

Durand v Nelson

2026 NY Slip Op 32043(U)

May 18, 2026

Supreme Court, Queens County

Docket Number: Index No. L&T 312274/25

Judge: Clinton J. Guthrie

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.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS: HOUSING PART SPP

-----X
YVES DURAND,

Index No. L&T 312274/25

Petitioner,

-against-

DECISION/ORDER

ORVILLE A. NELSON, JEWEL VANN NELSON,
JOHN DOE, JANE DOE,

Respondents.

-----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 order to show cause seeking dismissal, or in the alternative, to file an answer (seq. 1), and petitioner’s cross motion to amend the petition (seq. 2):

Papers	Numbered
Order to Show Cause & All Documents Annexed.....	<u>1 (NYSCEF #11-15)</u>
Notice of Cross Motion & All Documents Annexed.....	<u>2 (NYSCEF #17-22)</u>
Affirmation in Reply.....	<u>3 (NYSCEF #23)</u>

Upon the foregoing cited papers, the decision and order on respondent’s motion and petitioner’s cross motion, consolidated for determination herein, is as follows.

PROCEDURAL HISTORY

This summary holdover proceeding based upon a 90-day notice of termination was filed in August 2025. Respondent Orville A. Nelson (“respondent”) was appointed a guardian ad litem (GAL) in October 2025. After multiple adjournments in this resolution Part, the proceeding was transferred to the trial expediter on March 24, 2026. Before a pre-trial conference was held, counsel appeared for respondent’s GAL and filed an order to show cause

seeking dismissal, or, in the alternative, leave to file an answer.¹ After the order to show cause was signed, the proceeding was transferred back to this Part. Following an adjournment for briefing, petitioner made a cross motion to amend the petition. This court heard argument on both motions on May 12, 2026.

DISCUSSION/CONCLUSION

Respondent seeks dismissal on three primary bases, namely a failure to comply with notice requirements under the Violence Against Women Act (VAWA), failure to serve the form notice required by the Good Cause Eviction Law (GCEL) with the Notice of Petition and Petition, and failure to properly plead the “small landlord” exemption under the GCEL. Petitioner opposes dismissal in all respects and seeks amendment of the petition to augment the pleading to comply with the GCEL requirements.

As to the first basis, courts in this state have held that service of the notice of occupancy rights and companion certification form as required under the federal regulations governing VAWA (*see* 24 CFR § 5.2005(a)) with a predicate notice to the tenant is a required condition precedent to maintaining a summary eviction proceeding where the landlord a “covered housing provider” subject to VAWA’s requirements (*see Joe Cent. Brooklyn LLC v Upshaw*, 2026 NY Slip Op 30924[U] [Civ Ct, Kings County 2026]; *Williamsburg Hous. Preserv. LP v Thompson*, 2025 NY Slip Op 33532[U] [Civ Ct, Kings County 2025]; *Cross Bronx Preserv. LLC v Delgado*, 2025 NY Slip Op 31036[U] [Civ Ct, Bronx County 2025]; *Rahman v Lewis*, 84 Misc 3d 720 [Civ Ct, Bronx County 2024]). Respondent argues that because his tenancy was subject to a Section 8 subsidy, at least previously, he was entitled to the required VAWA notice. Petitioner

¹ Respondent’s answer was deemed a “general denial” when the case was transferred to the trial expediter.

replies that since respondent moved in after the inception of the former Section 8-subsidized tenant Lela Vann's tenancy and was not on her lease or HAP (Housing Assistance Payments) contract, he is not entitled to the VAWA notice.

The relevant regulation requires that “[a] covered housing provider must provide to each of its applicants and to each of its tenants the notice of occupancy rights and the certification form as described in this section[.]” (24 CFR § 5.2005(a)). While the term “tenant” is not defined in the VAWA section of the CFR, elsewhere it is defined as “an individual or family renting or occupying an assisted dwelling unit.” (24 CFR § 5.504(b)). While another court has held that the term “tenant” should be interpreted broadly in this context to serve the remedial purpose of the VAWA statute (*see Blvd. Together Master Tenant v Fermin*, 2025 NY Slip Op 33780[U] [Civ Ct, Kings County 2025]), the court does not find that respondent has established that the subject premises remains an “assisted dwelling unit” subject to the VAWA statute and regulations after the vacatur of the Section 8 subsidy-holder, Lela Vann, on this CPLR § 3211(a)(7) motion to dismiss (*see Watts v City of New York*, 186 AD3d 1577, 1578 [2d Dept 2020] [On a motion to dismiss for failure to state a cause of action, “the complaint [petition] is to be afforded a liberal construction, the facts alleged are presumed to be true, the plaintiff [petitioner] is afforded the benefit of every favorable inference, and the court is to determine only whether the facts as alleged fit within any cognizable legal theory[.]”]).² The court stresses that the issue of whether respondent is protected by VAWA, should respondent interpose a defense on this point, should be determined after a trial on the merits.

Respondent next argues that the petition should be dismissed because petitioner failed to

² Respondent concedes that Lela Vann vacated from the subject premises in his affirmation in support (*see Nelson Aff.*, ¶ 3).

serve the “Notice to Tenant of Applicability or Inapplicability of the New York State Good Cause Eviction Law” with the Notice of Petition and Petition, as required by Real Property Law (RPL) § 231-c(1) and RPAPL § 741(5-a). Respondent acknowledges that the GCEL notice was served with the predicate notice of termination but disputes that he received it with the pleadings. Petitioner argues in opposition that since the predicate notice and annexed GCEL notice were annexed to and incorporated within the Petition (*see* NYSCEF Doc. 1), petitioner has satisfied its obligation to serve the GCEL notice with the pleadings.

