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Lendor v. Moussavi

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Lendor v Moussavi
2021 NY Slip Op 50807(U) [72 Misc 3d 1220(A)]
Decided on August 23, 2021
Civil Court Of The City Of New York, Kings County
Capell, J.
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Decided on August 23, 2021

Civil Court of the City of New York, Kings County

Dexter Lendor, Petitioner,

against

Syed Moussavi, 22 HAWTHORNE STREET LLC, Respondent-Landlord, THE DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT OF THE CITY OF NEW YORK, Respondent-HPD.

Index No. L & T 1334/20

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Heela D. Capell, J.

After trial, the court makes the following findings and determination:

Dexter Lendor ("Petitioner") commenced this combined H.P./Harassment action against Seyed Moussavi and 22 Hawthorne Street LLC ("Respondents"), alleging that Respondents, the owners of the building [\[FN1\]](#) located at 22 Hawthorne Street Brooklyn, NY ("Building") *inter alia*, engaged in actions constituting "harassment" as per the New York City Administrative Code 27-2005[d]. Petitioner resides in Apartment No.3F at the Building ("Premises"). The court conducted a trial on April 22, 2021 and May 18, 2021 on the harassment cause of action only. [\[FN2\]](#) Petitioner and Respondents were represented by counsel. [\[FN3\]](#)

At trial, Petitioner called two witnesses: himself and Delene Ahye, ("Ahye") who he stated was his fiancée and partner for 28 years. He testified that when he moved into the Building, in 2014, it was owned by his aunt, Iris Miguel. In 2015, Respondent Seyed Moussavi, also known as Alex Moussavi, ("Moussavi") purchased the building from Ms. Miguel.

Moussavi testified on his own behalf, and called Kenneth Banks, ("Banks") the Building's managing agent, as his witness. Moussavi confirmed that he is the sole member of 22 Hawthorne Street LLC, which purchased the Building in 2015. He owns four buildings, and employs Banks to assist with all of them. Moussavi and Banks explained that Banks' responsibilities include coordinating the collection of rent, maintenance, tenant relations, leasing, and general building management. Moussavi testified that the Building contains "SROs," [\[FN4\]](#) and that when he purchased the Building, there were multiple repair violations against the Building. He and Banks asserted that they performed extensive repairs to the Building and corrected most of the violations.

Banks testified that he spent 25 years in the military and that he left the military between 2013 and 2014. He subsequently worked as a process server for "Solomon & Bernstein" and commonly found work on Landlord & Tenant cases at Bronx Housing Court. He began

working with Moussavi in or about 2015 and has been the Building's managing agent since 2016. However, Banks did not register himself as the managing agent until 2020 because he "didn't get a chance to." Banks stated that he has worked on all of Moussavi's buildings, and did not start clearing violations at the Building until 2020 because he was finishing work on other buildings owned by Moussavi.

The Premises

The parties dispute whether Petitioner lawfully resided at the Premises. Petitioner recalled that between 2014 and 2015 he resided in a room on the fourth floor of the Building. However, he moved into the Premises in 2015 because Moussavi asked him to move there to [*2]"fix it up, paint, install new floors, carpeting, and whatever else was needed." Petitioner stated that the Premises has a kitchen, closet, and living room, but does not have a bathroom; there is a shared bathroom in the third floor hallway for those who are living in an SRO. He asserted that when he moved into the Premises, it did not have a stove, and that he ultimately bought his own stove.

Petitioner stated that the rent for the Premises was \$750.00 per month, and that Moussavi agreed to pay him \$250.00 per month if he performed work in the Building. He testified that Moussavi paid him once very early on in this arrangement and never paid him again. Nonetheless, Petitioner maintained that he performed tasks around the Building for Moussavi, such as painting, plastering, sheetrock, changing lights, plumbing, recycling, garbage disposal, and cleaning the hallways.

