

BNS Bldgs., LLC v Thomas
2026 NY Slip Op 32081(U)
May 5, 2026
Civil Court of the City of New York, Kings County
Docket Number: Index No. LT-311863-25/KI
Judge: Vanessa Fang
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Civil Court of the City of New York
County of Kings
Part: Part C, Room: 402



Index #: LT-311863-25/KI
Motion Seq #: 2

Decision/Order

BNS BUILDINGS, LLC,
Petitioner(s)
-against-
ADRIANNA AYESHIA CLARISSA THOMAS,
Respondent(s),
"JOHN DOE," "JANE DOE,"
Respondent-undertenants.

Present: Vanessa Fang
Judge

Recitation, as required by CPLR 2219(A), of the papers considered in the review of this motion by respondent to grant summary judgment dismissing this proceeding and grant leave to conduct discovery.

PAPERS	NUMBERED
Notice of Motion and Affidavits/Affirmations Annexed	1
Order to Show Cause and Affidavits/Affirmations Annexed	2
Answering Affidavits/Affirmations	3
Replying Affidavits/Affirmations	4
Exhibits	5
Stipulations	6
Other _____	7

Upon the foregoing cited papers, the Decision/Order in this Motion is as follows:

Petitioner commenced this summary nonpayment proceeding on the grounds that respondent has failed to pay rent arrears from January through April 2025 at \$1,900.00 per month for the subject premises located at 200 Highland Blvd., Apt. 6H, Brooklyn, New York. The petition pleads that the premises is not subject to rent stabilization on the grounds that the apartment was rented "after June, 1997 and before June 24, 2011 at a legal regulated rent of at least \$2,000.00."

Respondent interposed an amended answer and counterclaims on October 28, 2025 alleging defenses and claims comprising improper rent demand and defective petition seeking in excess of the amount legally collectable, no lease in effect at commencement, no certificate of occupancy, failure to register rent with DHCR, rent overcharge, breach of the warranty of habitability and an order to correct, and attorney's fees.

Respondent now moves pursuant to CPLR § 3212(b) for summary judgment dismissing the petition on the grounds that the subject building is occupied in violation of the existing certificate of occupancy ("CO"). Respondent argues that petitioner is precluded from maintaining this nonpayment proceeding or collecting rent

under MDL §§ 301 and 302 while the CO violation exists. Respondent proffers New York City Department of Buildings (“DOB”) website printouts showing two open violations – one violation was issued on September 26, 2006 under OATH/ECB Violation Number: 34542255J and a second violation was issued on February 3, 2007 under OATH/ECB Violation Number: 34560680J both for occupancy contrary to the CO at the cellar.

In opposition, petitioner asserts that the allegation of an illegal unit in the cellar level is inaccurate and that this violation was cured prior to the arrears accruing. Petitioner further asserted that it was unclear why the DOB portal did not reflect the cure and that, in any event, petitioner was in the process of removing the violations from the record.

In reply, respondent concedes that the violations have since been cured and proffers proof that both violations have been resolved and that compliance for both was on November 20, 2025. The certification for violation number 34560680J was disapproved on December 5, 2025 and later accepted on January 12, 2026. The certification for violation number 34542255J was disapproved on January 12, 2026 and later accepted on January 15, 2026.

MDL § 301 provides that “[n]o multiple dwelling shall be occupied in whole or in part until the issuance of a certificate by the department that said dwelling conforms in all respects to the requirements of this chapter, to the building code and rules and to all other application law.” MDL § 302(1) provides that “[i]f any dwelling or structure be occupied in whole or in part for human habitation in violation of section three hundred one, during such unlawful occupation . . . [n]o rent shall be recovered by the owner of such premises for said period, and no action or special proceeding shall be maintained therefore, or for possession of said premises for nonpayment of such rent.” In sum, when the occupancy is inconsistent with the existing CO, petitioner is barred from the collection of rent. *Chazon, LLC v. Maugenest*, 19 N.Y.3d 410 (2012); *Matter of GVS Props. LLC v. Vargas*, 172 A.D.3d 466 (1st Dept. 2019); *West 47th Holdings LLC v. Eliyahu*, 64 Misc.3d 133(A) (AT 1 2019).

