

**Li-Johnson v Sierra**

2024 NY Slip Op 34096(U)

November 18, 2024

Civil Court of the City of New York, Queens County

Docket Number: Index No. L&T 307892/2024

Judge: Clinton J. Guthrie

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This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF QUEENS: HOUSING PART B

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BRENDA LI-JOHNSON,

Petitioner,

-against-

MELANIE SIERRA, "JOHN DOE", and "JANE  
DOE",

Respondents.

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Present:

Hon. CLINTON J. GUTHRIE  
Judge, Housing Court

Index No. L&T 307892/24

**AMENDED  
DECISION/ORDER**

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of respondent’s motion to amend the answer pursuant to CPLR § 3025(b), for summary judgment pursuant to CPLR § 3212, and for an order to correct:

<b>Papers</b>	<b>Numbered</b>
Notice of Motion & All Documents Annexed.....	<u>1 (NYSCEF # 8-21)</u>
Affirmation in Opposition & All Documents Annexed.....	<u>2 (NYSCEF # 22-31)</u>
Reply Affirmation.....	<u>3 (NYSCEF # 32)</u>

Upon the foregoing cited papers, the decision and order on respondent’s motion is as follows:

PROCEDURAL HISTORY

This summary holdover proceeding, based upon a 90-day notice of termination, was filed in May 2024. Respondent Melanie Sierra (hereinafter “respondent”) filed a pro se answer on July 5, 2024. Subsequently, counsel for respondent appeared and made the instant motion to amend the answer, for summary judgment, and for an order to correct. After the submission of opposition and reply papers, the court heard argument on the motion on November 13, 2024 and reserved decision.

## DISCUSSION/CONCLUSION

### A. Motion to amend the answer.

The court first addresses respondent's motion to amend the answer. Respondent argues that the proposed amended answer contains the defenses previously interposed but provides "greater context and clarity" and includes additional legal and equitable defenses (Mem. of Law, Page 4). Respondent further asserts that the motion to amend the answer was made within one month of respondent's attorneys being retained and that "any delay is unwilful, not prejudicial, and minor." (*Id.*). Petitioner opposes the respondent's motion in all respects, though the substance of the opposition is overwhelmingly focused on the request for summary judgment, rather than amendment of the answer.

Pursuant to CPLR § 3025(b), "[a] party may amend his or her pleading . . . at any time by leave of court or by stipulation of all parties. Leave shall be freely given upon such terms as may be just including granting of costs and continuances" (*see also Faiella v. Tysens Park Apts., LLC*, 110 AD3d 1028, 1029 [2d Dept 2013] ["Leave to amend a pleading should be freely given absent prejudice or surprise to the opposing party, unless the proposed amendment is palpably insufficient or patently devoid of merit."]; *Nationstar Mtge., LLC v. Jean-Baptiste*, 178 AD3d 883, 886 [2d Dept 2019]). Mere delay is insufficient to deny amendment; only delay with "significant prejudice" to the other side is a barrier to amendment (*see BAC Home Loans Servicing, L.P. v. Jackson*, 159 AD3d 861, 863 [2d Dept 2018]). In line with this principle, the Appellate Term, Second Department recently reversed a lower court's denial of a motion to amend an answer in a summary eviction proceeding, notwithstanding a 2-year delay in seeking amendment after a change in the law (*see Hill Plaza Enters. NY, LLC v. Terris*, 82 Misc 3d 132[A], 2024 NY Slip Op 50565[U], \*1-2

[App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2024)].

Upon review of petitioner's proposed amended answer, the court does not find respondent's proposed amended defenses and counterclaims to be "palpably insufficient or patently devoid of merit." (*Faiella*, 110 AD3d at 1029).<sup>1</sup> Moreover, the court does not find that petitioner has demonstrated surprise or prejudice that would bar the amendment of the answer at this juncture. Accordingly, the prong of respondent's motion seeking to amend the answer is granted and the amended answer (NYSCEF Doc. 21) is deemed served and filed.

B. Motion for summary judgment.

Respondent seeks summary judgment on her retaliatory eviction defense. Respondent asserts that she made complaints about conditions in the subject premises with the New York City Department of Housing Preservation and Development (HPD) on November 10, 2023, January 1, 2024, January 5, 2024, and January 10, 2024, all less than one year before petitioner issued its notice of termination and commenced this proceeding. Respondent annexes proof of the complaints and HPD violations issued after the complaints were made. Respondent argues that she is entitled to a statutory rebuttable presumption that retaliatory eviction exists because of the complaints about housing conditions under Real Property Law (RPL) § 223-b(5)(a). Because of the statutory presumption, respondent argues that no issues of fact are in dispute and that judgment should be granted in her favor. Petitioner opposes the motion and primarily asserts that respondent's complaints about conditions are undercut by her failure to give access to complete repairs.