Ahye stated that she has lived at the Premises with Petitioner since October 2015, and that before living at the Premises, they lived together in a room on the fourth floor of the Building. She testified that Petitioner was permitted to reside at the Premises because he was the Building's superintendent, but that Respondents terminated his job in June 2020. Initially, the Premises was dilapidated, contained uneven floors, peeling paint, and did not have a functioning kitchen or stove. She and Petitioner purchased a stove in 2015 and repaired the Premises prior to moving in.

Moussavi testified that when he purchased the Building, he was informed by the prior owner that Petitioner "came with the building," and was the Building's "handyman." Moussavi asserted that he "had no choice" but to continue with this arrangement after purchasing the Building, at which time Petitioner was occupying a room on the fourth floor.

Moussavi explained that through the years he had spoken with Petitioner "several" times, and requested that Petitioner perform repair work in the Building. Moussavi confirmed that during Petitioner's employment at the Building, he never paid rent and never received payment for his work. Moussavi emphasized that Petitioner's "payment was the apartment," by which he meant the room on the fourth floor.

Petitioner introduced into evidence a letter dated December 19, 2015 that was signed by Moussavi ("Letter") (Pet. Ex. 12). The Letter stated, *inter alia*, that Moussavi is the owner of the Building, Petitioner is superintendent of the Building and resides at the Premises, and that Moussavi "authorizes the gas connection to be made to his [Dexter's] apt" (Pet. Ex. 12). Moussavi conceded that Petitioner likely moved into the Premises at some point in 2015, and that he became aware of this "several months later." He clarified that the intent of the Letter was to enable Petitioner to have cooking gas at the Premises, but not so that Petitioner could reside there.

Banks maintained that Petitioner was permitted to use the stove in the Premises because his room on the fourth floor of the Building was "junky" and "like a hoarder place." However, he emphasized that Moussavi had given Petitioner permission to use the stove in the Premises only, and not to live there. Banks observed that Petitioner was residing at the Premises in 2016 or 2017.

Harassment Allegations

At trial, Petitioner asserted that Respondent's acts or omissions constitute harassment as follows:

Construction

Petitioner maintained that Respondents harassed him by unlawfully performing construction in and around the Building. Petitioner recounted that "since July [2020] almost every day," and "sometimes six days a week Monday to Sunday" until "after five in the evening" workers have been performing "heavy" construction and "gutting out" two apartments to install bathrooms. Ahye confirmed Petitioner's testimony that Respondents performed major work to the Building in July 2020, "seven days per week from 7:00am until 5:00pm or 6:00pm."

Petitioner further explained that he did not observe any work permits posted in the Building during the construction. The court took judicial notice of a violation on the New York City Department of Buildings ("DOB") website dated August 14, 2020 for certain construction work without a permit, which matched Petitioner's printout of the violation (Pet. Ex. 4). The violation states: "observed interior renovation in progress including erected 4' waste waterpipe at all floor, new plywood floor substrate, new stair steps, overhead electric outlet and approx. 80% new sheetrock without permit." (*Id.*) Ahye testified that she noticed work being done after a stop work order was issued but did not specify any dates or times during which she observed this work being done.

Moussavi testified that he performed work at the Building that did not require a permit, and that he was disputing the violation. Banks conceded that workers had renovated the entire Building, and had installed brand new kitchens in place of the old ones. Banks also asserted that DOB incorrectly issued the stop work order and that a hearing on the violation was scheduled for May 2022. Moussavi explained that he stopped working in the Building after he received a stop work order, and that when they had been working at the Building, his workers worked from 8:00am to 4:30pm. Ahye conceded that since Respondents renovated the Building, it looks "new."

Petitioner also stated that due to the construction, dust poured into the Premises from under the door and above his kitchen, that the Building was filled with dust, and at least two dumpsters were filled with construction debris. Ahye asserted that she is allergic to the dust that was produced by the construction. However, she did not introduce corroborating evidence of any illness or condition caused by the dust.

