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

----------X

1362 OCEAN LLC, L&T Index No. 329410-24/KI

Petitioner,

-against- **DECISION/ORDER**

CANDY PHILLIP, ET AL.

Respondents.

----------X

Hon. Sulay K. Grant, J.H.C.:

Recitation, as required by C.P.L.R. § 2219(a), of the papers considered in the review of Respondent's motion for summary judgment (NY St Cts Elec Filing Doc No. 16 [NYSCEF], Motion seq #2):

Papers	**Numbered**
Notice of Motion, Affirmations, Exhibits	NYSCEF Doc. Nos. 16-29
Affirmations in oppositions, Exhibits	NYSCEF Doc. Nos. 33-38
Reply Affirmation	NYSCEF Doc. Nos. 39

FACTUAL AND PROCEDURAL HISTORY

Petitioner, 1362 Ocean LLC, commenced the instant nonpayment proceeding against Respondents seeking unpaid rent from May through September 2024.[1] Respondent Candy Phillip (hereinafter, "Respondent") filed a *pro se* answer and retained Brooklyn Legal Services as counsel. Shortly thereafter, Respondent filed a motion seeking leave to interpose an amended answer and directing that Respondent deposit the petition amount in Respondent's counsel's escrow account in satisfaction of the deposit requirement of Multiple Dwelling Law (MDL) Section 302-a. On consent of the parties, Respondent's motion was granted in its entirety, her answer, with the exception of her personal jurisdiction defense, deemed served on Petitioner and filed with the court, and Respondent's funds directed to be deposited in her counsel's escrow account on or before April 29, 2025. The proceeding was adjourned for Respondent to file the instant motion. After the matter was fully briefed and argued before the court, the court reserved decision.

Summary Judgment Standard

A motion for summary judgment may be granted only when there is no doubt as to the absence of any triable issue of material fact (*Kolivas v Kirchoff*, 14 A.D.3d 493, 787 NYS2d 392 [2nd Dept 2005]). "Issue finding, rather than issue determination is the court's function. If there is

---

[1] In July of 2024, prior to the commencement of this proceeding, Respondent Candy Phillip commenced a Housing Part proceeding (LT-1896-24/KI) against Petitioner due to violations in the subject premises.

any doubt about the existence of a triable issue of fact or if a material issue of fact is arguable, summary judgment should be denied" (*Celardo v Bell*, 222 A.D.2d 547, 548, 635 NYS2d 85, 86 [2nd Dept 1995]). A party moving for summary judgment must make *prima facie* showing of entitlement to judgment as a matter of law, offering sufficient evidence to demonstrate the absence of any material issues of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]; *Napolitano v Suffolk County Dep't of Pub. Works*, 65 AD3d 676, 884 NYS2d 484 [2nd Dept 2009]). If a *prima facie* showing has been made, the burden shifts to the opposing party to produce evidentiary proof sufficient to establish the existence of material issues of fact (*Alvarez*, 68 N.Y.2d 320, 324 508 NYS2d 923, 925).

Respondent moves for summary judgment on two bases: the first seeks dismissal pursuant to CPLR § 3212(b) based upon the existence of rent impairing violations under MDL § 302-a and seeking an 100 percent rent abatement for the period of May 2024 through November 2024; and the second seeks a finding of harassment against Petitioner in violation of NYC Admin Code 27-2005(d) and issuance of a Class C violation imposing civil penalties and awarding compensatory and punitive damages to Respondent. Annexed to Respondent's motion are certified records of Housing Maintenance Code (hereinafter, "HMC") violations issued by the Department of Housing Preservation and Development of the City of New York (hereinafter, "HPD") against the subject premises for the period between January 1, 2019, and May 13, 2025. (NYSCEF Doc. No. 19).

DISCUSSION

Rent Impairing Violations

It is well settled that landlords are required to maintain the property in a habitable condition and in accord with the uses reasonably intended by the parties. *See, Park W. Mgt. Corp. v. Mitchell,* 47 NY2d 316 (1979), RPL § 235-b(1). HPD violations constitute *prima facie* evidence that conditions exist. *See, Dept. of Hous. Preserv. & Dev. v. Knoll, 120 Misc2d 813, 814 (App Term, 2d Dept 1983).* "Failure to file such certification of compliance shall establish a prima facie case that such violation has not been corrected" (NYC Administrative Code 27-2115 [f][7]). Pursuant to MDL § 302-a(2)(a) a rent impairing violation is defined by as a violation that constitutes, or if not promptly corrected, will constitute, a fire hazard or a serious threat to the life, health or safety of the occupants thereof."

Respondent seeks an 100 percent rent abatement for the period alleged as owed in the unamended petition, based on eight rent impairing violations marked with order number 507 for repair of the roof so it will not leak over the ceilings, walls or window frame of various rooms throughout the subject premises. (NYSCEF Doc. No. 19).

