

Cohen v Clinton HDFC-NRP Lease
2021 NY Slip Op 32963(U)
August 25, 2021
Civil Court of the City of New York, New York County
Docket Number: Index No. L&T 000006-21/NY
Judge: Frances A. Ortiz
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CITY OF NEW YORK
COUNTY OF NEW YORK, HOUSING PART B

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ANDREA COHEN,
Petitioner, Tenant,

-against-

**Index No. L&T 000006-21/NY
DECISION AND ORDER**

CLINTON HDFC-NRP LEASE, "John Doe,"
"Jane Doe"
Respondent(s)-Owner(s)
-----X

FRANCES A. ORTIZ, JUDGE¹

Recitation as required by CPLR 2219(a), of the papers considered in the review of respondent’s motion for partial summary judgment or granting motion to strike the petition that alleges harassment and sanctions for frivolous conduct.

Papers	Numbered
Notice of Motion, Affirmation, Exhibits & Memorandum of Law.....	1/NYSCEF 5-26
Petitioner’s Affirmation & Affidavit in Opposition & Exhibits.....	2/ NYSCEF 4
Reply Affirmation.....	3/NYSCEF 27

Upon the foregoing cited papers, the Decision/Order of this Court on this motion is as follows:

This is an HP Action originally brought by tenant/petitioner against respondent/owners seeking an order to correct Housing Maintenance Code violations at the subject premises and a finding of harassment. Petitioner brought a prior HP action on October 29, 2020 (*Andrew Cohen v. Joseph Restuccia and Clinton Housing Development Company and New York City Department*

¹ This Court gratefully acknowledges the assistance of law student intern, Daniel Thaler, with this decision and order.

of Housing Preservation and Development, Index no. 857/20) in which she alleged violations of the Housing Maintenance Code. This Court on November 24, 2020 issued an Interim Order to Correct the Housing Preservation and Development (“HPD”) violations for the subject premises, and marked the case off calendar without prejudice to restore on default.

Subsequently, petitioner commenced the current HP Action through submission of an order to show cause signed by this Court on January 5, 2021. On January 28, 2021, this Court issued an Interim Order to Correct all new violations of the Housing Maintenance Code, based on new violations reported in the January 13, 2021 Inspection Report. The Order adjourned the harassment portion of the petition to March 4, 2021.

Respondent/owner on February 1, 2021 served a Demand for a Verified Bill of Particulars with respect to the harassment claims. Petitioner served the responses in the Verified Bill of Particulars on April 5, 2021, and the matter was again adjourned to April 12, 2021. Another Interim Order to Correct was issued and the matter was adjourned to May 26, 2021 for respondent’s motion.

Now, respondent/owner moves for partial summary judgment arguing for dismissal of petitioner’s harassment claim, and the ordering of penalties and sanctions against petitioner for an alleged “unresponsive” Bill of Particulars.

The harassment petition indicates that the respondent/owner did not comply with prior repair orders of the court and details issues such as lack of proper plumbing, water damage to walls, exposed studs, no working refrigerator or stove, damage to the apartment due to management’s vandalism, lack of carbon monoxide and smoke detectors, buckled wood floors, missing toilet seat, vermin and in sum an uninhabitable apartment.

Petitioner in opposition to the motion submits an affidavit detailing her prior litigation history with respondent/owners dating back to a 2005 holdover (LT # 75778/2005) and a recent illegal lockout (LT # 5463/2020). The illegal lockout proceeding resulted in a post hearing written decision by Judge Evon Asforis finding that respondent/owners had illegally locked petitioner from the subject premises. The Order restored her to possession of the subject premises on September 29, 2020. Upon restoration to the subject premises, petitioner found the subject premises littered with trash, including empty whiskey bottles, used condoms, broken and smashed personal items, and missing allegedly stolen valuables and cash. Petitioner also highlights the psychological harm that resulted from being illegally locked out and being restored to find the subject premises in such a state. (*Cohen Affidavit* ¶ 16, *Exhibit "G"/NYSCEF 4*), Petitioner alleges that the subject premises were rampant with rodent feces, broken plumbing, inoperative stove, inoperative refrigerator, and a host of other unpleasant conditions, repeatedly devoid of repair. Exhibit "I". She states that she made repeated requests to the respondent/owners, specifically the super and the management to address the repairs, that the owners refused to make repairs despite Orders to Correct issued by this Court on November 24, 2020, January 28, 2021 and April 12, 2021 (*Id* ¶s17 & 21). As such, petitioner claims she, her disabled son and the rest of the family have not been able to move back into the subject premises. (*Id* ¶24).