The Ceiling

Petitioner testified that during the construction, the ceiling in the kitchen area of the Premises "came down" on Ahye, who went to the emergency room due to injuries sustained from the collapse. He stated that during this ceiling "collapse" he heard "nothing but pounding" which occurred "constantly" upstairs. Ahye also testified that the ceiling collapsed between 9:00am and 9:30am, at which time she called 311. Petitioner introduced into evidence a video taken in August 2020, which depicted a hole in the kitchen ceiling, and debris on the stove top and surrounding area (Pet. Ex. 8). Ahye testified that the video was recorded after she returned from the emergency room.

On cross examination, Ahye stated that she never filed a claim through the landlord's insurance company for her injuries. Banks testified that he went to the Premises on the day of the alleged "collapse." He claimed that the plywood and boards among the debris were not originally part of the ceiling, but were either nailed into the ceiling by Petitioner or placed on top of the stove by Petitioner. Banks also asserted that he did not see any damaged sheetrock in the Premises, and that Ahye came back from the hospital an hour later wearing clean clothes, and seemed to be "fine." Respondents introduced photos of the kitchen ceiling after the damage to [*3] corroborate Banks' testimony that the "debris" was extraneous to the ceiling (Resp. Ex. D5-D7).

The Basement

Petitioner testified that, in 2014, he began storing some of his possessions in the basement of the Building. These possessions included plates, a toaster, sports memorabilia, and antiques. He stated that Respondents restricted his access to the basement starting in June 2020 and that only Banks could provide him with access. Petitioner stated that Banks refused to allow him into the basement unless he agreed to move out. Ahye testified that Respondents damaged or destroyed most of her and Petitioner's belongings that they had been storing in the basement. Petitioner maintained that at a certain point he observed Building workers bringing what remained of his belongings out of the basement.

Banks stated that the basement had been full of "garbage" for "years," and that he never denied Petitioner access to the basement. He noted that Petitioner had keys to the basement until he was terminated and that he was able to access the basement at any time. Banks testified that although Petitioner had keys to the basement, he observed Petitioner "break into" the basement "a few times" in 2019 and 2020. Banks also asserted that he observed Petitioner and his son removing Petitioner's belongings from the basement. Respondents introduced into evidence photographs of filled garbage bags outside of the Building, which Banks testified were the remaining items from the basement (Pet. Exs. C1-C3). Banks testified that he supplied these bags to Petitioner and his son, that Petitioner and his son filled the bags with the items from the basement, and brought them upstairs to the garbage bins.

Termination Notice

Petitioner introduced into evidence a document entitled "Termination of Employment

and Vacate" provided to him by Banks [\[FN5\]](#) (Pet. Ex. 2). He testified that Banks "hit" him in the back with the document and exclaimed, "you've been served man, you got to go, you got to get the f out of here." He also testified that in December 2020, another document, entitled "Final [\[*4\]](#)Notice" was affixed to the door of the Premises, which he deduced had come from Banks [\[FN6\]](#) (Pet. Ex. 3).

Moussavi testified that he ultimately sought to terminate Petitioner's employment because he received complaints from many tenants that Petitioner was not performing necessary repairs in the Building. He also observed Petitioner behaving erratically while intoxicated on many occasions. Moussavi asserted that Petitioner rented out Apartments 3R and 4F in the Building on a weekly basis in the summer of 2020, without permission, and was storing his personal belongings in three other empty rooms in the Building.

Banks testified that Petitioner was a "handyman around the [B]uilding" and that his responsibilities included sweeping and performing some maintenance. He also picked up rent checks on occasion. However, Banks maintained that Petitioner was "always intoxicated" and did not complete the tasks he was assigned. Furthermore, he alleged that Petitioner commonly lost his keys and broke through doors and locks in the Building. Petitioner also did not allow access to the Premises, or made it difficult for Respondents to gain access to the Premises to make repairs. Banks also alleged that Petitioner stole supplies from the Building and took them off site. Banks stated that he received complaints that Petitioner was harassing the construction workers on the job and that he personally observed Petitioner "putting his hands" on the workers. Banks testified that he served Petitioner with the termination notice for these reasons (Pet. Ex. 2).

Moussavi testified that he asked Banks to prepare the termination and final notices, and that Banks prepared them. Banks testified that in July 2020, he served the first document on Petitioner on the street as he was coming up the steps of the Building. Banks stated that his intention was for Petitioner to vacate the Premises and to give him time to find another place to live.

