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2020-10-08

### Torres v. N.Y.C. Hous. Auth.

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

-----X  
**STEVEN TORRES,**

**HP Index No. 000677/20**

**Petitioner**  
**-against-**

**DECISION/ORDER**

**NEW YORK CITY HOUSING AUTHORITY  
(NEW AMSTERDAM HOUSES)**

**Respondent-Landlord.**  
-----X

**RECITATION AS REQUIRED BY CPLR §2219(A) OF PAPERS CONSIDERED IN THE  
REVIEW OF RESPONDENT'S MOTION TO DISMISS PURSUANT TO CPLR 3211**

<b>PAPERS:</b>	<b>NUMBERED</b>
<b>RESPONDENT'S NOTICE OF MOTION, AFFIRMATION &amp; EXHIBITS</b>	<b>1-6;A-B</b>
<b>PETITIONER'S AFFIRMATION AND AFFIDAVIT IN OPPOSITION</b>	<b>1-8</b>
<b>RESPONDENT'S REPLY AFFIRMATION</b>	<b>1-4</b>

**HON. ANNE KATZ:**

Petitioner commenced this HP action by Order to Show Cause Directing the Correction of Violations and Verified Petition dated August 5, 2020. The Verified Petition alleged conditions at 240 West 65<sup>th</sup> Street, Apartment 8C, New York, New York 10023 ("premises"). The conditions alleged were: mold in the bathroom; hole under the sink; damaged tiles; the ceiling is falling and paint chips are all over the floor. According to the petitioner, he has requested repairs for three to five years and some patchwork was done over a year ago but not completed. The case was returnable in the HE part on August 13, 2020. At that time, this Court took testimony from Steven Torres the manager of New Amsterdam Houses. Mr. Torres testified that petitioner is not the tenant of record nor is he listed on the family composition. Mr. Torres testified that the tenant of record was Louie Brugman who is now deceased. In his papers respondent also alleges no written requests were made to add petitioner to the lease. Based upon the foregoing, respondent argues that petitioner lacks standing to bring this action as he is a squatter or licensee, who entered into possession of the premises without the permission of the landlord. *New York City Administrative Code §27-2115(f)(4), (h.i)*. Additionally, respondent alleges that petitioner is not entitled to the repairs as they are not of an emergency nature and due to the COVID-19 pandemic NYCHA does not prioritize these types of repairs.

Petitioner alleges that he is a lawful occupant of the premises. Petitioner alleges that he is the son of the deceased tenant of record who authorized him to live in the premises and that respondent

has never terminated his license to reside there. Petitioner alleges that his state identification card lists the premises as his address, that all utilities at the premises are registered in his name and that his cell phone and medical insurance are use the premises as his address. Petitioner alleges that NYCHA's housing manager, Mr. Scott had knowledge that he resided at the premises and took care of his father, the tenant of record. According to petitioner's affidavit, Mr. Scott, worked at the premises for over 8 years and went to the premises on numerous occasion s to check up on the tenant of record. According to petitioner, if Mr. Scott could not reach the tenant of record, he would contact petitioner because he knew the tenant of record was very sick. In fact, Mr. Scott allegedly told petitioner that he was a "wonderful son for the way that he took care of his father". Petitioner alleges he served as a caretaker for his father from 1993 until his death in February, 2020. Accordingly, respondent argues that pursuant to the Housing Maintenance Code, he may apply to the Civil Court's HP Part for an order to correct violations. *NYC Admin. Code §27-2115(h)(i)* provides "...if there is a notice of violation outstanding respecting the premises in which the lawful occupancy or group of lawful occupants resides...the lawful occupant or any group of lawful occupants, may individually or jointly apply to the housing part for an order. Respondent further argues that the Courts have previously held that a "licensee tenant or subtenant may bring a proceeding for an order to correct violations. *Various Tenants of 515 E. 12<sup>th</sup> St v. 515 E. 12<sup>th</sup> St Inc, 128 Misc2d 235 (1985)*. Petitioner rejects respondent's argument that he is a squatter as a squatter is defined as someone who has intruded into the property without the permission of the person entitled to possession and the occupancy has continued without permission or permission has been revoked and notice of revocation given to the person to be removed. *Williams v. Alt, 226 NY 283, 123 NE 499 (Ct. Appeals 1919)*.

The legislative intent in enacting the Housing Maintenance Code was to provide for safe housing. The term housing standard should be given a broad meaning and it encompasses any legislative standard which directly impacts the health and safety of occupants of buildings covered by the Building Code and Housing Maintenance Code. *Various Tenants of 515 E. 12<sup>th</sup> St. v. 515 E. 12<sup>th</sup> St. , 128 Misc2d 235, 489 NYS2d 830 (1985)*. The Civil Court of the City of New York, Housing Part, has jurisdiction to order respondent owners to make necessary repairs to correct conditions at the building which violate the Housing Maintenance Code. *See Various Tenants, supra*. Absent a warrant of eviction, a licensee, tenant or subtenant may bring a proceeding for an order to correct violations. *See Various Tenants, supra*.

According to petitioner's affidavit in opposition to the motion to dismiss, he entered into possession as a licensee of his father and took care of him with the knowledge of respondent for many years. At the hearing, Mr. Torres did not deny knowledge of petitioner but rather testified he was not on the lease or the family composition. Under these circumstances it is clear that petitioner is not a squatter to whom respondent is not obligated to provide essential services. *Maria Valentin v. DHPD, 160 Misc2d 418, 609 NYS2d 554 (1994)*. Unlike the petitioner in *Valentin, supra.*, who admitted that she unilaterally entered into a vacant apartment without authority or permission of anyone, petitioner is the son of the deceased tenant of record. Furthermore, although respondent, like respondent in *Valentine, supra.*, does have a waiting list of pre-approved applicants who have qualified for this project, respondent may be entitled to a first, second and/or third step grievance to prove any alleged succession claim he may have for succession. Petitioner's

possession of the premises is based upon color of right or consent and not as a squatter. Therefore, this Court find petitioner is entitled to maintain this proceeding.

This constitutes the Decision and Order of this Court. All parties will receive an invitation for a hearing.

Date: New York, New York  
October 8, 2020



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HON. ANNE KATZ, J.H.C.

**ANNE KATZ  
JUDGE, HOUSING COURT**