

321 E. 84 L.P. v Levan
2026 NY Slip Op 32115(U)
May 7, 2026
Supreme Court, New York County
Docket Number: Index No. 155253/2024
Judge: Gerald Lebovits
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (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.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. GERALD LEBOVITS

PART

07

Justice

-----X

321 EAST 84 L.P.,

INDEX NO. 155253/2024MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 002

- v -

CATHY LEVAN, JOHN DOE, and JANE DOE,

**DECISION + ORDER ON
MOTION**

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68

were read on this motion for

SUMMARY JUDGMENT (AFTER JOINDER)

Claro PLLC, New York, NY (Joseph M. Claro of counsel), for plaintiff.

Himmelstein Gribben & Joseph LLP, New York, NY (Serge Joseph of counsel), for defendant.

Gerald Lebovits, J.:

Plaintiff, 321 East 84 L.P., owns the premises located at 321 East 84th Street in Manhattan. Defendant, Cathy Levan, currently resides in apartment 2F in that residential building.

Defendant originally resided in a rent-stabilized apartment at 940 1st Avenue in Manhattan. That building is now owned by 940 1st Avenue Owner L.P. ("940 1st Avenue") but was previously owned by First Avenue Realty Holdings L.P. ("First Avenue Realty").

In December 2017, defendant was temporarily relocated from 940 1st Avenue to plaintiff's building at 321 East 84th, after the parties agreed in Housing Court that defendant's 940 1st Avenue apartment required repairs. (See NYSCEF No. 26 [judgment on consent]; Index No. LT-6079-17/NY). At that time, First Avenue Realty, the former owner, entered into an agreement with the then-owner of the 321 East 84th premises to house defendant temporarily. Defendant has resided in that apartment for the last nine years. Defendant claims that 940 First Avenue has not adequately completed the repairs and thus that she is not required to return to her original apartment. 940 First Avenue disputes that contention.¹

¹ Defendant and 940 1st Avenue have an appearance in Housing Court on May 19, 2026. Among the motions in Housing Court is 940 1st Avenue's motion for a finding that it has complied with its repair obligations. (See Index No. LT-006079-17/NY, NYSCEF No. 217 [notice of motion].)

In June 2017, a foreclosure action on the 321 East 84th building was initiated by the then-owner's mortgagor. The mortgagor filed a notice of pendency in July 2017. Supreme Court rendered its judgment of foreclosure in July 2023. (*See* NYSCEF No. 45 [judgment of foreclosure]; Index No. 850152/2017 [Kahn, J.]) A judicial foreclosure sale of the building took place in December 2023. (*See* NYSCEF No. 46.) And the purchaser assigned the building to plaintiff in April 2024. (*See* NYSCEF No. 47.)

In June 2024, plaintiff brought this ejectment action against defendant. Plaintiff asserts claims for ejectment and use and occupancy. Defendant raises three affirmative defenses: (1) that plaintiff may eject defendant only upon serving a termination notice that comports with the Rent Stabilization Code; (2) that a tenancy agreement between defendant and the 321 East 84th building's prior owners is binding on plaintiff; and (3) that the current action should be transferred to Housing Court. (*See* NYSCEF No. 13 [answer].) Defendant also raises three counterclaims: (1) attorney fees under Real Property Law § 234; (2) retaliation; and (3) a declaration that the 321 East 84th apartment is subject to rent stabilization. (*See id.*)

Plaintiff now moves for summary judgment on its ejectment claim and summary judgment dismissing defendant's affirmative defenses and counterclaims.² The motion is granted. Defendant has no valid tenancy at 321 East 84th.

DISCUSSION

I. Ejectment Claim

Plaintiff argues that defendant has no valid tenancy in 321 East 84th and therefore has no right to remain in apartment 2F. Plaintiff says that no lease agreement—oral or written—exists between plaintiff and defendant. (*See* NYSCEF No. 29 at 4-5.)