Other Purported Harassing Activity

Petitioner also testified that Banks broke the door handle of the Premises in July 2020. He testified that he heard a noise outside of the Premises, opened the door, and saw the handle to his door lock on the ground. He then observed Banks walking away from his door.

Petitioner maintained that before this incident the lock had functioned properly. Ahye introduced a video into evidence depicting Petitioner holding a door handle which was separated from the door in the background (Pet Ex. 9). She explained that Petitioner saw Banks outside after they heard the door handle being tampered with. She testified that this occurred sometime in 2020. Banks testified that he was not present during the filming of the video, and did not ever tamper with the door knob to the Premises. He further noted that he believed the door in the video is not actually the door to the Premises at all. Ahye later testified that she has never had difficulty accessing the Premises.

Petitioner testified that he never interacted with Banks from 2016 - 2019. However, starting in 2020 Banks would scream out his name at 6:00am, bang on the Premises door, and ask Petitioner when he was going to move. Banks also would threaten, "you don't know what I'm going to do to you," "I'm a former navy seal," "I'm going to f you up," and "you got to f'ing go because I'm telling you, you don't know who you're messing with." Petitioner maintained he felt threatened by these interactions, which occurred numerous times, both inside and outside of the Building. However, when he spoke to Moussavi about Banks, Petitioner was told that "he's crazy, you have to listen to him, if he wants you to leave you have to leave." He also testified that in July, 2020 he overheard Banks telling workers in the Building that they should "f [Petitioner] up." Petitioner stated that during the summer of 2020, Banks was knocking at his door "constantly."

Ahye stated that she first met Banks as he was yelling for Petitioner, early in the morning during the summer of 2020. She reiterated that Banks often yells out Petitioner's name in the Building, and from his office, which is next door to the Premises; she finds Banks' behavior intimidating. Ahye maintained that Banks would record her coming out of the bathroom in the third floor hallway, would leave the door to his office open so he could speak to her, and once offered to give her crystal dishes to replace the ones that were damaged in the basement.

Banks adamantly denied Petitioner's allegations that he threatened him. Banks asserted that the reason he spoke to Petitioner about being a veteran was because Petitioner was a veteran as well, and they were both aware of each other's status as veterans. Banks testified that Petitioner often called out his name in the Building, that Petitioner "put his hands" on him, and that he heard Petitioner banging on doors in the Building. Banks also testified that Petitioner harassed the Building's workers, "put his hands" on them, and that Petitioner had a known drinking problem. Banks further stated that the camera in the hallway on the third floor was meant for security purposes and not to record Ahye coming out of the bathroom.

He maintained he offered crystal dishes to Ahye, which he found in a flea market, because he felt bad that her belongings had been damaged.

Petitioner also testified that Banks offered him \$5000.00 to move but did not provide any further testimony about this. Banks testified that he did not offer Respondent money to move, and in fact it was Petitioner who asked Banks for money to move.

The Bathroom

Petitioner testified that one day in July 2020, at about 7:00am, Banks and several workers began to "break down" a shared third floor bathroom. He asserted that he was not notified in advance of this work and that the third floor bathroom was unusable until the work was completed. As a result, the only bathroom he was able to use was the shared bathroom on the fourth floor. Banks testified that the third floor bathroom was under construction for two weeks but was fixed up "like a hotel bathroom." Banks also stated that the fourth floor bathroom was available to Ahye and Petitioner during that two week period.

Heat and Hot Water

Petitioner testified that on numerous occasions there was a lack of heat at the Premises, and further alleged that when workers were not at the Premises, the temperature at the Premises would cool off. However, he did not testify to specific instances when the heat was inoperable.

