

Torres v Sedgwick Ave. Dignity Devs.

2021 NY Slip Op 33000(U)

April 22, 2021

Civil Court of the City of New York, Bronx County

Docket Number: Index No. 307644/20

Judge: Shorab Ibrahim

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This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK
 COUNTY OF BRONX: HOUSING PART H

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 JASON TORRES,

Petitioner,

Index No. 307644/20

-against-

SEDGWICK AVENUE DIGNITY DEVELOPERS,
 JOHN WARREN & MHR MANAGEMENT, INC.,

ORDER TO CORRECT AND
 NOTICE OF VIOLATIONS
 PURSUANT TO CPLR 409(B)

Respondents-Owners,

and

DEPARTMENT OF HOUSING PRESERVATION
 & DEVELOPMENT OF THE CITY OF NEW YORK,

Co-Respondents.

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 IBRAHIM, J.:

The petition in this "HP proceeding" alleges that petitioner is the tenant or lawful occupant of the subject premises (2629 Sedgwick Avenue, Apt. 4D, Bronx, NY 10468, that respondents are "owners" under the Housing Maintenance Code, and that violations were issued for petitioner's apartment.¹

A violation status report available on the website of the Department of Housing Preservation and Development ("DHPD"), and admissible pursuant to CPLR 4518 and MDL 328(3), shows several open violations in the subject apartment, issued on January 30 2015; May 14 and December 18, 2018; October 10 and October 28, 2019; July 16, August 5, September 17 and November 13, 2020; and January 28, February 16 and April 14, 2021.² A copy of the violation status report printed on April 19, 2021 is annexed hereto.

Respondents have appeared remotely by counsel and have interposed an answer. It is not disputed that petitioner is the tenant or lawful occupant of the subject apartment or that respondents are proper parties. While several violations have been corrected, there has been no

¹ The Building Registration Summary Report maintained by DHPD lists Sedgwick Avenue Dignity Developers, LLC as the corporate owner of the subject building, John Warren as the registered managing agent and MHR Management, Inc. as the managing agent company.

² The court takes notice of the open violations pursuant to CPLR §4518 and MDL §328(3).

true defense to an Order to Correct stated in the answer. (*see D'Agostino v Forty-Three E. Equities Corp.*, 12 Misc. 3d 486, 489-490 [Civ Ct, New York County 2006] *aff'd on other grounds*, 16 Misc. 3d 59 [App Term, 1st Dept 2007])[“ It is not a defense to an order to correct that the tenant refused access to repair the violation”] [internal citation omitted]; *Vargas v 112 Suffolk St. Apt. Corp.*, 66 Misc. 3d 1214[A] at *3 [Civ Ct, New York County 2020] [“[t]he few defenses to an order to correct include lack of standing or jurisdiction, completed repairs, that conditions are not code violations, that a notice of violation is facially insufficient, that the respondent is no longer the owner, and economic infeasibility”] [internal citations omitted]; *Allen v 219 24th St. LLC*, 67 Misc. 3d 1212(A), *17, 126 NYS3d 854 [Civ Ct, New York County 2020]; *Morales v Balsam*, 69 Misc. 3d 1204(A), *1-2, 2020 NY Slip Op 51176(U) [Civ Ct, Bronx County 2020]). Additionally, the existence of violations of record are prima facie proof they continue to exist. (*see DHPD v Living Waters Realty, Inc.*, 14 Misc. 3d 484, 487 [Civ Ct, New York County 2006]).

In view of the foregoing, pursuant to CPLR 409(b), [“The court *shall* make a summary determination upon the pleadings, papers and admissions to the extent that no triable issues of fact are raised.”], and upon petitioner’s request, it is hereby ORDERED that respondents shall correct the “CLASS C” and “CLASS B” violations within 30 days of this order and “CLASS A” violations within 90 days of this order. (*see also New 100 Cipriani Units LLC v. Board of Managers of 110 E 42nd Street Condominium*, 766 AD3d 550, 551, 2018 NY Slip Op 08096 [1st Dept 2018]; *1091 River Avenue LLC v. Platinum Capital Partners, Inc.*, 82AD3d 404, 2011 NY Slip Op 01518 [1st Dept 2011]).

The court notes that the November 20, 2020 petition alleges, *inter alia*, roach infestation and persistent leaks. Open violations for leaks at the bathroom ceiling date back to October 2019 and for open violations for roach infestation date back to August 2020.³ In fact, just days before this case was heard on April 19, 2021, additional violations for those very same issues were again placed on or about April 14, 2021.⁴

Additionally, closed violations for leaks in the apartment date back to July 2006.⁵ In fact, there are three (3) closed “CLASS A” violations for leaks from July 2006 through June 2017,

³ See the DHPD violation status report printed on April 19, 2021.

⁴ See Id.

⁵ The court takes notice of the closed violation summary report pursuant to CPLR §4518 and MDL §328(3).

twenty one (21) closed "CLASS B" violations for leaks from July 2006 through February 2019, and two (2) closed "CLASS C" violations for leaks in January 2015.⁶ These leaks occurred at the (i) ceiling in the kitchen; (ii) ceiling and south wall in the bathroom; (iii) south wall, west wall and ceiling in the second room from north; (iv) ceiling in the second room from east; and (v) south wall and ceiling in the third room from north.

Access shall be arranged by the parties' counsels as required. The parties are directed to comply with all appropriate safety protocols in light of the COVID-19 pandemic, including but not limited to: wearing gloves and masks, complying with all rules, regulations, and orders related to social distancing, and following the recommendations of the Centers for Disease Control ("CDC"), the NYS and NYC Departments of Health and other health officials, and to take into consideration the health and safety vulnerabilities of the tenants and their household members to the extent the landlord and/or its agents have knowledge.

Upon default, either party can move for appropriate relief, including, but not limited to, civil penalties and contempt.

Petitioner's other claims are adjourned to June 7, 2021 at 10:00 am for trial.

This constitutes the Order of the court. Copies will be emailed to the parties' counsels.

Dated: April 22, 2021
Bronx, New York

SO ORDERED,

SO ORDERED
/S/

Shorab Ibrahim, JHC
Judge of the Housing Court

To:

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⁶ See the DHPD closed violation summary report.

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