In opposition, defendant claims that she has a valid tenancy at 321 East 84th. She points to a 2021 nonpayment proceeding against defendant brought by the former 321 East 84th owner. (*See* NYSCEF No. 41 at 1; Index No. LT-301654-21/NY.) Defendant argues that the nonpayment petition refers to an agreement between defendant and the former owner for defendant to occupy apartment 2F and that the agreement constitutes evidence of her tenancy.³ (*See* NYSCEF No. 31 at ¶ 12; NYSCEF No. 41 at 1.) Defendant also asserts that 940 1st Avenue is affiliated with plaintiff and therefore that the tenancy rights she has at the original apartment—at 940 1st Ave—should be imputed to her tenancy at 321 East 84th.

This court declines to weigh in on whether those repairs have been completed. That is Housing Court's job.

² Plaintiff makes no argument on this motion about its use-and-occupancy claim.

³ Notably, defendant produces no lease between herself and 321 East 84th's former owner to show that she has a valid tenancy.

On reply, plaintiff contends that even if that agreement exists, it is void because it post-dates the notice of pendency filed in the foreclosure action. (*See* NYSCEF No. 68 at 5.) Plaintiff further asserts that 940 1st Avenue and plaintiff are not affiliated.

This court concludes that defendant has raised no issue of fact about whether she has a valid tenancy in plaintiff's building at 321 East 84th. Even assuming that defendant and the former 321 East 84th owners entered into a lease agreement in December 2017, that agreement is inoperative. The notice of pendency to foreclose on the 321 East 84th building was filed in July 2017, months before defendant entered into the alleged agreement. And a post-foreclosure purchaser of property does not purchase that property subject to a tenant's lease if the tenant's interest post-dates the notice of pendency.⁴ (*See Polish Nat. All. of Brooklyn, U.S.A. v White Eagle Hall Co., Inc.*, 98 AD2d 400, 404 [2d Dept 1983] [holding that tenants are necessary parties to a foreclosure action "unless the interest in the property was obtained after the mortgagee filed a notice of pendency"].)

Moreover, defendant has provided no evidence that plaintiff, 321 East 84th L.P., and 940 1st Avenue Owner L.P. are affiliated. Defendant contends that they share the same general partners—Chaskiel Strulovitch and Nitanel Deitcher—and the same business address. (*See* NYSCEF No. 31 at ¶ 6.) Defendant further asserts that both 940 1st Avenue and plaintiff have the same legal counsel. But defendant provides no evidence that Strulovitch and Deitcher are associated with plaintiff.⁵ Indeed, Shlomo Drazin, a member of plaintiff, a limited partnership, represents that those individuals have no membership in plaintiff or ownership interest in the 321 East 84th building.⁶ (*See* NYSCEF No. 66 at ¶ 4.) And that both entities retained the same counsel and share an address is not enough, without more, to suggest that they are affiliated.

Accordingly, plaintiff's motion for summary judgment on its ejectment claim is granted.

II. Affirmative Defenses and Counterclaims

The branch of plaintiff's motion to dismiss defendant's affirmative defenses is granted. Defendant's affirmative defenses are that (1) plaintiff may eject defendant only upon serving a termination notice consistent with the Rent Stabilization Code; (2) a tenancy agreement between

⁴ Defendant further argues that even if her proof of tenancy is insufficient, she would be a tenant at will or sufferance—given the prior owner's petition in the nonpayment proceeding alleging that she is a tenant—and therefore that plaintiff would be required to terminate her tenancy before seeking to eject her. (*See* NYSCEF No. 60 at 11-13.) That the prior owner believed that the tenancy existed does not, however, necessarily mean that when *plaintiff* took ownership of the building, *plaintiff* did so subject to a tenancy that never existed.

⁵ Defendant provides only the deed recording for the building at 940 1st Avenue, which Deitcher signed. (*See* NYSCEF No. 36 [deed recording].) But whether a principal of 940 1st Avenue signed a deed recording for the 940 1st Avenue building has no bearing on whether Deitcher is affiliated with plaintiff, the owner of the building at 321 East 84th.

