

<b>191 Audubon Corp. v Gomez</b>
2026 NY Slip Op 31109(U)
February 6, 2026
Civil Court of the City of New York, New York County
Docket Number: Index No. LT-314072-24/NY
Judge: Yekaterina Blinova
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

Civil Court of the City of New York  
County of New York

Index # **LT-314072-24/NY**

191 AUDUBON CORPORATION,

Petitioner(s)

**Decision / Order**

-against-

DARLIN GOMEZ, "John" "Doe"; "Jane" "Doe"

Mot seq 01

Respondent(s)

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:  
NYSCEF Doc No. NYSCEF Doc Nos. 11 - 17, 20, 22.

In this nonpayment proceeding, respondent moves for dismissal (mot seq 01) under CPLR §§ 3211(a)(1), (7), based on alleged deficiency of the rent demand, and under CPLR §§ 3211(a)(1), (7) and MDL §§ 301-302, alleging that occupancy of the subject building in violation of the building's certificate of occupancy. Petitioner opposes.

Respondent argues that petitioner should be precluded from collecting rent for the subject premises because there exist two open Department of Buildings violations finding uses of the building contrary to that permitted by the certificate of occupancy (NYSCEF Doc Nos. 16, 17). In opposition petitioner argues that a landlord is not precluded from recovering rent for apartments unaffected by the certificate of occupancy violations.

MDL §301 requires that any multiple dwelling built or altered after April 18, 1984 must have a certificate of compliance or occupancy. MDL § 302(b) dictates that “no rent shall be recovered” by the owner of a building which is occupied in violation of MDL § 301. Where a “building lacks a valid certificate of occupancy, landlord is precluded from seeking to recover rent from tenant” (*E. Harlem MEC Parcel C, L.P. v. Smalls*, 82 Misc 3d 127(A), 205 NYS3d 841 [App Term 1st Dept 2024]); *see also Chazon, LLC v Maugeness*, 19 NY3d 410, 415 [2012]; *Barrett Japaning, Inc. v. Bialobroda*, 190 AD3d 544, 140 NYS3d 498 [1st Dept 2021]).

Petitioner’s opposition focuses primarily on older, pre-*Chazon* precedent which found certificate of occupancy violations prevent recovery of rent only for spaces to which the violations apply. However, more recent decisions unequivocally hold that recovery of rent is barred for all portions of the building, even if the apartment for which rent is sought is not the subject of the certificate of occupancy violation (*Ormonde Equities LLC v. Jacoby*, 200 NYS3d 290, 290 [App Term 1<sup>st</sup> Dept 2023]; *West 48th Holdings LLC v. Eliyahu*, [App Term 1<sup>st</sup> Dept 2019]).

Here, it is essentially undisputed by petitioner and a matter of public record that at least one violation exists for the subject premises for occupancy contrary to that allowed by the certificate of occupancy, “from legal occupancy two apartments on the first floor to illegal occupancy with dry cleaning service business” (NYSCEF Doc No. 16). As respondent established their defense under MDL §§ 301-302 as a matter of law, respondent’s motion seeking dismissal of the proceeding is granted. The Court does not reach the balance of respondent’s arguments for dismissal as moot.

Accordingly, it is ORDERED that respondent’s motion (mot seq 01) is granted, and petition is dismissed. This constitutes the decision and order of this Court.

Date: 2/6/26

YEKATERINA BLINOVA  
JUDGE, HOUSING COURT

\_\_\_\_\_  
Judge of the Civil Court