

Fordham Law School

FLASH: The Fordham Law Archive of Scholarship and History

[All Decisions](#)

[Housing Court Decisions Project](#)

2020-08-25

1825 LAC REALTY CORP. v. GLENTON

Follow this and additional works at: https://ir.lawnet.fordham.edu/housing_court_all

Recommended Citation

"1825 LAC REALTY CORP. v. GLENTON" (2020). *All Decisions*. 176.
https://ir.lawnet.fordham.edu/housing_court_all/176

This Housing Court Decision is brought to you for free and open access by the Housing Court Decisions Project at FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in All Decisions by an authorized administrator of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

**CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX: HOUSING PART B**

1825 LAC REALTY CORP.,

Petitioner-Landlord,

Index No: 43922/20
DECISION / ORDER

-against-

DACRES GLENTON ET AL,

Respondent-Tenant.

8/25/20
SO orders
ARLENE H. HAHN
JUDGE, HOUSING PART

HON. ARLENE H. HAHN, J.H.C.

Recitation, as required by CPLR2219(a), of the papers considered in the review Petitioner's cross-motion.

PAPERS

NUMBERED

Respondent's Motion, Affirmation, Affidavit, and Exhibits in Support.....	1
Petitioner's Cross-Motion, Affirmation, Affidavit, and Exhibits in Support.....	2
Respondent's Reply Affirmation, and Exhibits in Opposition to Cross-Motion.....	3
Petitioner's Reply Affirmation.....	4

After oral argument, and in consideration of all papers and memoranda of law submitted by both parties, the Court decides Respondent's Motion and Petitioner's Cross motion as follows:

The instant proceeding was commenced as a month to month/no lease holdover on October 8, 2019. Petitioner's predicate notice and petition allege that the premises is a five unit building and not subject to rent control or the Rent Stabilization Law. The matter first appeared on the Court's calendar on October 28, 2019, and adjourned on several occasions for Respondent to consult and retain counsel and file an answer. On January 16, 2020, the matter was adjourned to February 25, 2020 and again to March 24, 2020, for motion practice.

On March 17, 2020, all court proceedings were suspended due to the Covid-19 Pandemic.

The parties, by their attorneys, voluntarily appeared via a Skype conference on July 23, 2020, and the matter was then adjourned to August 18, 2020 for completion of filing all papers and for argument. On August 18, 2020, argument was held, on the record, via a Skype conference.

Respondent, through their motion, now seeks to dismiss this proceeding on the grounds that the premises are rent stabilized and the petition fails to properly plead the regulatory status of the premises, pursuant to CPLR3211(a)(7), or in the alternative leave to conduct discovery pursuant to CPLR 408.

Petitioner, through their cross-motion, seeks an Order denying Respondent's motion, and an award in favor of petitioner, for use and occupancy.

Both parties, in their papers, acknowledge that the subject premises is registered as a five unit building, and that the certificate of occupancy allows five residential units, and that the premises was constructed prior to 1974.

Respondent, by Exhibit E in their motion to dismiss, shows that the prior owner had illegally altered the basement apartment into two residential units, thereby converting the property to a six family dwelling. As the alterations were accomplished without any work permits, violations were placed against the property by the Department of Building for same on January 2, 2003 (violation #041414C09MB01/02/03), and by the Environmental Control Board on April 22, 2014 (violation #s 35078744K and 35078745M). That the violations were later resolved by the prior owner's filing of an accepted certificate of correction, coupled with the payment of the fine assessed at the ECB hearing dated June 20, 2014, only confirms the fact that the premises once contained six dwelling units. Petitioner's argument that the HPD violation finding that apartment 1B had been illegally subdivided creating a commercial space is unpersuasive, as that violation was issued October 17, 2013, fully six months prior to the violation placed by the ECB on April 22, 2014. As such, Petitioner fails to refute the facts above with credible documentary or testimonial evidence. See 124 Meserole, LLC v. Recko, 2017 NY Slip op 50686(U)(App. Term 2nd Dept.).

Appellate authority provides that a building constructed prior to January 1, 1974, which contains six or more residential units, is subject to rent stabilization coverage. Joe Lebnan, LLC v. Olivia, 39 Misc.3d 31 (App. Term 2d 11th and 13th Jud. Dists. 2013); Rashid v. Cancel, 9 Misc.3d 130(A)(App. Term 2d and 11th Jud. Dists. 2005); Rosenberg v. Gettes, 187 Misc.2d 790 (App. Term 1st Dept. 2000); Matter of Graecor Realty Co. V. Hargrove, 90 N.Y.2d 350, 355 (1997). In Cancel, the court found that the use of an illegal basement for residential purposes brought an entire building under rent stabilization, as the basement's residential use constituted the sixth residential unit in the building. The court also held that, "[t]he alleged subsequent reduction in the number of housing accommodations to fewer than six, even if done, as the landlord claims, after the placement by the Department of Housing Preservation and Development of a violation, did not exempt the remaining units from rent stabilization." *Id.* The facts of Cancel clearly apply here, where both the Department of Buildings and the ECB found violations for an illegal residential unit at the subject building. In Rosenberg v. Gettes, the court emphasized:

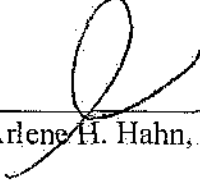
[w]e additionally note that the Division of Housing and Community Renewal (DHCR) has counted basement level apartments for purposes of determining whether a building has the requisite six housing accommodations for stabilization Jurisdiction, notwithstanding that those apartments did not appear on the certificate of occupancy or were otherwise "illegal", *Id.* at 791.

Given that the Respondent is subject to rent stabilization, Respondent "can [only] be evicted upon one of the grounds set forth in section 2524.33 of the RSC [9 NYCRR] and only after being served with the notices required under section 2524.2 of the code. As noted by the Court in Cancel, "if, as landlord claims, [s]he was unaware, when [s]he purchased the building, that the basement had been used as a housing accommodation, landlord's remedy, if any, would lie against the prior owner. However, landlord's alleged lack of knowledge does not give rise to an exemption from rent stabilization since landlord acquired the building subject to those rights and protections enjoyed by the building's tenants at the time of acquisition." (Cancel at 9

Misc.3d 130 [A].

Based upon the foregoing, Petitioner's Cross Motion is denied in its entirety.
Respondent's motion for dismissal is granted.

This constitutes the decision and order of the Court.



Hon. Arlene H. Hahn, J.H.C.

Dated: Bronx, New York
August 25, 2020