Moussavi explained that the furnace was new and never malfunctioned. He believed that [*5] someone had tampered with the thermostat on the furnace in order to shut it off. Moussavi alleged that he had received "30 to 40 calls and text messages" from people who were not tenants, complaining about a lack of heat and hot water in the Building and that three of these individuals threatened him, demanding that the "heat be turned on or otherwise there will be consequences." He further elaborated that the thermostat is located in the basement, which was locked, but was opened at some point by someone who used pliers [FN7] after he left the Building. Moussavi denied that he or his workers turned down the heat when they left the Building. Banks testified that they called a repairman to address the issues with the heat. When the repairman arrived, the heat had been switched off. Once the repairman turned the switch back on, the heat started working. [FN8]

The Law and its Application:

Standing

Section 27-2120 (b) of the Administrative Code of the City of New York states that "[a]ny tenant, or person or group of persons lawfully entitled to occupancy may individually or jointly apply to the housing part of the civil court for an order restraining the owner of the property from engaging in harassment." Courts have been repeatedly called upon to interpret the meaning of "[a]ny tenant, or person or group of persons lawfully entitled to occupancy."

"Lawful occupancy of the subject premises establishes standing to commence an HP proceeding or a harassment proceeding." ([Allen v 219 24th St. LLC, 67 Misc 3d 1212\[A\]](#) [Civ Ct, New York County 2020] *citing* N.Y.C. Admin. Code §27-2115[h][1], N.Y.C. Admin. Code §27-2120[b].) One court found that a current superintendent is a person "lawfully entitled to occupancy." (*Allen*, 67 Misc 3d 1212[A].) On the contrary, squatters do not have standing. (*Valentin v Dept. of Hous. Preserv. & Dev.*, 160 Misc 2d 418 [Civ Ct, Bronx County 1994]). Courts have also found that a tenant who is no longer in physical possession of an apartment has standing. (*Francis v Stein*, 2020 NYLJ LEXIS 768, [Civ Ct, Bronx County 2020]; [citing *Aguaiza v Vantage Props., LLC, 69 AD3d 422*](#) [1st Dept 2010].)

Similarly, a rent stabilized tenant who had secured a stay of execution of a possessory judgment, still had standing in an HP Action. (*Shapiro v Townan Realty Co.*, 162 Misc 2d 630 [Civ Ct, New York County 1994]; [see also *Vargas v 112 Suffolk St. Apt. Corp., 66 Misc 3d 1214\[A\]*](#), [Civ Ct, New York County 2020].) Although the issuance of the judgment of possession severed the landlord-tenant relationship, the court observed that "while a respondent in a nonpayment proceeding remains in lawful possession as a result of a stay by the Civil Court, he or she should not be deprived of the legal right to insist that the landlord maintain the premises in a safe and habitable condition. This includes enforcement of such right through commencement of an HP proceeding." (*Id.*)

In (*Torres v N.Y.C. Hous. Auth.*, 2020 NYLJ LEXIS 1650, [Civ Ct New York County 2020]), the son of a deceased tenant of record who occupied the premises as a licensee had standing in an HP Action. The court reasoned:

"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. 12th St. v. 515 E. 12th St.*, 128 Misc 2d 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."

(*Torres v. N.Y.C. Hous. Auth.*, 2020 NYLJ LEXIS 1650.)

At trial, Respondents argued that Petitioner does not have standing to commence this proceeding because he has been terminated from his position as superintendent and is occupying the Premises without permission. However, the procedural history of the case indicates otherwise. Petitioner commenced this case for an order "Directing the Correction of Violations and for a Finding of Harassment and for a Restraining Order" on September 22, 2020. On November 3, 2020, Judge Weisberg issued an Order to Correct the outstanding HPD violations on Respondents' default. Respondents retained counsel on January 7, 2021 and filed a Verified Answer where they raised the issue of Petitioner's standing. Nevertheless, Respondents did not move to vacate the default Order to Correct. Rather, Respondents have represented to the court on multiple occasions that they have been making repairs pursuant to the Order. Indeed, Judge Barany's transfer order from the Resolution Part to the Trial Part, dated March 3, 2021, provides, "[i]t appears that the remaining repair issue concerns replacement windows which respondents assert were previously ordered, but were not delivered with the correct measurements. At the conference the respondent's agent confirmed that the reordered windows are expected within days and are expected to be installed prior to March 12, 2021." Respondents have, by their conduct, acknowledged their obligations under the Order to Correct and Petitioner's right to request repairs to the Premises in this proceeding.