Respondent/owners in reply argue that petitioner has not provided documentary evidence to prove the state of the subject apartment was caused by the owner, nor that there have been alleged repeated requests for repairs to the owner, and that petitioner has failed to show the statutory elements for harassment.

DISCUSSION

According to the *New York City Administrative Code § 27-2005 (d)*, “[t]he owner of a dwelling shall not harass any tenants or persons lawfully entitled to occupancy of such dwelling.” Harassment is defined as “any act or omission by or on behalf of an owner that causes or is intended to cause any person lawfully entitled to occupancy of a dwelling unit to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy” *NYC Admin Code § 27-2004 [a][48]*. Harassment includes “repeated interruptions or discontinuances of essential services, or an interruption or discontinuance of an essential service for an extended duration or of such significance as to substantially impair the habitability of such dwelling unit” *NYC Admin Code § 27-2004 [a][48][2][b]*, and “an interruption or discontinuance of an essential service that (i) affects such dwelling unit and (ii) occurs in a building where repeated interruptions or discontinuances of essential services have occurred ” *NYC Admin Code § 27-2004 [a][48][2][b-1]*. Upon a finding of harassment, tenants may seek an order from a court restraining an owner from engaging in such conduct, and to impose civil penalties of not less than \$2,000.00 and not more than \$10,000.00 *NYC Admin Code § 27-2115 [m][2]*. Petitioner does not need to establish intent. *NYC Admin Code § 27-2004(a)(48)(ii)* states that the term harassment “includes one or more of the following acts or omissions, provided that there shall be a rebuttable presumption that such acts or omissions were intended to cause such a person to vacate such dwelling unit or to surrender or waive any rights.”

Summary judgment is appropriate where the movant establishes the claim by tender of evidentiary proof in admissible form sufficiently to warrant the court as a matter of law to direct judgment in its favor. *Rodriguez v. City of New York*, 31 N.Y.3d 312, 317 (2018); *Friends of Animals, Inc. v Associated Fur Manufacturers, Inc.*, 46 N.Y.2d 1065 (1979). The failure to make

such a prima facie showing requires denial of the motion regardless of the sufficiency of the opposing papers. *Alvarez v Prospect Hospital*, 68 N.Y.2d 320 (1986). In determining the motion, the Court must be mindful that summary judgment is a drastic remedy and should not be granted when there is any doubt as to the existence of a triable issue. *Rotuba Extruders, Inc. v Ceppos*, 46 N.Y.2d 223, 231 (1978). The evidence must be considered in the light most favorable to the party opposing the motion, *Henderson v City of NY*, 178 A.D.2d 129, 130 (1st Dept 1991), and the motion must be denied where conflicting inferences may be drawn from the evidence. *Nowacki v Metropolitan Life Ins. Co.*, 242 A.D.2d 265, 266 (2nd Dept 1997).

Here, petitioner in her petition and affidavit in opposition to the motion for partial summary judgment has facially shown harassment under *New York City Administrative Code § 27-2005 (d)*. Specifically, such factors articulated are the claim that there have been repeated requests for repairs that have been unanswered and the failure to address the repairs has prevented petitioner from resuming occupancy of the premises with her family, even after a judicial determination finding of an unlawful eviction against the respondent/owners and a forthwith judgment of possession awarded to petitioner for restoration to the subject premises.

Further, respondent's papers in support of the motion have not established by tender of evidentiary proof in admissible form sufficiently to warrant this Court as a matter of law to direct judgment in its favor. *Rodriguez v. City of New York*, *supra*. There are issues of fact that remain regarding the alleged continued lack of repairs and the circumstances surrounding the conditions of the subject premises.

