

<b>Bradhurst Assoc. v Swinton</b>
2026 NY Slip Op 32042(U)
May 12, 2026
Civil Court of the City of New York, New York County
Docket Number: Index No. L&T 316072/24
Judge: Clinton J. Guthrie
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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK: HOUSING PART D

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BRADHURST ASSOCIATES,

Index No. L&T 316072/24

Petitioner,

-against-

**DECISION/ORDER**

ANGELINE SWINTON,

Respondent.

-----X

Present:

Hon. CLINTON J. GUTHRIE  
Judge, Housing Court

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of respondent’s motion to amend the answer and to dismiss:

<b>Papers</b>	<b>Numbered</b>
Notice of Motion & All Documents Annexed.....	<u>1 (NYSCEF #11-21)</u>
Affirmation in Opposition & Supplemental Affirmation.....	<u>2 (NYSCEF #23-24)</u>
Affirmation in Reply & All Documents Annexed.....	<u>3 (NYSCEF #25-28)</u>

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

PROCEDURAL HISTORY

This summary nonpayment proceeding was commenced in September 2024. In December 2024, respondent filed a pro se answer. Thereafter, counsel appeared in March 2025 and subsequently made the instant motion to amend the answer and to dismiss the petition.

Following briefing on the motion, this court heard argument on December 16, 2025.

DISCUSSION/CONCLUSION

While respondent seeks amendment of the answer, she also seeks dismissal on the bases of two proposed “defenses,” which go to petitioner’s compliance with condition precedents. As

these challenges are in the nature of a CPLR § 3211(a)(7) failure to state a cause of action dismissal request, the court will first address them before assessing whether amendment of the answer is justified (*see* CPLR § 3211(e); *GMAC Mortgage, LLC v Coombs*, 190 AD3d 37, 43 [2d Dept 2020] [CPLR § 3211(a)(7) motion may be made “at any subsequent time” after a responsive pleading is required]).

For the reasons elaborated upon fully in *Rahman v Lewis*, 84 Misc 3d 720 [Civ Ct, Bronx County 2024], the court finds that petitioner lacks a cause of action because it failed to serve respondent with a “Notice of Occupancy Rights under the Violence Against Women Act (“VAWA Notice”) and companion certification form at the time that the predicate rent demand was served, as required by 24 CFR § 5.2005(a).<sup>1</sup> This determination is based upon a finding that petitioner, a landlord proceeding against a tenant with a Section 8 Housing Choice Voucher (HCV), is a “covered housing provider” subject to the VAWA notice requirements (*see Rahman*, 84 Misc 3d at 724 [citing 24 CFR § 5.2003]; *see also Cross Bronx Preserv. LLC v Delgado*, 2025 NY Slip Op 31036[U] [Civ Ct, Bronx County 2025]).

Additionally, as respondent lives in a “covered property” (*see* 15 USC § 9058(a)(2)) subject to the Coronavirus Aid, Relief, and Economic Security (CARES) Act [*see* 15 USC § 9058(c)], petitioner was obligated to provide a 30-day notice before proceeding herein (*see 1451 Assoc. LP v Jordan*, 88 Misc 3d 1213[A], 2025 NY Slip Op 52165[U] [Civ Ct, NY County

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<sup>1</sup> The court finds that a rent demand is a “notification of eviction” (24 CFR § 5.2005(a)(2)(iii)) with which the VAWA notices must be provided, as its purpose is to permit “the tenant to choose between timely paying the rent demanded therein – thus preserving the landlord-tenant relationship – or surrendering possession.” (*Greenport Preserv., L.P. v Heyward*, 74 Misc 3d 46, 49 [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2021] [Internal citations omitted]). Courts in other jurisdictions have held that a predicate “pre-eviction” notice is a “notification of eviction” as defined in the CFR (*see Lambert v Gharouni*, 2023 Vt Super LEXIS 162 [Superior Court of Vermont 2023]; *In re Hous. Auth. of Hartford*, 2022 Conn Super LEXIS 1748 [Superior Court of Connecticut 2022]; *DHI Cherry Glen Associates, L.P. v Gutierrez*, 46 Cal App 5th Supp 1 [Appellate Division, Superior Court of California 2019]).

2025]; *Belplain Realty Co. Inc. v Caro*, 85 Misc 3d 1278[A], 2025 NY Slip Op 50740[U] [Civ Ct, Bronx County 2025]; *GO HPS LLC v Harris*, 86 Misc 3d 1082, 1084-1085 [Civ Ct, Queens County 2025] [Wherein this court surveyed the state of the law in other jurisdictions and determined that the CARES Act notice provision remains in effect]). Petitioner served only a 14-day rent demand before commencing this proceeding (*see* NYSCEF Doc. 1, Page 22). As such, petitioner has failed to comply with a second condition precedent and dismissal is required (*see Caro*, 2025 NY Slip Op 50740[U], \*4; *Harris*, 86 Misc 3d at 1084-1085). Respondent’s motion to dismiss is granted pursuant to the foregoing determinations. The clerk shall issue a judgment dismissing the petition (*see* CPLR § 411).

Upon the dismissal for failure to comply with required conditions precedent, the court finds respondent’s motion to amend the answer to be moot. The prong of the motion seeking amendment is denied as moot and without prejudice.

This Decision/Order will be filed to NYSCEF.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated: Queens, New York  
May 12, 2026

 

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

CHECK ONE:

MOTION SEQ. #: 1

CHECK IF APPROPRIATE:

NOTES

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	GRANTED IN PART
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	STAY CASE
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE
NOTES					