Ultimately, while respondent states in his affirmation in support that he “did not see any additional notices regarding [his] rights under the Good Cause Eviction Law” with the copy of the pleadings taped to his door in October 2025 (*see* Nelson Aff., ¶¶ 6-7), the court affords petitioner all favorable inferences and does not find that there is a basis to dismiss the proceeding for failure to serve the GCEL with the pleadings on this motion to dismiss.³ The Petition filed with the court includes a copy of the GCEL notice as an attachment and the petition restates the claimed “small landlord” exemption set out in the GCEL notice. In these circumstances, it cannot be held that respondent has established a “jurisdictional” defect (*cf. Jones Living Trust v Burnell*, 88 Misc 3d 129[A], 2026 Ny Slip Op 50201[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2026]) that would require dismissal on this record.

Finally, respondent asserts that the petition and predicate notice are defective because petitioner did not provide the information required to invoke the “small landlord” exemption under the GCEL. In part to remedy any defect, petitioner has sought amendment of the petition to state that his wife, Carmelle Durand, is a co-owner of the subject property and that they only

³ The court notes that respondent’s affirmation is signed by his GAL, so its value as a sworn statement based on personal knowledge is compromised.

own this property, which includes 2 units, and no other properties in the state of New York.

Upon this requested amendment, petitioner argues that he has complied with his pleading obligations under the GCEL

Real Property Law § 214(1) creates an exception for:

“[P]remises owned by a small landlord provided than in connection with any eviction proceeding in which the landlord claims an exemption from the provisions of this article on the basis of being a small landlord, such landlord shall provide to the tenant or tenants subject to the proceeding the name of each natural person who owns or is a beneficial owner of, directly or indirectly, in whole or in part, the housing accommodation at issue in the proceeding, the number of units owned, jointly or separately, by each such natural person owner, and the address of such units, excluding each natural person owner’s principal residence[.]”

Real Property Law § 211(3)(a) defines “small landlord” as a landlord of no more than ten units in the state, unless a different number of units is applicable under a local law outside of New York City (cross-referencing to RPL § 213(b)). Under RPL § 211(3)(b), a single natural person landlord qualifies as a “small landlord” if they “own or are a beneficial owner of, directly or indirectly, in whole or in part, no more than” ten units. Under RPAPL § 741(5-b), a petition must “append or incorporate the information required by [RPL § 214(1)]” if an exemption from the GCEL pursuant to RPL § 214(1) is claimed. The requirements contained in RPAPL § 741(5-b) became effective on August 18, 2024 (*see 1303 Needham Realty LLC v Brown*, 2025 NY Slip Op 25028, *2 [Civ Ct, Bronx County 2025] [citing L 2024, ch 56, [§ 1], part HH, § 7]).

Respondent annexes a deed showing that Yves Durand and Carmelle Durand are co-owners of the subject property (*see* NYSCEF Doc. 14). The original Petition states only that “the landlord owns only this two (2) family house within New York State and no other properties.” (*see* NYSCEF Doc. 1). As such, it did not incorporate all relevant information,

inasmuch as Carmelle Durand was a co-owner of the subject property. However, the court finds that petitioner has set forth a sufficient basis to amend the petition to plead that petitioner and Carmelle Durand are co-owners of the subject property, which contains 2 units, and that they own no other properties in New York, particularly as respondent has not established undue prejudice or surprise that would defeat amendment (*see* CPLR § 3025(b); *Igna v Revenco*, 86 Misc 3d 1210[A], 2025 NY Slip Op 50911[U] [Civ Ct, Kings County 2025]; *Sin Hang Lau v Yun He Zheng*, 86 Misc 3d 859 [Civ Ct, Kings County 2025]). Petitioner's cross motion is granted accordingly, and the proposed amended petition is deemed served and filed. Upon amendment, the court does not find a basis to dismiss in this posture on the basis of improper pleading of the "small landlord" exemption. Nonetheless, petitioner will be obligated to prove its exemption at trial (*see 1646 Union, LLC v Simpson*, 62 Misc 3d 142[A], 2019 NY Slip Op 50089[U], *2 [App Term, 2d Dept 2019]).

For each of these reasons, respondent's motion to dismiss is denied. The court grants respondent's alternative request to, in effect, interpose a late answer, particularly as "public policy favor[s] resolution of cases on the merits[.]" (*NYU-Hospital for Joint Diseases v Praetorian Ins. Co.*, 98 AD3d 1101, 1102 [2d Dept 2012]). An answer shall be filed no later than June 1, 2026. If timely filed, the answer shall supersede the general denial.

The proceeding will be restored for pretrial conference in Part G, Room 123, on June 10, 2026 at 9:30 AM.

This Decision/Order will be filed to NYSCEF.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated: Queens, New York
May 18, 2026



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

CHECK ONE:

MOTION SEQ. #: 1

MOTION SEQ. #: 2

CHECK IF APPROPRIATE:

NOTES

<input type="checkbox"/>	CASE DISPOSED		<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION			
<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
<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							