

Department of Hous. Preserv. & Dev. v Thomas
2021 NY Slip Op 32566(U)
December 3, 2021
Civil Court of the City of New York, Kings County
Docket Number: Index No. L&T 302216/21
Judge: Heela D. Capell
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART O

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DEPARTMENT OF HOUSING PRESERVATION
AND DEVELOPMENT,

Petitioner,

Index No. L&T 302216/21

- against-

**DECISION/ORDER
AFTER TRIAL**

LAQUASIA THOMAS, ALFRED THOMPSON,
165 CONOVER STREET ASSOC. LP,

Respondents.

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Present: Hon. HEELA D. CAPELL
Judge, Housing Court

After trial, the court makes the following findings and determination:

The Department of Housing Preservation and Development (“HPD” or “Petitioner”) commenced this action against Laquashia Thomas, Alfred Thompson and 165 Conover Street Associates, L.P, (“Respondents”) seeking an order directing to Respondents to correct hot water violations HPD issued at 165 Conover Street, Brooklyn, New York (“Building”) as well as an award of civil penalties against the Respondents.

At trial, HPD introduced into evidence: a certified Multiple Dwelling Registration for the Building listing 165 Conover Street Assoc., L.P. as the owner of the Building and Laquashia Thomas and Alfred Thompson as agents for the Building (Pet Ex. 1); a certified deed for the Building (Pet Ex. 1A); affidavits of service in connection with this action (Pet Ex. 2); HPD’s report of heat and hot water violations for the Building from January 7, 2021 through March 10, 2021 listing five violations for lack of hot water (Pet Ex. 3); 7 certified violation notices for lack of hot water at the Building from March 5, 2020 through March 10, 2021 (Pet Ex. 3A); a spreadsheet of the calculation of civil penalties HPD is seeking against the Respondents in this

action (Pet Ex. 4); and an amended spreadsheet reflecting a calculation of damages HPD is seeking against the Respondents for 1/7/21; 2/23/21 and 3/10/21, which removes two violations contained in Petitioner's Exhibit 4 from the tally (Pet Ex. 5).

The total amount of penalties sought by HPD is \$244,500.00 (Pet Ex 5). In addition to providing a spreadsheet calculating the amount of penalties requested, HPD's counsel explained that the penalties were calculated based on the number of days the violations were open without correction. The first violation is calculated at \$250.00 per open day and the second two were calculated at \$1,000.00 per day. HPD is seeking penalties for the following dates: January 7, 2021 through February 2, 2021 for violation number 13975388 (total of 54 days at \$250.00 per day = \$13,500.00); February 23, 2021 through June 4, 2021 for violation number 14038252 (total of 102 days at \$1,000.00 per day = \$102,000.00) and March 10, 2021 through July 16, 2021 for violation number 14068069 (total of 129 days at \$1,000.00 per day = \$129,000.00) (Pet Ex. 5).

Respondents called one witness on their defense. Tyrone Madden testified that he has been employed for ten years by New Star Development as the Building's "supervisor" and that New Star "takes care of buildings, cleans buildings and builds buildings." His job responsibilities include dealing with heat and hot water issues, garbage, gas and repairs at the Building. There are three hot water tanks and three storage tanks on the first floor of the Building that service the hot water. All six tanks have been in place for the ten years since Madden has been supervising the Building. Madden testified the tanks were damaged during Hurricane Sandy because the Building is in a flood zone, but that management "dried them out." Madden explained that if he receives a hot water complaint, he checks the boiler, pump, which sends the hot water to the units, and water temperature.

At Respondent's request, the court took Judicial Notice that on March 16, 2020 Governor Cuomo announced a State of Emergency in New York State due to the COVID-19 pandemic. Madden asserted that the hot water temperature dropped during this period because an increased number of occupants were running the hot water at once. However, the hot water temperature number never dropped to zero, which would indicate an issue with the hot water tank.

The witness maintained that there are between 34 and 38 units in the Building. From March 10, 2020 to March 16, 2021, especially early in the day, the hot water temperature would not rise to the required 120 degrees because every tenant was staying home and burdening the hot water system. It was therefore "impossible" for every tenant to get the requisite 120 degree water at that time. Mr. Madden testified that he received a few complaints from tenants at that time for lack of hot water and conceded that the temperature could have gone down to 90 degrees. Mr. Madden now checks the water temperature every other day and maintains that it is consistently 120 degrees. The witness insisted that the hot water system has not been serviced since the pandemic began.

