimony about her reasons for posting the ad: She denied that she had any specific apartment in mind but placed the ad just “in general, to meet people” because she “didn’t feel safe” and “possibly to rent my place or my neighbor’s place two doors down,” and that she could not remember whether or not she had posted the photograph of the apartment that accompanying one of the ads (Resp. Ex. E).

The court cannot believe Maneri’s testimony that she had no specific apartment in mind but that she generally placed ads about apartments. It was clear from the testimony and from the ads themselves, which contained Ms. Maneri’s email address, that these specific listings were for the subject apartment. Equally incredible was her testimony that she could not remember whether or not she had posted the photograph of the apartment that accompanying one of the ads (Resp. Ex. E). Bickman, on the other hand, testified that she recognized the descriptions and photograph in the ads as her own apartment, and the court credits this testimony.

Maneri, who holds herself out as a licensed and experienced real estate professional, used her knowledge of real estate law and practice to gain a foothold in the subject premises by advertising on Craig's List. Bickman was lured in by that advertisement and invited Ms. Maneri and her husband to share the apartment.

Having gained a foothold in the apartment, Maneri systematically proceeded to undercut Bickman in every respect: First, interfering with her leasehold by contacting Bickman's old and new landlords in an effort to cut respondent out of her tenancy arrangement and to convince the owners to provide petitioner with a lease to the apartment in her own name. In addition, as part of her campaign, Maneri made allegations that the premises lacked heat and was infested with bedbugs, allegations which were unsupported by any credible evidence. The only evidence offered was Ms. Maneri's discharge instructions from hospitals showing no specific diagnoses or conditions, and documents from an exterminator which petitioner herself hired. The court does not credit these unsubstantiated allegations, but rather views them as part of a scheme or plan on the part of Maneri to harass and intimidate Bickman to apparently secure an advantage. In addition, crediting Bickman's testimony that her belongings were damaged, altered, and in many cases removed from the apartment, petitioner's allegations were apparently used as a pretext to discard many of Bickman's belongings.

Adding insult to injury, Maneri sought to further profit from Bickman's apartment by attempting to sublease it without any authorization to Dillinger, Miranda and several others. Ultimately, Maneri leased this apartment to Miranda and two other individuals, taking payments of \$4,000 each in advance from these individuals, yet, according to Bickman's testimony, never fully paying her rental obligations to respondent under their rental agreement.

For the foregoing reasons, and in accordance with this court's final decision rendered orally on September 26, 2007, the court finds that petitioners have not met their burden of proving by a preponderance of the evidence that they were locked out of the subject apartment (*see Barash v*

Maneri's convoluted tale of moving Miranda into Bickman's apartment and receiving roughly three separate \$4,000 payments from him and his friends, yet maintaining that the money paid was for the rental of another apartment that Maneri had yet to secure for Miranda, defies both logic and belief. The logical inference is that Maneri knowingly rented Bickman's apartment out from under her to Miranda and his friends, yet never fully paid her rental obligations to Bickman.

Therefore, this court finds Rana Maneri's testimony lacking in credibility, and gives no credibility or weight to petitioners' allegations.

### **Conclusions**

Upon consideration of all the testimony, evidence, and the sworn statements in the verified position, the court concludes that in no respect has Ms. Maneri met her burden of proving that she or her husband were locked out by Ms. Bickman and/or that they are entitled to be restored to the apartment.

Even assuming that the Maneris had shown some right to be restored to possession, at best, petitioners were "roommates" of Bickman for a three-month period under a lease term which expired on May 31, 2007. Inasmuch as any possessory interest that the Maneris may have had in the apartment terminated on May 31, 2007, restoration to the apartment would be futile. The court is not required to restore petitioners to possession in a situation where the remedy would be futile and Bickman would clearly have a right to have them removed again (*see 110-45 Queens Blvd. Garage, Inc. v Park Briar Owners, Inc.*, 265 AD2d 415, 416 [2d Dept 1999]; *Wagman v Smith*, 161 AD2d 704 [2d Dept 1990]).