A rent impairing violation need not be inside a tenant's apartment to raise the claim that the violation abates rent. *See, 170 NY Properties LLC v. Edwards,* 85 Misc.3d 1068, 223 N.Y.S.3d 907 (Civ. Ct, NY 2024). MDL § 302-a(3)(a)(ii) states in relevant part, "[i]f a condition constituting a rent impairing violation exists in the part of a multiple dwelling used in common by the residents or in the part under the control of the owner thereof, the violation shall be deemed to exist in the respective premises of each resident of the multiple dwelling." HPD has compiled a list of rent impairing violations pursuant to MDL § 302-a, and order number 507 is assigned to the rent impairing violation for repair of the roof so it will not leak (*see,* 28 RCNY § 25-191). It therefore follows that the rent impairing violations for the roof of the subject building is deemed to exist in the Respondent's unit.

For Respondent to successfully meet her burden on her rent impairing violation defense she must prove each of the three elements of MDL § 302-a: "1) a deposit of the amount due under the original petition, which includes any amendments; (2) existence of a rent-impairing violation that has not been certified as corrected within six months of said notice; and (3) proof that the notice of violation for the open rent impairing violation was provided to the owner by DHPD by mail" (*170 NY Properties LLC v. Edwards,* 85 Misc.3d at 1076). There is no dispute that Respondent satisfied each and every element of this test.[2]

Further, Petitioner is not entitled to recover rent after the expiration of the six months so long as the violation remains uncorrected. *See*, *Food First HDFC Inc., v. Turner*, 69 Misc. 3d 1202(A), 130 N.Y.S.3d 926 (Civ. Ct, NY 2020); MDL § 302-a(3)(a), MDL§ 302-a(3)(c). Here, certified HPD records show that six months since August 16, 2023, the last date Petitioner received notice of the rent impairing violations, falls in February of 2023. As these violations remained uncorrected until November of 2024, Petitioner may not recover rent starting March of 2023 through November of 2024.

As Respondent has met her burden, satisfying all three elements of MDL § 302-a, and has proven *prima facie* entitlement to summary judgment for an 100 percent rent abatement from May 2024 through November 2024, the burden now shifts to Petitioner to raise an issue of fact requiring trial.

In opposition, Petitioner notes that pursuant to MDL § 302-a(3)(b)(iv), if the resident has refused access to the owner for correction of violations, then the provisions in which rent cannot be collected for rent impairing violations does not apply. Petitioner argues that Respondent repeatedly denied Petitioner access to the subject premises and indicates that it was only after Petitioner relocated Respondent that Petitioner obtained access to the subject premises facilitating their ability to correct the rent impairing violations. However, as noted above, the rent-impairing violations under which Respondent moves are not located inside the Respondent's apartment, but on the roof of the building, which is under the control of Petitioner. Thus, Petitioner's claim of denial of access to Respondent's apartment, even if true, cannot rebut Respondent's successfully raised defense under MDL § 302-a(3)(a). *See, Beverly Holdings N.Y., LLC v. Blackwood*, 86 Misc. 3d 132(A), 235 N.Y.S.3d 900 (App. Term, 2d Dept, 9th & 10th Jud Dists 2025); *170 NY Properties LLC v. Edwards,* 85 Misc.3d at 1075 (The court therein found that "protestations that a tenant denied access to remediate common area violations will not serve to raise a material issue of fact regarding access"). Accordingly, Petitioner fails to meet its burden of raising an issue of fact requiring trial and Respondent is entitled to summary judgment on her rent impairing violation defense.

Accordingly, as the Respondent is entitled to an 100 percent abatement in rent for the period alleged as owed in the petition, which has not been amended, this court dismisses the petition. Counsel for Respondent is further directed to release Respondent's funds held in escrow to Respondent.

The court now turns to Respondent's counterclaim, for which she seeks summary judgment.

---

[2] As to the second prong of this test, Petitioner in opposition mentions in passing that there is an issue of fact as to whether Petitioner corrected conditions giving rise to the rent impairing violations and highlights that Respondent now concedes that Petitioner corrected all of the rent impairing violations. However, Petitioner makes no argument that such violations were corrected within six months of receiving notice of the rent impairing violations and/or that despite giving notice to HPD of corrections made, HPD failed to remove or cancel the violations. Accordingly, for all intents and purposes, Petitioner does not dispute that Respondent has satisfied the second element of MDL § 302-a.

Harassment

Respondent also seeks summary judgment on her counterclaim for harassment. The New York City Administrative code, or Housing Maintenance Code (hereinafter, "HMC") defines harassment as:

> any act or omission by or on behalf of an owner that (i) causes or is intended to cause any person lawfully entitled to occupancy of a dwelling unit to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy, and (ii) includes one or more of the following acts or omissions... repeated interruptions or discontinuances of essential services, or an interruption or discontinuance of an essential service for an extended duration or of such significance as to substantially impair the habitability of such dwelling unit.... repeated failures to correct hazardous or immediately hazardous violations of this code or major or immediately hazardous violations of the New York city construction codes, relating to the dwelling unit or the common areas of the building containing such dwelling unit, within the time required for such corrections[.] (HMC § 27-2004[a][48]; [b-1]; [b-2]).

