

Nicholson v 125 Ct. St. LLC

2025 NY Slip Op 32447(U)

July 8, 2025

Supreme Court, Kings County

Docket Number: Index No. 15300/14

Judge: Wavny Toussaint

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 70 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 8th day of July, 2025.

P R E S E N T:

HON. WAVNY TOUSSAINT,

Justice.

-----X
YOLANDE I. NICHOLSON,

Plaintiff,

-against-

Index No.: 15300/14

MS # 10

DECISION AND ORDER

125 COURT STREET LLC, TWO TREES MANAGEMENT CO., DAVID C. WALENTAS, JED WALENTAS, "JANE DOE," ABC COMPANY and XYZ CORPORATION,

Defendants.

-----X
The following e-filed papers read herein:

NYSCEF Nos.:

Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed	_____	<u>151, 139, 140, 154</u>
Opposing Affidavits (Affirmations)	_____	<u>157</u>
Affidavits/ Affirmations in Reply	_____	<u>159</u>

Upon the foregoing papers, defendant 125 Court Street LLC (125 LLC) moves, by order to show cause (Seq. 10), for an order: (1) pursuant to CPLR §§ 2221 (d) and (e), granting 125 LLC leave to reargue and/or renew the decision and order of this court, dated August 15, 2024, to the extent that such prior order denied 125 LLC's prior motion (Seq. 09), and upon granting reargument and/or renewal, modifying the prior order to the extent of (1) establishing an interim monthly use and occupancy (U&O) rate for the subject

apartment, without prejudice, calculated as follows: (a) \$3,576.00 as the “base date” rent, pursuant to the applicable four-year lookback period; plus (b) applicable two-year Rent Guidelines Board increases for the period starting from plaintiff’s lawful eviction from the apartment in July 2014 through the present, resulting in a monthly U&O of \$4,073.95; plus (c) reimbursement for separately metered electricity for the apartment, and (2) directing that plaintiff otherwise abide by the non-monetary leasehold terms of the parties’ initial lease dated March 8, 2005¹. Plaintiff opposes the motion.

BACKGROUND

Plaintiff commenced this action seeking, among other relief, rent overcharge damages stemming from her occupancy of an apartment in a residential building owned by 125 LLC. Plaintiff took occupancy of the apartment pursuant to an initial rent stabilized lease dated March 8, 2005 for a two-year term commencing on May 1, 2005 at a monthly rent of \$2,933.00. The “Temporary Rent Concession Rider” signed by plaintiff along with the lease indicated that the legal regulated rent for the apartment was \$8,000.00 and that the \$2,933.00 rate constituted a lower preferential rent. Upon expiration of the initial lease, plaintiff signed a two-year renewal lease at a monthly rent of \$3,576.00. Upon expiration of the first renewal lease, 125 LLC offered a second renewal lease for a one or two-year term commencing on June 1, 2009 at a monthly rent of \$4,276.00.

Plaintiff did not sign the second renewal lease and occupied the apartment as a holdover month-to-month tenant, continuing to pay the monthly rent of \$3,576.00 as stated

¹An additional request in the instant motion to consolidate with this action whatever issues were remaining in the related holdover proceeding (125 Court Street LLC v Yolande Nicholson et al, LT-063946-10/KI) was withdrawn (see Affirmation, NYSCEF Doc. No 154).

in the first renewal lease. As the result of plaintiff's refusal to enter into the renewal lease, 125 LLC commenced a Holdover Proceeding in Civil Court, Kings County in February 2010.

PROCEDURAL HISTORY

Lengthy and complex litigation ensued in both the Holdover Proceeding and the instant rent overcharge action. On December 20, 2019, the Appellate Term, Second Department issued an order which, among other things, dismissed the petition in the Holdover Proceeding and remitted the matter to Civil Court for a determination of the branch of a motion by plaintiff seeking to be restored to possession of the apartment, which had been surrendered pursuant to stipulations that were later vacated (*125 Ct. St., LLC v Nicholson*, 67 Misc.3d 28 [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2019]). The Appellate Term's order was subsequently affirmed by the Appellate Division, Second Department (*Matter of 125 Ct. St., LLC v Nicholson*, 214 AD3d 723 [2d Dept 2023]). By order of the Civil Court dated March 22, 2024, plaintiff was restored to possession of the apartment, with a stay in effect until April 22, 2024.