Furthermore, the Administrative Code of the City of New York provides a "lawful occupant" with the right to maintain a harassment proceeding (NYC Admin Code 27-2004[a] [48]). As stated above, a superintendent has been held to be a "lawful occupant" (*see Allen v 219 24th St. LLC*, 67 Misc 3d 1212[A]). Moreover, in *Shapiro*, the issuance of a warrant of eviction severed the landlord-tenant relationship, yet the court held that the petitioner was "lawfully occupying the apartment," for the purposes of an HP Action (*Shapiro v Townan*

Realty Co., 162 Misc 2d 630). Similarly, the fact that Petitioner is no longer employed as the "superintendent" or "handyman" at the Building does not render him an unlawful occupant of the Premises per NYC Admin Code 27-2004[a][48].

Respondents maintain that Petitioner is squatting in the Premises. However, Moussavi and Banks conceded that they became aware Petitioner moved into the Premises between 2015 and 2017, while still employed by Respondents as the superintendent of the Building. Indeed, the Letter signed by Moussavi states on its face that Petitioner's apartment is the Premises (Pet Ex. 8). Moussavi and Banks asserted that they have since renovated the fourth floor room, and [*6] never tried to remove Petitioner for "squatting" in the Premises. Accordingly, for the purposes of this Action, Petitioner was lawfully occupying the Premises as an incident of his employment prior to commencing this HP Action. [\[FN9\]](#)

The New York City Civil Court Act provides: "Regardless of the relief originally sought by a party the court may recommend or employ any remedy, program, procedure or sanction authorized by law for the enforcement of housing standards, if it believes they will be more effective to accomplish compliance or to protect and promote the public interest" (NYC Civil Ct Act § 110[c].) Here, as Petitioner was "lawfully" in possession of the Premises prior to the alleged termination of his employment, and as the court has broad authority to enforce "housing standards," the court finds Petitioner has standing to commence this proceeding. [\[FN10\]](#)

Harassment

The New York City Administrative Code § 27-2005(d) forbids the owner of a dwelling from harassing "any tenants or persons lawfully entitled to occupancy of such dwelling" as per § 27-2004(a)(48). The enactment of this legislation "created a new cause of action . . . to address a perceived effort by landlords to empty rent-regulated apartments by harassing tenants into giving up their occupancy rights" (*Aguaiza v Vantage Props., LLC*, 893 NYS2d 19, 20 [1st Dept 2010]; see also *Prometheus Realty Corp. v City of NY*, 11 NYS2d 299, 300 [1st Dept 2010]). Administrative Code § 27-2115 allows for a private right of action based on a claim of harassment (NYC Admin. Code 27-2115[h]).

"Harassment" is defined as: "any act or omission by or on behalf of an owner that (i) causes or is intended to cause any person lawfully entitled to occupancy of a dwelling unit to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy,

and (ii) includes one or more of the following acts or omissions, provided that there shall be a rebuttable presumption that such acts or omissions were intended to cause such person to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy..." (NYC Admin. Code 27-2004[a][48]). The code lists specific acts or omissions which can form the basis for a finding of harassment. [\[FN11\]](#)

Proof that an owner violated a section of this statute, gives rise to a "rebuttable presumption that such acts or omissions were intended to cause [the tenant] to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy" (NYC Administrative Code 27-2004[a][48][ii]). The burden then shifts to the owner "to rebut the presumption that such acts or omissions were intended to cause plaintiffs to vacate or surrender their occupancy rights" (*Cartagena v Rhodes 2 LLC*, NY Slip Op 30290[U] [Sup Ct NY Co 2020]). Administrative Code § 27-2115 [m][2] provides that "upon a finding of harassment, the court shall impose a civil penalty of not less than \$2,000 and not more than \$10,000." (*Id.*) Upon a finding of harassment, the petitioner is entitled to compensatory damages or one thousand dollars, and reasonable attorney's fees, plus punitive damages within the sole discretion of the court (NYC Admin. Code § 27-2115[m][6][o]).

