

<b>Matter of Weldon v New York City Hous. Auth.</b>
2007 NY Slip Op 30173(U)
March 9, 2007
Supreme Court, Queens County
Docket Number: 0003462
Judge: Allan B. Weiss
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable, ALLAN B. WEISS IAS PART 2  
Justice

In the Matter of the Application of  
FLORA WELDON

Petitioner

-against-

NEW YORK CITY HOUSING AUTHORITY

Respondent.

Index No.: 3462/07

Motion Date: 2/28/07

Motion Cal. No.: 25

Motion Seq. No.:1

The following papers numbered 1 to 9 read on this application for an order directing her landlord, the New York City Housing Authority to provide entry to the Department of Housing Preservation and Development (DHPD) so it may inspect the apartment for violations.

PAPERS  
NUMBERED

Order to Show Cause-Petition-Exhibits .....	1 - 5
Notice of Cross-Motion-Affidavits-Exhibits ...	6 - 9
Replying Affidavits.....	

Upon the foregoing papers and after a conference on February 28, 2007 at the motion calendar, it is **ORDERED** that the cross-motion is denied and the application is granted to the extent that it is

**ORDERED** and **ADJUDGED** that the petitioner's landlord, the New York City Housing Authority (NYCHA), shall provide access and open the petitioner's apartment, Apt. 8D, at the Beach 41st Street Houses, 453 Beach 40th St., Far Rockaway, N.Y., to enable the DHPD to conduct a full inspection of the apartment.

This is an application by petitioner, the tenant of record of apartment 8D at the Beach 41st Street Houses, 453 Beach 40th St., Far Rockaway, N.Y., owned and operated by the NYCHA, for an Order directing the NYCHA to provide DHPD with access to petitioner's apartment to conduct an inspection. Petitioner resides at New Providence in Manhattan, a shelter, as a result of

her apartment being uninhabitable. Although DHPD had previously found numerous violations, it has been unable to conduct a recent inspection to determine whether the conditions have been cured. Petitioner claims that she granted the respondent written authorization to admit DHPD in the context of a recent action in the Housing Court in New York City, however, respondent still refuse to provide access. DHPD attempted to inspect the apartment, but has been unable to do so because it cannot gain access. The petitioner maintains that she cannot be present at the apartment to admit the DHPD for a further inspection because she resides at a shelter, and the manager, Miss Young, at the Beach 41st Street Housing refused to let DHPD into the apartment to conduct an inspection despite her written authorization to do so.

The respondent cross-moves to dismiss the petition pursuant to CPLR 3211 and CPLR 7801 on the ground that the petition fails to state a cause of action under Article 78. Respondent's have incorrectly denominating this proceeding as an Article 78. It is merely a special proceeding (CPLR Article 4) seeking emergency equitable relief in a summary fashion which is the purpose of a special proceeding (see Alexander, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR C401:1 at 440). Accordingly, the respondents cross-motion is denied and the court will address the merits of the application.

The respondent does not deny the essential allegations in the petition and admits that the petitioner is the tenant of record and asserts that it is the petitioner's responsibility to provide DHPD with access to the apartment to conduct an inspection and NYCHA has no such obligation.

Under ordinary circumstances, where the tenant occupies and is in possession of the apartment such a claim may be appropriate. However, in view of the undisputed fact that the tenant does not and cannot occupy the apartment because of its uninhabitable condition, the respondents claims are unpersuasive.

Accordingly, the petition is granted to the extent set forth above.

Dated: March 9, 2007  
D# 30

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J.S.C.