On or about April 1, 2024, 125 LLC moved by order to show cause (Seq. 09) for an order directing plaintiff to pay U&O for the subject apartment at a certain specified rate beginning five days after plaintiff was restored to possession in accordance with the March 22, 2024 order, with such interim U&O payments to continue every month thereafter, *pendente lite*, pending further order of this Court, and directing that plaintiff abide by all other terms and conditions set forth in her initial lease dated March 8, 2005. Leave to appeal the Appellate Division's order affirming the Appellate Term's December 20, 2019

order was dismissed on constitutional grounds by the Court of Appeals (*Matter of 125 Ct. St., LLC v Nicholson*, 41 NY3d 1005 [2024]).

125 LLC's order to show cause (Seq. 09) was denied by this Court in an order dated August 15, 2024, which also denied a separate motion (Seq. 08) by 125 LLC for summary judgment. In the August 15, 2024 order, the court stated the following:

“The Civil Court retained jurisdiction over the underlying Holdover Proceeding and recently restored plaintiff to possession of the apartment by order dated March 22, 2024. However, it is not known at this point whether plaintiff has taken or has been granted physical occupancy of the apartment, and this court defers the question of use and occupancy to the Civil Court.

“As a result, defendants' order to show cause for an award of use and occupancy is denied without prejudice to defendants to make the appropriate application before the Civil Court.”

THE PARTIES' CONTENTIONS

125 LLC moves to renew and/or reargue the August 15, 2024 order based upon the order of the Civil Court, dated February 19, 2025, which denied 125 LLC's motion for U&O, as well as the subsequent dismissal of the Holdover Proceeding on February 21, 2025 as noted in case comments filed in the Holdover Proceeding (NYSCEF Doc. No. 155). 125 LLC argues the Court misapprehended the fact and/or law that the Civil Court would or could retain jurisdiction over the issue of U&O. Accordingly, 125 LLC argues that where this Court had denied Motion Seq. 09 on the grounds that “[t]he Civil Court retained jurisdiction over the underlying Holdover Proceeding [and] defer[ed] the question of use and occupancy to the Civil Court”, and because the Civil Court has not retained

jurisdiction over this issue (*see* Civil Court order of the Hon. Shantonu J. Basu, NYSCEF Doc. No. 141), this Court should now take up the matter of U&O and award same as requested.

Plaintiff argues in opposition, among other things, that the motion is untimely having been brought more than 30-days days after service of the prior order. Plaintiff further argues that U&O is no longer available to 125 LLC, as the only legitimate claim is to resolve all matters by offering plaintiff a rent stabilized lease. In reply, 125 LLC argues, among other things, that it satisfied the standard for renewal having submitted the procedural determination of the Civil Court wherein the court confirmed it lacked jurisdiction over the terms and conditions of plaintiff's restored tenancy.² 125 LLC further argues that U&O proper to balance the interests of the parties, as there presently is no lease between them.

DISCUSSION

Leave to renew must be based on new facts not available at the time of the prior motion (CPLR § 2221 [e] [2]) or, in the court's discretion, upon movant establishing a reasonable justification for presenting facts known to movant at the time of the first motion but not raised (CPLR § 2221 [e] [3]). "A motion for leave to renew . . . is addressed to the sound discretion of the Supreme Court" (*Fulcher v Empire State Grand Council Ancient & Accepted Scottish Rite Masons, Inc.*, 222 AD3d 721, 723 [2d Dept 2023] [internal quotation marks omitted]).

² The Court's order dated March 17, 2025 permitted 125 LLC's reply.

The part of this court's prior order denying U&O was based on the fact that the Holdover Proceeding was still pending, with the Civil Court retaining jurisdiction over the parties. As the dismissal of the Holdover Proceeding constitutes a "new fact" which had not yet materialized when this court issued the prior order, the instant motion for renewal is granted (*Miller v United Rentals Aerial Equip.*, 303 AD2d 471, 472 [2d Dept 2003]).