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<sup>1</sup> The defenses include retaliatory eviction, coverage under the Good Cause Eviction Law, a stay of eviction pursuant to RPAPL § 753, and breach of warranty of habitability (which is also pled as a counterclaim). The remaining counterclaim is harassment under the Housing Maintenance Code. While this is a holdover proceeding, the court finds that the breach of warranty of habitability defense is relevant to petitioner's claim for use and occupancy (*Stahl Assoc. LLC v. Alexandersson*, 66 Misc 3d 1225[A], 2020 NY Slip Op 50251[U] [Civ Ct, NY County 2020]).

Real Property Law § 223-b(1)(a) states that “[n]o landlord of premises or units to which this section is applicable shall serve a notice to quit upon any tenant or commence any action to recover real property or summary proceeding to recover possession of real property in retaliation for [a] good faith complaint, by or in behalf of the tenant . . . to a governmental authority of the landlord’s alleged violation of any health or safety law, regulation, code, or ordinance, the warranty of habitability under section two hundred thirty-five-b of this article . . . or any law or regulation which has as its objective the regulation of premises used for dwelling purposes [or rent gouging].” Pursuant to RPL § 223-b(5), a “rebuttable presumption that the landlord is acting in retaliation shall be created if the tenant establishes that the landlord served a notice to quit, or instituted an action or proceeding to recover possession, or attempted to substantially alter the terms of the tenancy, within one year after” a good faith complaint is made in accordance with RPL § 223-b(1)(a). Once the presumption exists, a landlord is required “to establish a non-retaliatory motive for his acts by a preponderance of the evidence.” (RPL § 223-b(5)(c)). The failure of a landlord to meet this burden once the presumption attaches will result in the dismissal of a summary eviction proceeding and judgment in the tenant’s favor (*see Lee v. Herron*, 81 Misc 3d 133[A], 2023 NY Slip Op 51377[U], \*1 [App Term, 2d Dept, 9th & 10th Jud Dists 2023]; RPL § 223-b(4)).

Respondent has clearly established her entitlement to the statutory presumption of retaliation here. Respondent has set forth proof that multiple complaints were made to HPD about conditions affecting health, safety, and the warranty of habitability less than one year before petitioner served its notice of termination (on January 14, 2024) and commenced this proceeding (in May 2024). In fact, both parties attach copies of the HPD complaints and the court may take judicial notice of the same pursuant to Multiple Dwelling Law (MDL) § 328(3). While petitioner

references the complaints as being “closed,” it is undisputed that violations were issued by HPD in response to several of the complaints. A violation placed by HPD is prima facie evidence of a condition constituting a hazard to life, health, or safety (*see Fiondella v. 345 W. 70th Tenants Corp.*, 217 AD3d 495, 496 [1st Dept 2023]). According to the violation summary dated October 2, 2024 annexed to respondent’s motion, these included nine (9) class “C” (immediately hazardous) violations that had been issued between February 2024 to April 2024. Additionally, respondent shows proof of multiple class “B” (hazardous) and one class “C” violation issued between November 2023 and January 2024. While petitioner references respondent’s failure to give access for repairs, there is no evidence of the same beyond cursory statements in petitioner’s “Declaration” pursuant to CPLR § 2106. Thus, the court finds that respondent’s complaints to HPD were undertaken in good faith less than one year before the predicate notice were served and the proceeding was commenced.

Thus, the burden shifts to petitioner to establish a non-retaliatory motive by a preponderance of the evidence. The court does not find that petitioner has set forth any evidence of such a non-retaliatory motive. At most, the opposition amounts to an attempt to demonstrate that respondent’s complaints were not made in good faith. As the court has found previously, the complaints were made in good faith, which is corroborated by violations being issued in relation thereto by HPD.

On a summary judgment motion, the Court of Appeals has held that “the proponent . . . must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact . . . Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues

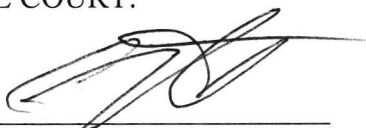
of fact which require a trial of the action.” *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 [1986] [internal citations omitted]. As respondent has met her prima facie burden to demonstrate her entitlement to summary judgment on her retaliatory eviction defense pursuant to RPL § 223-b and petitioner has failed to produce proof sufficient to establish a non-retaliatory motive for bringing the instant proceeding, summary judgment in respondent’s favor is warranted. Accordingly, respondent is granted summary judgment on her retaliatory eviction defense and the petition is dismissed. The clerk shall issue a judgment dismissing the petition (*see* CPLR § 411).

Having dismissed the petition, the court hereby severs respondent’s counterclaims without prejudice (*see* CPLR § 407; *City of New York v. Candelario*, 223 AD2d 617, 618 [2d Dept 1996]). The court also denies respondent’s request for an order to correct without prejudice.

This Decision/Order will be filed to NYSCEF.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated: Queens, New York  
November 18, 2024




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HON. CLINTON J. GUTHRIE  
J.H.C.

SO ORDERED - HON. CLINTON J. GUTHRIE