

Clarke v Haliman

2025 NY Slip Op 34891(U)

October 7, 2025

Civil Court of the City of New York, Bronx County

Docket Number: Index No. LT 350887/23

Judge: Christel F. Garland

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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 D

X

MICHAEL CLARKE,

Index No.
LT 350887/23

Petitioner – Landlord,

-against-

Present
Hon. Christel F. Garland

ENA MAY HALIMAN, JOHN DOE and JANE DOE,

Respondent -Tenant.

DECISION/ORDER

X

RECITATION, AS REQUIRED BY CPLR 2219(A), OF THE PAPERS CONSIDERED IN THE REVIEW OF THIS MOTION BY RESPONDENT TO DISMISS THIS PROCEEDING AND VACATE A STIPULATION

PAPERS

NUMBERED

Order to Show Cause, Affidavits & Affirmation Annexed	24 -25, 33 (NYSCEF)
Answering Affidavits & Affirmation Annexed	37 -38 (NYSCEF)
Replying Affidavits & Affirmation Annexed	n/a (NYSCEF)
Exhibits	26 – 32, 39 - 47 (NYSCEF)
Other	34 -36 (NYSCEF)

UPON THE FOREGOING CITED PAPERS, THE DECISION/ORDER IN THIS MOTION IS AS FOLLOWS:

Petitioner commenced this summary holdover proceeding on or about December 18, 2023 seeking to recover possession of the subject apartment based on his claim that the rental agreement between the parties expired and that Respondent Ena May Haliman (“Respondent”) remained in occupancy as a month-to-month tenant. In addition, the petition alleged that the premises are not subject to rent control or the Rent Stabilization Law because they are located in a building containing less than six (6) dwelling units and Respondent took occupancy after that point.

The proceeding was first scheduled to appear in this part on April 24, 2024 after an initial appearance in the Intake part, the purpose of which is to connect litigants to counsel. On that date it was adjourned for the court to make a referral for Respondent to obtain legal counsel. Despite these efforts, Respondent was unable to retain counsel and on the adjourned date of May 14, 2024, the parties entered into a stipulation pursuant to which Petitioner was granted a final judgment of possession and Respondent’s time to vacate the apartment was extended until September 14, 2024 for Respondent to vacate the apartment. The matter was discontinued against both John Doe and Jane Doe at that time. A judgment reflecting the terms of the stipulation was entered but the warrant did not issue for some time. Respondent then moved by order to show cause (“OSC”) for an order vacating the judgment based on her claim that she needed more time to continue looking for an

apartment. The court denied that OSC citing the need for Respondent to provide proof of a concrete plan to move. She then filed another OSC and that OSC was also denied given that the warrant of eviction had not yet issued and there was no imminent threat of eviction at that time.

After the warrant issued, Petitioner then moved for an order relieving his counsel and amending the petition to re-include John Doe and Jane Doe against whom the case had been discontinued and based on his claim that he had been unaware that Respondent had sublet the unit to “a gentleman” without his permission and the marshal needed the amendment to carry out the eviction.

On the return date of these two OSCs, Petitioner relieved his counsel, new counsel filed a notice of appearance, and the OSC seeking to amend the caption was withdrawn.

Respondent then retained counsel and moved by OSC for the instant relief. Respondent seeks an order vacating the stipulation of settlement entered into between the parties on the ground that she improvidently made that agreement without the benefit of counsel. In addition, Respondent seeks an order granting summary judgment in her favor given that the premises are *de facto* rent stabilized. In the alternative, Respondent seeks an order granting her leave to interpose an answer to the petition, and granting her discovery relating to her claim that the premises are rent stabilized.

In support of the OSC, Respondent asserts that she moved into the subject apartment sometime in 2016 pursuant to a lease for a one-year term. According to Respondent, from 2016 through 2023, she always paid her rent to Petitioner, but that sometime in August 2023, she spoke to Petitioner who informed her that he preferred a Section 8 tenant as Section 8 rent subsidies paid more than what Respondent was paying in rent at the time. Respondent asserts that less than a month later, Petitioner served Respondent with a 90-day notice to vacate the apartment. Respondent further asserts that the conditions in the apartment have made living there extremely difficult and dangerous to her health for which the Department of Housing Preservation and Development (“HPD”) issued violations. According to Respondent, Petitioner’s conduct towards her amounts to harassment and this includes damaging the roof which caused a ceiling collapse in her apartment, installing a security camera outside of her door, refusing to repair a plumbing issue in the bathroom which has resulted in water damage in the downstairs neighbor’s apartment, lack of adequate heat and leaving the apartment unpainted. In support of her claim that her apartment is subject to the rent stabilization law, Respondent contends that there are six units in the subject building, four of which are legal units and two of which are located in the basement that Respondent used to walk past to throw away her garbage. Respondent also asserts that there are six mailboxes in the building. Respondent contends that had she known defenses were available to her, including that she is entitled to a rent stabilized lease, she would not have agreed to the terms of the stipulation she seeks to vacate.

