

Fordham Law School

FLASH: The Fordham Law Archive of Scholarship and History

[All Decisions](#)

[Housing Court Decisions Project](#)

2020-11-05

230 Hart St. Inc. v. Koeneman

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

Recommended Citation

"230 Hart St. Inc. v. Koeneman" (2020). *All Decisions*. 206.
https://ir.lawnet.fordham.edu/housing_court_all/206

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 KINGS: HOUSING PART D

-----X
230 HART STREET INC.

Petitioner

Index No. LT # 87380/19

- against -

DECISION/ORDER

DAVID KOENEMAN
RAVEN FLEMING
JOHN DOE & JANE DOE
230 HART STREET
Apt. Floors 2 & 3
Brooklyn, NY 11206

Respondents.

-----X
HON. HANNAH COHEN:

Recitation, as required by CPLR 2219(a), of the papers considered in the review of respondent's motion seeking summary judgment or in the alternative discovery and ensuing opposition and reply .

<u>Papers</u>	<u>Numbered</u>
Notice of Motion	1
Opposition	2
Reply	3

Upon the foregoing cited papers, the Decision and Order on the Motion is as follows:

Petitioner commenced this holdover proceeding seeking possession of apartment Floors 2 and 3 at 230 Hart Street, Brooklyn NY 11235 based upon a termination of a licensee tenancy. The petition alleges that the subject premises is not subject to the Rent Stabilization Law of 1969 as

amended as the premises are located in a two family house.

Respondent David Koeneman and Raven Fleming each appeared with counsel and asserted affirmative defenses and counterclaims. David Koeneman now by motion seeks summary judgment in that premises are subject to rent stabilization as they have contained six or more units. Mr. Koeneman submits an affidavit testifying that there are four separate units on the first floor and two units on the first floor. In the alternative, respondent also asserts that he is a rent stabilized SRO tenant pursuant to RSC section 2520.6(j) and or seeks discovery.

In support of respondents motion for summary judgment, respondent submits the following: (1) an affidavit reiterating that there are six units in the premises and that the four units on the second floor are marked with number signs and submits four photos, one of a door knob and three other door knobs with a sticker indicating numbers 2, 3 and 4. Mr. Koeneman affirms that he resides in unit 3 and that Ms. Fleming resides in unit 4 on the second floor and knows of previous individuals who had lived on the second floor and has been inside unit 1 and has seen individuals come in and out of unit 2. Mr. Koeneman also affirms that currently two other individuals reside on the first floor; (2) copy of a sublease and indemnity agreement through Bedly for room #3 from Greenberg & Chester LLC and David Koeneman beginning April 1, 2019 through August 31, 2019; (3) Trulia search for the first floor unit, advertising room for rent within an apartment and; (4) article regarding a co-living company, Bedly closing; (5) DOB/ ECB violation issued August 7, 2012 for "occupancy contrary to that allowed by bldg dep records declared records declared an unsafe bldg 4/21/12 UB#3485/12 occupied SRO first floor 1 SRO front 1 SRO rear occupied SRO second floor 1 SRO".

Petitioner in opposition alleges that it entered into a lease agreement with Greenberg & Chester LLC (d/b/a Bedly Holdings) to rent unit 2 for October 1, 2017 through September 31,

2019. Pursuant to paragraph 12 of the lease, petitioner alleges that Bedly Holdings was permitted to sublet the premises under certain conditions and obtain petitioner's permission to sublet. According to the petitioner, paragraph 12 states "the subtenant does not become Landlord's tenant." Bedly surrendered legal possession of the premises on August 31, 2019 but Mr. Koeneman remained in the premises. Petitioner also disputes that the respondent may have rights as a SRO tenant, as the premises is a Class A dwelling and not a multiple dwelling.

In support of the opposition to summary judgment, petitioner submits the following: (1) affidavit in support from Joel Rolnitzky, the head officer of 230 Hart Street who states the premises does not contain more than four units and that any alteration if any, to the contrary was made by Bedly or the respondents without their permission and that they never had a landlord tenant relationship with the respondent; (2) copy of lease agreement with 230 Hart Street Inc., and Greenberg & Chester LLC for unit 2 from 10/1/2017 through 9/31/2019; (3) month to month sublease and indemnity agreement for unit 4 between Raven Fleming and Greenberg & Chester LLC effective 5/15/2018 through 8/3/2018; and (4) sublease and indemnity agreement for unit 3 between Greenberg & Chester LLC and David Koeneman beginning 4/1/2019 through 8/31/2019.

Respondent in reply reiterates that there are six units and notes the photographs that were submitted. Mr. Koeneman submits additional photos of mailings from the Board of Elections addressed to Jacqueline Thuy Tran at 230 Hart street 1 regarding early voting in 2020, Chase bank mail for Nathan Hubschman for 230 Hart street 1 undated, 2020 Board of elections notice for Nathan Hubschman at 230 Hart street 1, Nordstrom card services for John Burke at 230 Hart street 1 undated, 2020 Board of Elections notice for John Burke at 230 Hart street 1, streeteasy

expired listing for unit 1 and an article written about Bedly dated 11/20/2017. Respondent contends that whether petitioner was aware or not, the premises were illegally converted to six or more units and is therefore subject to rent stabilization. In the alternative, respondent seeks discovery from 2019 forward.

Courts have held that summary judgment will be granted “if upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party” (CPLR 3212[b]). The proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact” (*Zuckerman v City of New York*, 49 NY2d 557 [1980]; *Friends of Animals Inc. v Associated Fur Manufacturers Inc.*, 46 NY2d 1065 [Ct? 1979]). In considering a summary judgment motion, the courts function is to determine whether a material issue of fact exists, not to determine said issues (*Esteve v Abad*, 271 AD 725 [1st Dept 1947]). Summary judgement should be granted when the moving party makes a prima facie showing of entitlement to judgment as a matter of law, giving sufficient evidence to eliminate any material issues of fact from the case. See (*Winegrad v New York University Medical Center*, 64 NY2d 851 [1985]). The failure to make such a prima facie showing mandates denial of the motion (*Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]).

Here, petitioner disputes the alleged number of rooms at the premises and admits at most there are four units at the premises, consistent with the DOB ECB violation. Although respondent has produced several pieces of mail, said mail, some undated and four photos of a door knob with numbers are insufficient to warrant summary judgment in this matter. Whether

there are or have been, since 1974 six or more individual units at the premises is clearly an issue of fact, requiring a trial.


Respondent's motion for summary judgment is denied.

Respondent in the alternative seeks discovery from 2019 to present. In summary proceedings, a party may seek leave of the court for discovery wherein the movant shows ample need, a meritorious claim, that the discovery is tailored and no prejudice to the opposing party would be found (See *New York University v Farkas*, 121 Misc.2d 643 [Civ. Ct. NY Co 1983]). Here, along with the 2012 DOB/ECB violations for two illegal units respondent alleges a meritorious defense of rent stabilization and sufficient facts warranting discovery. Therefore, petitioner is directed to comply with the discovery demand except for #23 is that petitioner need not supply individuals if any, credit checks, tenant screening reports or background checks as those items are overly broad and evasive. Petitioner to comply with document demand within 30 days of receipt of this order. Petitioner and respondent to coordinate an visual inspection where photographs are to be permitted.

The case is marked off calendar pending discovery and may be restored by motion or stipulation by the parties.

This constitutes the decision and order of this court.

Dated: November 5, 2020
Brooklyn, New York



Hannah Cohen, J.H.C.

HANNAH COHEN
JUDGE, HOUSING COURT