

**Matthews-Taylor v Spurgeon**

2023 NY Slip Op 34879(U)

February 22, 2023

Supreme Court, Kings County

Docket Number: Index No. 514544/2021

Judge: Rupert V. Barry

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This opinion is uncorrected and not selected for official publication.

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS: PART 13

-----X  
CRYSTAL MATTHEWS-TAYLOR,

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Plaintiff,

-against-

JAYTEE SPURGEON, ET AL.,

DECISION/ORDER  
MOTION #3

Defendant.  
-----X

Recitation, as required by the CPLR § 2219(a), of the papers considered in the review of this order to show cause for use and occupancy.

PAPERS	NUMBERED
Order to Show Cause, Affidavits, and Exhibits	50-59
Opposition, Affidavits, and Exhibits	60-62
Supplemental Affirmation, Affidavits, and Exhibits	64-81
Reply Affirmation and Exhibits	82-87

Upon the foregoing cited papers, the decision and order on Plaintiff's order to show cause is as follows:

Plaintiff Crystal Matthews-Taylor commenced this proceeding on June 16, 2021, by filing summons and complaint seeking ejectment of Defendant Jaytee Spurgeon. Plaintiff is Defendant's landlord.

On August 24, 2022, Plaintiff filed an order to show cause, requesting that the Court issue an order requiring that Defendant pay Plaintiff use and occupancy for the subject premises dating back to May 2020 and on the first day of each month *pendente lite* at a rate of at least \$800 monthly. Defendant filed written opposition on October 20, 2022. This Court heard oral arguments on Plaintiff's motion on February 22, 2023.

Real Property Law § 220 provides that a "landlord may recover a reasonable compensation for the use and occupation of real property, by any person, under an agreement, not made by deed; and a parol lease or other agreement may be used as evidence of the amount to which he is entitled." N.Y. Real Property Law § 220. "The reasonable value of use and occupancy is the fair market value of the premises after the expiration of the lease, and it is the landlord, not

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the tenant, who has the burden of proving reasonable value of use and occupancy,” (see *Mushlam, Inc. v. Nazor*, 80 AD3d 471, 472 [2011] [internal citations omitted]).

In opposition to Plaintiff’s order to show cause, Defendant asserts that Plaintiff cannot collect use and occupancy, as Plaintiff and her predecessors-in-interest subdivided the subject premises into numerous smaller units. Defendant asserts that he and his son only occupy one room on the second floor of the subject building, and that three other unrelated family units occupy the other three rooms on the second floor. This is in addition to Defendant’s claim that Plaintiff resides on the first floor and other unrelated individuals reside in the basement. Defendant argues that subdividing the subject building in this manner brings the building within the ambit of the Multiple Dwelling Law (“MDL”). See MDL § 4 (defining a multiple dwelling as “a dwelling which is either rented, leased, let or hired out, to be occupied, or is occupied as the residence or home of three or more families living independently of each other”).

Defendant argues that, because the subject building is a multiple dwelling, and because neither Plaintiff nor any other landlord of the subject building has filed a certificate of occupancy with the New York City Department of Buildings (“DOB”) allowing for residential use, Plaintiff cannot collect use and occupancy. Specifically, Defendant cites to MDL § 301 (“[n]o multiple dwelling shall be occupied in whole or in part until the issuance of a certificate by the department that said dwelling conforms in all respects to this chapter”) and MDL § 302 (“If any dwelling or structure be occupied in whole or in part for human habitation in violation of section three hundred one . . . [n]o rent shall be recovered by the owner of such premises for said period . . .”).

In support of his argument that the subject building has more than two units, Defendant avers that he has been a tenant of the subject building for approximately eleven (11) years and has been a tenant of individual rooms on both the second floor and first floor. He claims to have assisted the prior landlord with the work required to divide the basement into three (3) residential units. Defendant also presents pictures of the doors and cabinets on the second floor, which have labels that Defendant states identify the rooms and cabinets as belonging to second floor units A-D.

Finally, Defendant includes an affidavit from Ron Lindsay, a third party who swears to being a former owner and building manager of the subject building. Mr. Lindsay states in his affidavit that, when a prior landlord purchased the subject building in 2014, the building had seven (7) units total on the first and second floors, with an unoccupied basement. Mr. Lindsay states that

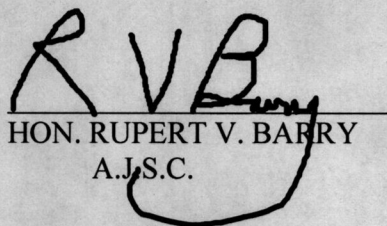
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the prior landlord began subdividing the basement against his advice, and that he has personal knowledge of the work completed in the basement.

Plaintiff pointing to deeds in the public record, mortgage documents, and the results of a New York City search through the New York City Department of City Planning is, to this Court, insufficient to refute the evidence presented by Defendant that the subject building is a multiple dwelling requiring the necessary certificate of occupancy.

Accordingly, Plaintiff's Order to Show Cause for use and occupancy is DENIED.

Date: February 22, 2023

  
HON. RUPERT V. BARRY  
A.J.S.C.

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KINGS COUNTY CLERK  
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