Petitioner maintains that Respondents harassed him *inter alia* for the following reasons: unlawful construction, collapsed ceiling in the Premises, inability to access and destruction of his [*7] property in the basement, serving Petitioner with termination notices, engaging in intimidating and harassing behavior towards himself and Ahye, depriving him of use to the third floor bathroom, removing the lock to his door, and failing to provide adequate heat and hot water in the Building.

With respect to the purported unlawful construction, the court finds that even if Respondents had continued working illegally, despite a stop work order, Respondents successfully rebutted the presumption that such work was intended to harass or intimidate Petitioner or cause him to surrender possession of the Premises (NYC Admin Code 27-2004[a][48].) Moussavi and Banks testified that when Respondents purchased the Building it was rife with repair violations. They also credibly testified, and Ahye acknowledged, that they corrected many of the violations in the summer of 2020. Moussavi and Banks credibly asserted that they performed work to the Premises as well, and were only thwarted by Petitioner's refusal to provide access.

For similar reasons, Petitioner's allegations with respect to the collapsed ceiling and inability to use the third floor bathroom do not rise to the level of harassment. Assuming

arguendo that Petitioner is correct that his ceiling collapsed because Respondents were working on the fourth floor, Respondents have rebutted any presumption that such work was being performed in order to harass Petitioner or cause him to vacate the Premises. As stated above, Moussavi and Banks testified credibly that they were working in and around the Building to correct violations and upgrade the facilities. Furthermore, the court does not find Ahye's testimony credible that she was injured by the purported collapse as she was able to record a video shortly thereafter and did not produce proof of an injury.

Importantly, Petitioner did not contradict Banks' testimony, supported by photographs, that the debris on the stove top had been superficially nailed into the ceiling by Petitioner (Resp. Ex. D5-D7). Indeed, Banks' testimony was supported by both Ahye and Petitioner's acknowledgements that it was their responsibility to repair the Premises when they moved in. Ahye testified that when she moved into the Premises in October, 2015, it was in a "dilapidated state;" Petitioner testified, at the beginning of his direct examination, that he was asked by Moussavi to move into the Premises, "because it was empty" and to "fix it up" and to "paint, install new floors, carpeting, and whatever else was needed." Banks' un rebutted testimony provided that Petitioner would not allow Respondents access to the Premises to perform repairs. Indeed, Banks asserted that the kitchen he intended to install in the Premises was in storage because Petitioner would not allow access. Accordingly, if parts of the ceiling fell onto the stovetop, it may have been a result of Petitioner's poor construction work. In any event, Petitioner failed to establish that Respondents purposefully caused the ceiling to collapse at the Premises in an effort to force Petitioner to vacate the Premises.

During his direct examination, Petitioner described the construction, and the accompanying noise and dust, but did not testify as to how this construction, which he conceded improved the state of the Building, was intended to cause him to waive rights or vacate the Building. By his own admission, the construction was not limited to the Premises or even to his area of the Building, but rather, was a complete renovation, that resulted in the removal of "two dumpsters" worth of debris. Moussavi and Banks credibly explained that they were interested in fully renovating the Building so as to, *inter alia*, clear the violations of record.

Petitioner also failed to establish that Respondent purposefully prevented Petitioner from accessing the bathroom on the third floor. Rather, Moussavi and Banks testified that they [*8]renovated and upgraded the third floor bathroom, which Petitioner and Ahye do not dispute. During this two week period, Banks explained that Petitioner was able to use the bathroom on the fourth floor. The court finds Banks' testimony credible that Petitioner was

only precluded from utilizing the third floor bathroom for a short period because Respondents were performing necessary repairs.

