

733 Hinsdale AB LLC v Rivera
2026 NY Slip Op 30979(U)
March 16, 2026
Civil Court of the City of New York, Kings County
Docket Number: Index No. LT-300326-24/KI
Judge: Shantonu J. Basu
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART T

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733 HINSDALE AB LLC,

Petitioner,

Index No.: LT-300326-24/KI

-against-

DECISION/ORDER

MARIA RIVERA et al.,

Respondent(s)

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Present:

Hon. Shantonu J. Basu

Judge, Housing Court

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of motion sequence 1.

PAPERS

NUMBERED

Notice of Motion, Affirmation, Affidavit & Exhibits..... 1, NYSCEF # 17-27

For the reasons stated below, Respondent’s motion is granted.

PROCEDURAL HISTORY AND FACTUAL BACKGROUND

This is a summary “no grounds” holdover proceeding concerning an alleged apartment allegedly not subject to rent regulation. Petitioner initiated this case by Petition dated December 6, 2023. The case was adjourned numerous times and then adjourned for Respondent to have an opportunity to meet with counsel. On February 10, 2025, Respondent, through her new counsel, interposed an answer asserting defenses related to “de facto” rent stabilization.

The court now considers a fully briefed motion where Respondent seeks summary judgment on the defense of “de facto” rent stabilization pursuant to CPLR § 3212. After Respondent moved for summary judgment on April 15, 2025, the proceeding was adjourned twice for Petitioner’s response and on September 30, 2026, this proceeding was marked submitted without opposition.

LEGAL ANALYSIS

a. *The standard for summary judgment*

Summary judgment is a drastic remedy. Courts should only grant motions for summary judgment motion when it is clear that there is no triable issue of material fact (CPLR § 3212; *Fernandez v Jones*, 76 Misc 3d 861, 867 [Civ Ct Bronx County 2022]).

If the movant meets the burden of showing entitlement to judgment as a matter of law burden, the opposing party must demonstrate that there is an issue requiring trial (*Zuckerman v City of New York*, 49 NY2d 557, 560 [1980]; *cf. Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986] [“Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers.”]; *Exit Empire Realty v Zilelian*, 137 AD3d 742, 743 [2d Dept 2016] [holding that if the movant fails to meet its burden, courts must deny the motion even when the motion is unopposed]).

However, neither the shadowy semblance of an issue nor bald conclusory assertions are sufficient to defeat a motion for summary judgment (*S. J. Capelin Assocs. v Globe Mfg. Corp.*, 34 NY2d 338, 341 [1974]; *Gelb v Bucknell Press, Inc.*, 69 AD2d 829, 830 [2d Dept 1979]).

Additionally, in a special proceeding, if it is clear that no triable issues of fact have been raised, the court must make a summary determination even where no motion is before the court (*Matter of Friends World Coll. v Nicklin*, 249 AD2d 393, 394 [2d Dept 1998]).

b. *Has Respondent met her initial burden to show entitlement to summary judgment?*

At the crux of this proceeding is whether the subject building has six units and therefore is covered by rent regulation. Petitioner brought this case seeking to recover possession and arguing that no lease renewal was required as “[t]he Apartment is not subject to the New York City emergency housing Rent Law or the Rent Stabilization Law of 1969 as amended, because it was vacant after 06-30-71 and is within a building containing less than 6 apartments”

Respondent submitted evidence that this property has six units and no opposition whatsoever was submitted.

As an initial matter, records from the New York City Department of Housing Preservation and Development’s I-card record show that the building was constructed before 1974 (NYSCEF #21) with four residential units. Therefore, respondent must show that at least two more units were created to prove that the premises are subject to rent regulation. Respondent Maria Rivera avers that there are numerous additional apartments (NYSCEF #18). Respondent states under oath that:

I believe that my landlord has rented out more than six dwelling spaces in this building while I have lived here. Specifically, when I first moved in, there were four units on the first floor; three units on the second floor (my floor); and numerous rooms being rented individually in the basement.

This is potentially sufficient evidence on its own as there is no opposition from the landlord.

However, in addition, Respondent attaches three records from the Environmental Control Board (“ECB”) of the New York City Department of Buildings (“DOB”) records that demonstrate that the Subject Building was divided into six or more residential units after January 1, 1974. These ECB violations, one in 2008 and two in 2014, each confirm that the Subject Building contained six or more units at the time of inspections.

ECB Violation 34687471L, dated September 11, 2008, states that the residence has been “altered for occupancy as dwelling for more than the legally approved number of families. The inspection counts nine dwelling units: two legal units per floor on each legal floor, and five (5) SRO units in the basement. This violation notes that “bathrooms and kitchen” had additionally been installed in the basement (NYSCEF # 22).