Petitioner then again moved by OSC for an order relieving his new counsel and by decision and order of this court, that OSC was granted and the matter was adjourned for Petitioner to oppose Respondent’s OSC.

Petitioner opposed the motion on the ground that he has not received any rent from Respondent for some time which is what prompted him to commence this proceeding. Petitioner states that he was able to obtain a final judgment of possession against Respondent but due to issues with the additional parties he was having trouble getting the warrant of eviction to issue. Petitioner states that he then returned to court to get the petition reinstated against both John Doe and Jane Doe which is when he discovered that Respondent had permitted another individual to reside in the apartment. Petitioner contends that but for the missteps resulting from his attorney’s omissions, the warrant of eviction

would have issued and would have been executed against Respondent. Petitioner further asserts that the subject building contains only four apartments and that he occupies one of the apartments while the remaining three are rented. Petitioner asserts that the reason there are six mailboxes in the building are that one is for the mailman, one for each of the renters and two are for his use (one for personal use and the other for business purposes). Petitioner asserts that the delays in obtaining a resolution in this matter have caused him to experience difficulty with honoring his mortgage obligations.

It is well-settled that stipulations of settlement are favored by the courts (*Hallock v State of New York*, 64 NY2d 224, 230, 485 NYS2d 510 [1984]). However, upon a showing of good cause such as fraud, collusion, mistake, accident, or some other ground of the same nature, the court may vacate a stipulation (*Matter of Frutiger*, 29 NY2d 143, 150, 324 NYS2d 36 [1971]). The discretion of the court to vacate a stipulation is not confined to instances of collusion, mistake, accident, fraud and surprise (see *Solack Estates v Goodman*, 102 Misc 2d 504, *aff'd* 78 AD2d 512 [1980]). Moreover, “the court has [the] power to relieve a party from a stipulation which is unjust or harsh even when fully understood and authorized” (*Bond v Bond*, 260 AD 781, 782, 24 NYS2d 169 [1940]). In fact, the court should vacate the stipulation when the parties can be restored to their former status (2 Carmody-Wait 2d § 7:20).

As is relevant here, when a tenant “puts into issue the rent-regulatory status of their apartment, it [is] landlord’s burden to prove at trial its allegation that the apartment was not rent regulated” (*124 Meserole, LLC v Recko*, 55 Misc 3d 146 [A][2nd Dept 2017]) (internal quotation marks and citation omitted). In addition, it is black letter law that “in order to be subject to rent stabilization, a unit must, among other things be located in a building containing at least ‘six housing accommodations’ on the date the building first became subject to regulation or any subsequent time” and have been built prior to 1974 (*id.*). A housing accommodation has been defined as “that part of any building or structure, occupied, or intended to be occupied by one or more individuals as a residence, home, dwelling unit or apartment” (*id.*). And, “once a building contains six or more units, all the units in the building are brought under rent stabilization” (*id.*).

In reviewing the evidence provided in support of the motion and the court having taken judicial notice of public records available on the subject property, the court finds that there is sufficient basis to grant the relief sought (see *Brandes Meat Corp v Cromer III*, 146 AD2 666 [Second Dept 1989] holding that (“this court may, in general, take judicial notice of matters of public record”).

The evidence here established that the subject building was constructed sometime in 1941 or prior to that time and that it is listed as a four-family dwelling. Now, according to Respondent there are two additional units in the basement. She supports this claim by her own observations and a photograph of what she purports to be the six mailboxes in the building. Petitioner for his part does not dispute the presence of the six mailboxes. In fact, he does little to controvert Respondent’s claims that the subject property is subject to the Rent Stabilization Law. Although if taken at face value, one can find Petitioner’s explanation for the presence of the six mailboxes as being credible, the trouble is that the records from the New York City Department of Buildings (“DOB”) rebuts this claim. There are violations of record for the subject property that speak directly to the two additional units in the cellar. These violations are from 20 years ago. But they remain open and what they show is that even if the violations were at some point corrected but the correction not reflected in public records, what is true is that there are or was at some point six units being utilized for habitation and “the alleged subsequent reduction in the number of housing accommodations to fewer than six, even if done, as

landlord claims, after the placement...of a violation, [does] not exempt the remaining units from rent stabilization” (*Rashid v Cancel*, 9 Misc 3d 130 [A] [Second Dept 2005]).

For the reasons stated above, Respondent’s motion is GRANTED to the extent that the May 14, 2024 stipulation, the ensuing judgment and warrant are vacated. In addition, the petition is dismissed for failure to state a ground for eviction given that Respondent is a rent stabilized tenant entitled to a renewal lease and removal only upon a ground stated in the law.

This constitutes the decision and order of the Court.

DATED: October 7, 2025

CG



Christel F. Garland, JHC