This Court will now turn to respondent/owners request pursuant to *CPLR §3042 (c) – (e)* and *CPLR §3126 (c)* to impose penalties, namely to strike the part of the instant petition that

seeks a finding of harassment, against the petitioner for providing an unresponsive Bill of Particulars.

The purpose of a demand for bill of particulars is to seek further amplification of a pleading. It affords the seeking party an opportunity to obtain a more thorough picture of the claim being particularized. It prevents surprise at trial and is designed to limit the proof. (*Siegel, N.Y. Prac. §238 (6th ed.)*). The responses to a demand for a bill of particulars must clearly detail the specific acts attributed to the respondent. However, the responses need not provide evidentiary material or information. *Felock ex rel. Felock v. Albany Med. Ctr. Hosp.*, 258 A.D.2d 772 (3rd Dep't 1999); *Ginsberg v Ginsberg*, 104 A.D.2d 482 (2nd Dep't 1984).

If a party receiving the responses to the demand for a bill of particulars serves a bill that the seeker deems inadequate, the seeker may not reject or return the verified bill. (*Siegel, N.Y. Prac. §241 (6th ed.)*). Instead, the seeker's remedy is to move pursuant to *CPLR §3042 (c)* to compel compliance. Here, respondent/owners move pursuant to *CPLR §3042 (c)* to compel compliance with the responses to the bill of particulars and based on such compliance ask pursuant to *CPLR §3126 (c)* to strike the part of the petition that seeks a finding of harassment against the respondent/owners.

Upon review of all twenty-five (25) responses made by petitioner to the demand, this Court does not find the responses were inadequate. The responses were thorough and adequately addressed. Rather, respondent/owners are simply unsatisfied with the responses provided in the bill of particulars. Accordingly, respondent/owner's motion to compel petitioner to respond more specifically to the demand for bill of particulars or to strike the harassment petition is denied.

It is worth noting that *NYC Civil Court Act §1101* indicates CPLR disclosure rules are applicable in civil court cases except that *CCA §1101* indicates that

“... In an action to impose or collect a civil penalty for violation of the multiple dwelling law or the housing maintenance code of the New York city administrative code, **leave of court**, obtained by motion to the housing part thereof, shall be required for disclosure or **for a bill of particulars** except for a notice under CPLR 3123, which leave shall be granted only upon a showing that such disclosure or bill of particulars is necessary to the prosecution or defense of the action. If it is so noted on the summons, any motion for disclosure or a bill of particulars must be made in writing and on notice and must be filed with the clerk with proof of service not later than thirty days after joinder of issue.”

Here, the instant HP Action demands correction of violations and finding of harassment which are actions that seek to impose a civil penalty for violation of the housing maintenance code of the New York City Administrative Code. As such, the respondent/owners would need leave of court to serve a demand for a bill of particular on petitioner. However, respondent/owners did not obtain leave of court to serve a demand for bill of particulars in these actions.

Finally, this Court denies respondent/owner’s request to impose sanctions against petitioner and her attorney. Under *22 NYCRR § 130-1.1*, this Court is permitted wide discretion to impose sanctions against an attorney who engages in frivolous conduct before the court. However, the claims made by respondent/owners against petitioner and her counsel do not even remotely fall within the meaning of frivolous conduct under *22 NYCRR § 130-1.1*.

The matter is restored to the Part B calendar for September 24, 2021 at 11 am for status conference on the harassment petition, and if the matter is not resolved then, it will be transferred to Part S for trial, after a preliminary conference order is prepared with the parties.

ORDERED: Respondent’s motion for partial summary judgment is denied..

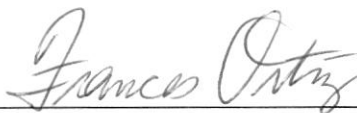
ORDERED: Respondent’s motion to compel compliance with the demand for bill of particulars and to strike the harassment petition is denied.

ORDERED: Respondent's motion for sanctions is denied.

This is the decision and order of this court. Copies of this decision will be uploaded to NYSCEF.

Date: August 25, 2021

New York, NY



Judge, Civil/Housing Court
Frances Ortiz

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