⁶ Drazin also represents that "Plaintiff, together with one of the First Avenue owners, ventured to acquire the first mortgage but the owner lacked capital to do so and Plaintiff took sole title to the Building." (NYSCEF No. 66 at ¶ 4.)

defendant and 321 East 84th's prior owners is binding on plaintiff; and (3) the current action should be transferred to Housing Court. (*See* NYSCEF No. 13 [answer].)

Given this court's conclusion that defendant has no valid tenancy in plaintiff's building at 321 East 84th, the first and second affirmative defenses are dismissed. There is no tenancy here on which to premise rent-stabilization rights. And because defendant has conceded that her primary residence is a rent-stabilized apartment at 940 1st Avenue (*see* NYSCEF No. 31 at 1), she may not also receive rent-stabilization protection at 321 East 84th, her temporary (and non-primary) residence. (*See* 9 NYCRR 2524.4 [c] [explaining that an owner may seek to recover possession of rent-stabilized apartment if the tenant does not use the apartment as a primary residence]; *see also* 9 NYCRR 2520.11 [k].) Moreover, as this court concluded above, the alleged tenancy agreement between defendant and 321 East 84th's prior owner is not binding on plaintiff.

The third affirmative defense is also dismissed. This court has already denied defendant's motion to transfer this action to Housing Court. (*See* NYSCEF No. 12 [Nov. 13, 2024, handwritten order on mot seq 001].)

The branch of plaintiff's motion to dismiss defendant's counterclaims is also dismissed. Defendant counterclaims for (1) attorney fees under Real Property Law § 234; (2) retaliation; and (3) a declaration that the 321 East 84th apartment is subject to rent stabilization. (*See* NYSCEF No. 13.) But because defendant has no valid tenancy in plaintiff's building, she is not entitled to a declaration that the 321 East 84th apartment is subject to rent stabilization. In addition, defendant does not oppose dismissal of her retaliation claim. And finally, given that defendant is not the prevailing party in this action, she is not entitled to attorney fees.

Accordingly, it is

ORDERED that plaintiff's motion is granted; and defendant's affirmative defenses and counterclaims are dismissed; and it is further

ORDERED that the branch of the plaintiff's motion for summary judgment on its claim for a writ of assistance is granted; and it is further

ORDERED that the execution of the writ of assistance is stayed for 30 days after service of this order with notice of entry; and it is further

ORDERED that after the 30-day stay, plaintiff is entitled to possession of apartment 2F located at 321 East 84th Street, New York, New York, as against defendant, and the Sheriff of the City of New York, County of New York, upon receipt of a certified copy of this decision and order and payment of proper fees, is directed peaceably to place plaintiff in possession accordingly upon the expiration of 30 days from receipt of the decision and order; and it is further

ORDERED that upon the expiration of 30 days from service of notice of entry of this decision and order, plaintiff may exercise all acts of ownership and possession of apartment 2F

located at 321 East 84th Street, New York, New York, including entry thereto, as against defendant; and it is further

ORDERED that plaintiff's use-and-occupancy claim is severed and shall continue; and it is further

ORDERED that plaintiff serve a copy of this order with notice of its entry on defendant and on the office of the County Clerk (using the NYSCEF document type "Notice to the County Clerk - CPLR § 8019 (c)"), which shall enter judgment accordingly.

<u>5/7/2026</u>			
DATE		HON. GERALD LEBOVITZ J.S.C.	
CHECK ONE:	☐ CASE DISPOSED	☒ NON-FINAL DISPOSITION	
	☒ GRANTED ☐ DENIED	☐ GRANTED IN PART	☐ OTHER
APPLICATION:	☐ SETTLE ORDER	☐ SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐ INCLUDES TRANSFER/REASSIGN	☐ FIDUCIARY APPOINTMENT	☐ REFERENCE