

**33rd St. Acquisition LLC v Feng**

2026 NY Slip Op 31619(U)

April 14, 2026

Supreme Court, New York County

Docket Number: Index No. 158102/2024

Judge: Matthew V. Grieco

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MATTHEW V. GRIECO PART 30M

Justice

-----X

33RD STREET ACQUISITION LLC,
Plaintiff,

- v -

ANNIE FENG,
Defendant.

-----X

INDEX NO. 158102/2024
MOTION DATE 11/24/2025
MOTION SEQ. NO. 007

DECISION + ORDER ON
MOTION + CROSS-MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 007) 208, 209, 210, 211, 213, 214, 215, 216, 217, 218, 219, 220, 221
were read on this motion to/for EVICTION/WRIT OF ASSISTANCE

Upon the foregoing documents, and for the reasons stated infra, the motion and cross-motion are denied.

Plaintiff landlord, 33rd Street Acquisition LLC, commenced this action in September 2024 against defendant rent stabilized tenant, Annie Feng, asserting a single cause of action, for breach of contract to recover unpaid rent from February 1, 2022 going forward, then totalling over \$68,000; the complaint expressly stated that landlord was not seeking eviction or ejection, but solely a money judgment (NYSCEF Doc. No. 1).

By order entered January 14, 2025, the Court (Arthur F. Engoron, J.) denied pro se tenant's motion to dismiss the complaint, and granted landlord's cross-motion to direct tenant to pay her monthly legal rent of \$1,625.59 during the pendency of the action (NYSCEF Doc. No. 39). Pro se tenant subsequently filed an answer and amended answer with counterclaims (NYSCEF Doc. Nos. 50, 53, 55, 59). Landlord replied to the counterclaims (NYSCEF Doc. Nos. 52, 60). Landlord also filed, without leave of the

Court, an amended complaint to add a cause of action for ejectment (NYSCEF Doc. No.32).

Landlord moved in March 2025 to hold tenant in contempt of the January 2025 order for failing to pay the monthly rent and to punish her by evicting her (NYSCEF Doc. Nos. 77-82). Tenant cross-moved to strike landlord's amended complaint (NYSCEF Doc. Nos. 97-99, 101). By order entered July 29, 2025, the Court (Engoron, J.) denied landlord's motion for contempt without prejudice, because the notice of motion did not include on its face the warning required by Judiciary Law § 756 (NYSCEF Doc. No. 163). Clarifying that the January 2025 order directing payment of rent was for payment of use and occupancy ("U&O"), the Court stated that, even if the notice of motion had contained the requisite contempt warning, the Court would have been "precluded from granting the ejectment relief sought by plaintiff, as the U&O Order, of which plaintiff alleges defendant is in contempt, did not include any predicate notice that defendant's failure to comply might result in ejectment, nor does it appear that any predicate notice was given before the commencement of the instant action" (*id.*). The Court granted tenant's cross-motion to strike the amended complaint as untimely filed, without prejudice to landlord's seeking leave to file a second amended complaint (*id.*).

Thereafter, landlord served tenant with a predicate notice of eviction (NYSCEF Doc. No. 166 at 183-195) and moved to amend the complaint to add a cause of action for ejectment (NYSCEF Doc. Nos. 168-173). Tenant opposed and cross-moved to dismiss the complaint and for sanctions (NYSCEF Doc. Nos. 174-177). By order entered October 27, 2025, the Court (Engoron, J.) granted landlord's motion and denied tenant's cross-motion (NYSCEF Doc. No. 184).

Landlord now moves to eject tenant for failure to pay use and occupancy as directed in the January 2025 order (NYSCEF Doc. Nos. 208-211). Tenant cross-moves to hold landlord and its counsel in contempt and for sanctions for misrepresenting the law (NYSCEF Doc. Nos. 217-220).

At the outset, tenant's assertion that a rent stabilized tenant cannot be ordered to pay use and occupancy is incorrect (*see Levinson v 390 W. End Assoc., L.L.C.*, 22 AD3d 397 [1<sup>st</sup> Dept 2005]; *Trump CPS v Meyer*, 249 AD2d 22 [1<sup>st</sup> Dept 1998]; *see also Kingsley v 300 W. 106<sup>th</sup> St. Corp.*, 162 AD3d 420 [1<sup>st</sup> Dept 2018] [occupant claiming succession rights to rent stabilized apartment], *lv dismissed* 32 NY3d 1134 [2019]).

Where use and occupancy is imposed as a condition to the right to remain in the premises, the tenant's failure to pay permits the landlord to seek a money judgment, or eviction, or both (*see Marbru Assocs. v White*, 206 AD3d 562 [1<sup>st</sup> Dept 2022]; *Park Terrace Gardens, Inc. v Penkovsky*, 100 AD3d 577 [1<sup>st</sup> Dept 2012]; *Rose Assoc. v Johnson*, 247 AD2d 222, 223 [1<sup>st</sup> Dept 1998]).

Justice Engoron ruled in the July 2025 order that the January 2025 order setting use and occupancy had not made payment a condition of remaining in the apartment during the pendency of this action or notified tenant that the failure to pay it could result in eviction (NYSCEF Doc. No. 163 at 3); Justice Engoron never modified those rulings in any of the subsequent orders, and evidently adhered to them. This Court is bound under the law of the case doctrine by that determination by a court of coordinate jurisdiction in the same action on an issue the parties had a full and fair opportunity to litigate (*see Martin v City of Cohoes*, 37 NY2d 162, 165 [1975]; *55 Liberty St. Assocs. v Garrick-Aug Assocs. Store Leasing, Inc.*, 255 AD2d 188, 189 [1<sup>st</sup> Dept 1998] [law of the case doctrine "requires courts to defer to the determinations, either express or implied,

of courts of co-ordinate jurisdiction”]). Although the doctrine is somewhat flexible (see *People v Evans*, 94 NY2d 499, 503-505 [2000]), it should be followed here, in light of the strict requirements and severe consequences relating to ejectment/eviction, and tenant’s pro se status.

Accordingly, the motion is denied, without prejudice to landlord moving to renew or otherwise modify the prior orders.


Regarding tenant’s cross-motion, landlord is not in contempt of any orders, and it has not engaged in any frivolous conduct within the meaning of 22 NYCRR 130-1.1.

It is therefore

ORDERED that plaintiff landlord’s motion is denied; and it is further

ORDERED that defendant tenant’s cross-motion is denied.

This constitutes the decision and order of the Court.

|                       |  |  |   |                                    |
|-----------------------|--|--|---|------------------------------------|
| 4/14/2026<br>DATE     | <br>MATTHEW V. GRIECO, J.S.C. |  |   |                                    |
| CHECK ONE:            | <input type="checkbox"/> CASE DISPOSED   | <input checked="" type="checkbox"/> DENIED | <input checked="" type="checkbox"/> NON-FINAL DISPOSITION |                                    |
| APPLICATION:          | <input type="checkbox"/> GRANTED   |  | <input type="checkbox"/> GRANTED IN PART                  | <input type="checkbox"/> OTHER     |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> SETTLE ORDER  |  | <input type="checkbox"/> SUBMIT ORDER                     |                                    |
|                       | <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN  |  | <input type="checkbox"/> FIDUCIARY APPOINTMENT            | <input type="checkbox"/> REFERENCE |