There exists a duty for owners of a multiple dwelling to not harass their tenants. (HMC §27-2005[d]). Additionally, there is a a "rebuttable presumption that such acts or omissions were intended to cause such person to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy[.]" (HMC § 27-2004[a][48] [b-2]).

In the instant case, Respondent has attached certified copies of HPD violations issued to the subject premises over the period of several years, which includes numerous Class B and Class C violations. (NYSCEF Doc. No. 19). Respondent alleges that Petitioner repeatedly failed to correct hazardous and immediately hazardous violations within the time required by law, with some violations staying open for over a year or longer. As noted *supra,* Petitioner failed to address rent impairing violations, classified as Class B hazardous violations, for over a year. Petitioner, in its opposition papers, fails to contest Respondent's allegations and fails to rebut the presumption that Petitioner's acts were intended to cause Respondent to vacate her apartment or to surrender or waive her rights in relationship to her occupancy of her apartment. (*See,* HMC § 27-2004[a][48] [b-2]). Thus, Respondent has met her burden to establish her entitlement to summary judgment and Petitioner has failed to raise an issue of fact requiring trial.

> "A finding that an owner has engaged in harassment in violation of Section 2005 (d) of the New York City Administrative Code is a Class "C" immediately hazardous violation, and HPD is to issue a penalty for said immediately hazardous violation. The court is empowered to issue an order restraining the owner from violating Section 2005 (d) and directing the owner to ensure no further violations occur. For each dwelling unit in which the court has found a violation of Section 2005 (d), the court is to impose a civil penalty between $1,000 and $10,000, along with other relief deemed appropriate by the court.... A court may also issue compensatory damages, or if the litigant chooses, $1,000, along with reasonable attorneys' fees and costs. The court also has discretion to award punitive damages."*294 5th Ave. Realty Partners LLC v. Jimenez,* No. LT-327208-23/KI, 2024 WL 3034133, at *6 (Civ. Ct, NY County June 3, 2024) internal citations omitted.

Upon review of the record, this court finds that as Petitioner harassed Respondent in violation of Section 27-2005 (d) of the NYC Administrative Code, this Court directs HPD to place a Class "C" violation for harassment at the subject premises and Petitioner is directed to refrain from engaging

in any harassing conduct prohibited by NYC Administrative Code Section 27-2005 (d). Additionally, the court finds it appropriate to issue civil penalties against Petitioner in the amount of $5,000.00 based on Petitioner's repeated pattern of delay in correcting hazardous and immediately hazardous violations. The court will adjourn the proceeding to address Respondent's request for compensatory damages but declines to award legal fees and costs, or punitive damages.

CONCLUSION

For the reasons stated above, it is hereby
ORDERED, that the branch of Respondent's motion seeking an 100 percent rent abatement for the period of May 2024 through November 2024 and seeking dismissal of the proceeding is granted. It is also,

ORDERED, that the branch of Respondent's motion seeking an injunction against future harassment and imposing civil penalties pursuant to Section 27-2005 and 27-2115(m)(2) of the NYC Administrative Code, is granted to the extent that Petitioner is hereby found to have harassed Respondent in violation of Section 27-2005 (d) of the NYC Administrative Code. The court directs HPD to place a Class "C" violation for harassment at the subject premises. Petitioner is hereby ordered to refrain from engaging in any harassing conduct prohibited by NYC Administrative Code Section 27-2005 (d) and as defined by NYC Administrative Code 27-2004(a)(48). The court imposes a civil penalty in the amount of $5,000, which is awarded to HPD and may be enforced as a lien against the property. It is also,

ORDERED, the Housing Court may, either on the application of any party or *sua sponte*, join any City Department to a Housing Part action pursuant to New York City Civil Court Act §110(d), and accordingly, joins HPD to the instant nonpayment proceeding as a Respondent and the caption is henceforth amended to reflect the same. It is also,

ORDERED, the proceeding is adjourned to March 12, 2026, at 2:15 pm for a pre-hearing conference and for possible settlement of the remaining issues of compensatory damages. It is also,

ORDERED, Respondent is to serve notice of entry of this Decision and Order on Petitioner and upload proof of service on NYSCEF within seven days of the court uploading the same, and personally serve HPD with this Decision and Order joining them to this action, and upload proof of service of the same on NYSCEF within 10 days of the court uploading this Decision and Order.

This constitutes the Decision and Order of this court.

Dated: Brooklyn, New York
January 19, 2026

Hon. Sulay K. Grant, JHC