On October 14, 2014, two ECB Violations were issued 35153008J and 35153007H. ECB Violation 35153008J states again that the residence has been “altered for occupancy as dwelling for more than the legally approved number of families.” It also states that the building is “now altered and occupied as a six family” (NYSCEF # 26). ECB Violation 35153007H is based upon work without a permit creating seven (7) rooms in the basement with two each of water and waste lines for bathroom sink toilets and showers and two each kitchen residential sinks and two electrical lines for two stoves creating two “full class ‘A’ apartments at cellar level (NYSCEF # 27).

Respondent’s affidavit, coupled with copies of the ECB violations are sufficient to show the creation of an additional two or more housing accommodations within the meaning of RSC § 2520.6[a], which defines that “housing accommodation” as “part of any building or structure, occupied or intended to be occupied by one or more individuals as a residence, home, dwelling unit or apartment” (RSC § 2520.6[a]; *see also 124 Meserole, LLC v Recko*, 55 Misc 3d 146[A], 2017 NY Slip Op 50686[U], at * 1-2 [App Term, 2d Dept 2017]; *Wang v Moises*, 82 Misc 3d 1213[A], 2024 NY Slip Op 50294[U] [Civ Ct, Kings County 2024] [collecting cases that explain how courts apply the term “housing accommodation”]).

Since Respondent has made the initial showing, the burden now shifts to Petitioner to lay its proof bare and establish the existence of material issues of fact which require a trial (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]).

a. *Has Petitioner met its burden to lay its proof bare and establish triable issues of fact?*

In response to Respondent's motion, Petitioner submitted no opposition whatsoever.

Where a party would be expected to deny an allegation, a party's failure to do so may be deemed as an admission of that allegation (*see eg. DeCarlo v Sanese*, 65 AD2d 945, 945 [4th Dept 1978]).

Even though the court must render a decision on the version of the facts most favorable to the party opposing summary judgment (*Foster v New York City Hous. Auth.*, 251 AD2d 42 [1st Dept 1998]), vague or conclusory assertions are insufficient to defeat a motion for summary judgment (*S. J. Capelin Assocs. v Globe Mfg. Corp.*, 34 NY2d 338, 341 [1974]; *Gelb v Bucknell Press, Inc.*, 69 AD2d 829, 830 [2d Dept 1979]) and Petitioner has failed to submit even conclusory allegations in opposition.

Furthermore, when viewing the facts presented as a whole, and granting Petitioner every favorable inference as *Foster* requires, this court finds that the ECB violations have sufficient detail to support a finding that the additional units should be considered as additional housing accommodations inasmuch as the ECB violations state that in 2008, there were five units created in the basement in violation of the legal occupancy of the premises and in 2014, that there were also more than the legally approved number of families, and that there were seven units created in the basement in addition to the four legal units on the first and second floors (*see Bertie v Norman*, 82 Misc 3d 1212[A], 2024 NY Slip Op 50293[U] [Civ Ct, Kings County 2024] ["As there were agency determinations that there were two illegal units in the basement, the court exercises its discretion to adopt that finding."]; *see also Ortiz v Sohngen*, 56 Misc 3d 19 [App Term, 2d 2017] ["Here, the record of the ECB violation . . . is prima facie evidence that the premises contained more than the approved six residential units. Other than bare statements in affidavits of landlord and a person who was sometimes landlord's realtor, to the effect that the building has always been composed of five residential units and one commercial unit, landlord has not provided sworn proof on personal knowledge to rebut the DOB's determination."]).

It does not matter that the additional units were not legally constructed. It is often the case that the additional units are illegal. Once a sixth unit is added, the entire building comes under the purview of rent-stabilization, even if the use of the illegal sixth unit has been discontinued (*Robrish v Watson*, 48 Misc 3d 143[A], 2015 NY Slip Op 51299[U] [App Term, 2d Dept 2015]).

Since Respondent's affidavit is sufficient, and the ECB violation orders speak for themselves, and Petitioner failed to deny Respondent's allegation of at least a fifth and sixth unit, this court is constrained by the Appellate Term's binding precedent in *Rashid*

to grant Respondent's motion for summary judgment (*see Lashley-Smith v Bradshaw*, 66 Misc 3d 143[A], 2020 NY Slip Op 50179[U] [App Term, 2d Dept 2020] [affirming the housing court's grant of summary judgment which deemed the apartment to be rent-stabilized]).

CONCLUSION

For the reasons stated above, Respondent's motion sequence 1 for summary judgment is granted. The instant proceeding is therefore dismissed.

This constitutes the decision/order of this court.

Dated: March 16, 2026
Brooklyn, NY



Hon. Shantonu J. Basu
Housing Court Judge