Under Real Property Law [RPL] § 220, an owner "may recover a reasonable compensation for the use and occupation of real property, by any person, under an agreement, not made by deed." "The award of use and occupancy during the pendency of an action or proceeding accommodates the competing interests of the parties in affording necessary and fair protection to both and preserves the status quo until a final judgment is rendered" (*MMB Assoc. v Dayan*, 169 AD2d 422, 422 [1st Dept 1991] [citations and internal quotation marks omitted]).

While the legal regulated rent in this matter remains in dispute, "[c]onsistent with [RPL] § 220, it has long been held that a dispute concerning the amount of rent owed is no reason to allow a tenant to occupy the landlord's real property gratis" (*Levinson v 390 W. End Assoc., L.L.C.*, 22 AD3d 397, 403 [1st Dept 2005], citing *Goldman v Segal*, 278 AD2d 74, 75 [1st Dept 2000]; *East 4th St. Garage v Estate of Berkowitz*, 265 AD2d 249, 249 [1st Dept 1999]; *Eighteen Assoc. v Nanjim Leasing Corp.*, 257 AD2d 559, 560 [2d Dept 1999]; *Trump CPS v Meyer*, 249 AD2d 22, 23 [1st Dept 1998]; *MMB Assoc.*, 169 AD2d at 422). The Appellate Division, Second Department found that the Supreme Court "improvidently exercised its discretion" in denying an owner use and occupancy where, as here, the tenant

“fully intend[ed] to continue renting the subject apartment pursuant to a rent-stabilized lease” (*Esposito v Larig*, 174 AD3d 574, 576 [2d Dept 2019]).

In its December 20, 2019 decision, the Appellate Term noted that since plaintiff was the first occupant of the premises, in 2005, and the initial rent she paid was \$2,933.00, that sum became the initial legal regulated rent and 125 LLC’s failure to file proper and timely annual rent registration statements froze the rent at said amount and barred the collection of any rent in excess thereof until a proper registration was filed (*125 Ct. St., LLC*, 67 Misc 3d at 32-34). In this action, plaintiff has maintained that \$2,933.00 constitutes the legal regulated rent. Accordingly, the court finds that 125 LLC is, at the very least, equitably entitled to an award of monthly U&O in the amount of \$2,933.00 pending the final determination of the legal regulated rent in this matter.

The court disagrees with plaintiff’s contention that 125 LLC is barred by the doctrine of “unclean hands” from collecting U&O. Even if 125 LLC has willfully overcharged plaintiff and/or is found to have engaged in a fraudulent scheme to deregulate the apartment or collect a rent in excess of the legal regulated rent, the Rent Stabilization Law and Code provide the appropriate remedies in such scenarios (e.g., treble damages, application of the default formula). There is no provision, however, entitling a tenant to reside in his or her apartment rent free. As a result, 125 LLC’s motion is granted to the extent that, pending the determination of the legal regulated rent in this matter, plaintiff shall pay \$2,933.00 per month as fair U&O.

Because there is no apparent danger of plaintiff committing any act or engaging in any conduct antithetical to the material conditions and terms of the initial lease, that part

of 125 LLC's motion seeking an order directing that plaintiff abide by the non-monetary leasehold terms of the parties' initial lease dated March 8, 2005 is denied.

CONCLUSION

Accordingly, it is hereby

ORDERED, that 125 LLC's motion for renewal (Seq. 10) is granted to the extent that plaintiff shall pay 125 LLC, or the agent designated by 125 LLC for collection of rental payments, \$2,933.00 per month as U&O pending final determination of the legal regulated rent for the subject apartment in this action or further order of this court regarding U&O payments; and it is further

ORDERED, that such monthly payment obligations shall commence beginning July 1, 2025 and it is further

ORDERED, that payments shall be made by any method, electronic or otherwise, normally accepted by 125 LLC and/or its designated agent(s) for payment of rent.


Any relief not expressly granted herein has been considered and is denied.

This order shall not preclude the parties from entering into any stipulation or agreement with respect to payment of U&O, lease offerings, or any other issue. Compliance with this order shall not be deemed a waiver of any rights of the parties.

The foregoing constitutes the decision and order of the court.

ENTER

2025 JUL -9 10:41
KINGS COUNTY CLERK
FILED



J. S. C.

HON. WAVNY TOUSSAINT
J. S. C.