On cross examination, Mr. Madden acknowledged that he is not a licensed or certified plumber and that if the hot water system required repair he would not repair it himself. He did not have personal knowledge of the facts that occurred on the dates the violations in Petitioner's Exhibits 3 and 3A were issued.

In closing, HPD argued that Respondents failed to meet their burden to rebut the presumption that violations continued to exist as they did not produce any documentation of correction nor certify the violations as corrected. Respondents argued that the amount of penalties sought were exorbitant, that the Respondents run a low income and low rent building

for people in need, and that the hot water system was not broken - only overtaxed due to the pandemic.

HPD's violation records (Pet Ex. 3) are *prima facie* proof of the existence of the conditions stated therein. (MDL § 328[3]; *see also, Dept. of Hous. Preserv. & Dev. of the City of N.Y. v Knoll*, 120 Misc 2d 813 [App Term, 2d Dept 1983]). HPD's certified violations (Pet Ex. 3A) create a presumption that the conditions continue until they are certified corrected. (HMC § 27- 2115[k][1][i], *Department of Hous. Preserv. & Dev. Of City of N.Y. v De Bona*, 101 AD2d 875, 875 [2d Dept 1984]). The enactment of the presumption of a continuing violation protects the tenant's rights by removing the onerous burden of proof that the violation existed on every date in question" (*Id.*).

Here, HPD is seeking penalties for three "C" violations based upon lack of hot water. HMC § 27- 2115(c) & (k) provide that "C" violations must be corrected within 24 hours or HPD is entitled to civil penalties in the amount of \$250.00 per day for the first violation and \$1000.00 per day for subsequent violations.

It is an owner's responsibility to certify that the violation has been corrected, and "failure to file such certificate of compliance shall establish a *prima facie* case that such violation has not been corrected" (HMC § 27-2115[f][7]). However, a landlord can rebut the presumption that the violations exist by providing "documentary evidence in the form of a certification of compliance or repair receipts or detailed testimony of repairs being done so as to show when and what repairs were specifically corrected" (*Dept. of Hous. Preserv. & Dev. of City of N.Y. v Deka Realty Corp., et. al.*, N.Y.L.J., June 16, 1992, page 36, col. 6 [App Term 2d Dept 1992], citing *Department of Hous. Preservation & Dev. v Knoll*, 120 Misc 2d 813).

Here, it is undisputed that the hot violations at the Building were never certified as corrected. Respondents failed to present any documentary evidence that they corrected the violations nor that there was adequate hot water at the Building after the violations were issued. Respondents also failed to provide testimony from a witness with personal knowledge of the facts that occurred on the dates the violations were issued, and any expert testimony about the state of the hot water system after the violations were issued. Accordingly, Respondents failed to rebut Petitioner's *prima facie* case. (*Id.*)

After trial, the court finds that HPD is entitled to an order directing Respondents to correct the hot water violations at the Building and a judgment against Respondents in the amount of \$244,500.00,¹ and an order to correct the violations. HPD is directed to draft an order to correct and submit same on NYSCEF for the court's signature within ten days. While the court is mindful that Respondent services some low income residents, its residents are still entitled to hot water as required by law, and the owners and agents remain obligated to close their violations with HPD pursuant to HMC § 27-2115[k][1][i]. Moreover, the imposition of civil penalties is meant to deter landlords from not complying with law in the future (*See generally, Dept. of Hous. Preserv. & Dev. of City of N.Y. v Deka Realty Corp., et. al., supra*).

Accordingly, IT IS ORDERED that:

HPD is awarded a judgment in its favor against the Respondents in the amount of \$244,500.00; and

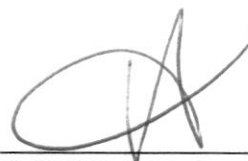
Respondents are ordered to correct the violations contained in Petitioner's Exhibit 3A.

Petitioner shall submit an order to correct for the court's signature via NYSCEF within 10 days.

¹Notably, HPD is not seeking penalties for the violations through the date of trial, but rather from January 7, 2021 through February 2, 2021 for the first violation; February 23, 2021 through June 4, 2021 for the second violation; and March 10, 2021 through July 16, 2021 for the third violation (Pet Ex. 5).

This constitutes the decision and order of the court.

Dated: Brooklyn, New York
December 3, 2021

A handwritten signature in black ink, appearing to be 'H. D. Capell', written over a horizontal line.

HON. HEELA D. CAPELL
J.H.C.