Based on respondent’s documentary evidence, the two CO violations were resolved after April 2025. No proof was submitted to substantiate petitioner’s claim that the violations were cured prior to the accrual of the rent arrears. Therefore, petitioner has failed to rebut respondent’s claim that the CO violations existed during the period for which unpaid rent is sought in the petition to create a triable issue of fact. Accordingly, as respondent has demonstrated that her occupancy of the subject premises violated the CO from January through April 2025,

respondent's motion for summary judgment pursuant to CPLR § 3212 is granted and this nonpayment proceeding is dismissed.

Discovery

Respondent also moves pursuant to CPLR § 408 for leave to conduct discovery with respect to the regulatory status of the subject premises. Respondent maintains that the subject premises is rent stabilized, but that she moved into the apartment in June or July 2023 pursuant to an unregulated free market lease. Respondent alleges that the DHCR rent history indicates indicia of fraud showing various increases above the permitted allowances in 1990, 1997, 2003, and 2008. Respondent also claims that the registered preferential rents are significantly less than the legal regulated rents; multiple questionable vacancy increases were taken in 2006 and 2008; the rent threshold was reached in 2010 just prior to the change in the 2011 rent law increasing the decontrol threshold from \$2,000 to \$2,500; and a DHCR rent reduction order issued in 1997 is still in effect.

Petitioner's opposition to this branch seeking discovery is only supported by an attorney affirmation which argues that respondent's claim of improper deregulation is speculative.

Discovery in a summary proceeding requires leave of court. CPLR § 408. The party seeking leave to conduct discovery must show that there is "ample need" to obtain the information requested which may be demonstrated based on a consideration of the following factors: (1) whether the movant has asserted facts to establish a cause of action or defense; (2) whether the movant has demonstrated a need to determine information directly related to the cause of action or defense; (3) whether the information requested is carefully tailored to clarify the disputed facts; (4) whether granting disclosure would result in prejudice; (5) whether the court can diminish or alleviate the prejudice; and (6) whether the court can structure discovery to protect self-represented litigants against adverse effects of a movant's discovery requests. *New York University v. Farkas*, 121 Misc.2d 643, 647 (Civ Ct, NY Co 1983).

Respondent has demonstrated ample need based on the contention that the DHCR registration bears indicia of fraud and that the subject premises was improperly deregulated. Disclosure of the information requested concerning the history of the rents and leases for the subject premises may aid in clarifying pertinent facts and issues and is directly related to respondent's defenses and counterclaims. As issues of fact have been raised to question the reliability of the rent history, the court "shall consider all available rent history which is reasonably

necessary to make” a determination on claims of rent overcharge and in determining the legal regulated rent. NYC Administrative Code § 26-516(h); *see West Pierre Associates LLC v. Harvey*, 241 A.D.3d 413 (1st Dept. 2025). Furthermore, an apartment’s rental history may be examined to determine the apartment’s regulatory status without a showing of fraud and without a time period restriction. *See AEJ 534 East 88th, LLC v. New York State Div. of Hous. And Comm. Renewal*, 194 A.D.3d 464 (1st Dept. 2021); *Matter of Kostic v. New York State Div. of Hous. And Comm. Renewal*, 188 A.D.3d 569 (1st Dept. 2020); *Diagonal Realty, LLC v. Linares*, 70 Misc.3d 133(A) (AT 1 2020).

Accordingly, respondent’s motion for leave to conduct discovery is granted. Petitioner is directed to provide documents responsive to respondent’s Interrogatories and Document Request except as to Document Items 7, 11, and 12. Items 1 and 6 are limited to the subject premises. Responses are to be provided within sixty (60) days¹ from the date of notice of entry. This proceeding is adjourned to July 20, 2026 at 9:30am for control purposes.

This constitutes the decision and order of the Court.

Dated: May 5, 2026
Brooklyn, New York


VANESSA FANG, J.H.C.

CHECK ONE:

MOTION SEQ. #:

CHECK IF APPROPRIATE:

NOTES

☐	CASE DISPOSED	☐	NON-FINAL DISPOSITION	
☒	GRANTED	☐	DENIED	
☐	SETTLE ORDER	☐	GRANTED IN PART	☐
☐	INCLUDES TRANSFER/REASSIGN	☐	SUBMIT ORDER	☐
		☐	FIDUCIARY APPOINTMENT	☐
			OTHER	☐
			STAY CASE	☐
			REFERENCE	☐

¹ Parties consented to this deadline.