Petitioner also maintains that Respondents did not provide him with access to his belongings in the basement and that Respondents destroyed these belongings. However, neither Petitioner nor Ahye testified to what these specific items were, the extent of the alleged damage, nor when the damage occurred. Banks asserted that most of the belongings in the basement appeared to be garbage and that Petitioner had access to these items until the summer of 2020. Ahye and Petitioner failed to rebut Banks' testimony that he provided access to Petitioner to remove his belongings, that Petitioner and his son did actually remove the belongings into garbage bags provided by Banks, and that they discarded them in the trash as depicted by Respondents' photographs (Resp. Ex. C1-C3).

The court also finds that Respondent's service of two termination notices on Petitioner does not rise to the level of harassment. Notably, Petitioner has not established that the termination notices are frivolous. Banks and Moussavi testified credibly that Petitioner had neglected many of his superintendent duties and responsibilities and Petitioner did not rebut this testimony with any witnesses. Banks and Moussavi also raised credible concerns with respect to Petitioner's ability to carry out his superintendent responsibilities. In [*Garcia v Adams*, \(71 Misc 3d 1205\[A\] \[Civ Ct, Kings County 2021\]\)](#), as here, the court found that the service of a predicate notice in preparation for the commencement of a summary proceeding did not constitute harassment.

Similarly, Petitioner and Ahye failed to establish that Banks broke their door handle. Moreover, Banks managed to successfully rebut their claim that he broke the handle by stating that the door in the video is not actually the door to the Premises and that he was not present in the Building on the day the video was taken. Banks also rebutted Ahye's testimony that he was purposefully harassing her by speaking to her when she walked by or recording her walking to the bathroom. Banks testified credibly that the surveillance camera is located in the hallway for security reasons, rather than to record Ahye, and that he spoke to her in an effort to be pleasant, not to harass her. Importantly, Ahye is not a party to the proceeding.

Both Petitioner and Banks testified that they were the target of yelling, intimidation, physical violence, and general harassment from the other. Aside from Ahye, Petitioner did not introduce testimony from a disinterested witness to corroborate that Banks yelled at, threatened or assaulted Petitioner. While Petitioner testified that Banks intimidated him by stating he was a "former Navy Seal," Banks testified that Petitioner told him his daughter was

"on the police force." Banks testified that in fact Petitioner disclosed that he was in the armed forces one day when Banks was "in uniform." Ahye introduced into evidence an audio recording in which she states Banks can be heard yelling (Pet. Ex. 7). However, Banks seems to be yelling at someone other than Petitioner or Ahye (*Id.*) Banks maintained that he was yelling at the workers to get the work done so that the tenants in the Building could resume their lives.

The evidence presented amounts to proof of a "mutually acrimonious relationship" between Banks and Moussavi, and possibly between third parties and Respondents, rather than harassment. ([*see Garcia v Adams*, 71 Misc 3d 1205\[A\]](#).) Banks introduced into evidence a video in which multiple people, including Petitioner, can be observed chanting outside the [*9]Building in what he perceived to be a threatening manner, towards Banks, that Banks testified he found to be harassment towards him (Resp. Ex. L). This video was posted on social media. Moussavi stated that his car had been broken into on two separate occasions, in front of the Building. Banks testified that people had come into his office to threaten him on behalf of Petitioner. He also testified that he has received death threats. Banks additionally testified that Petitioner had "put his hands" on him and Moussavi testified that his other tenants told him they were terrified of Petitioner.

However, the unsupported allegations regarding Banks described by Petitioner do not rise to the level of harassment. As the *Garcia* court stated: "[w]hen the evidence comes down to one interested party's word against the other interested party's word, in the absence of some reason to weight one party's testimony more than another, the evidence is in equipoise and the proponent, Petitioner, does not satisfy her burden of proving her proposition by a preponderance of the evidence" (*Garcia, supra, citing Rinaldi & Sons, Inc. v Wells Fargo Alarm Service, Inc.*, 39 NY2d 191,196 [1976], *White v State of New York*, 41AD 3d 1071, 1073-74 [3rd Dept. 2007]). The allegations are also insufficient to establish that Banks was acting on behalf of or at the direction of Respondents during these purported interactions (NYC Administrative Code 27-2004[a][48][["harassment shall mean...any act or omission by or on behalf of an owner..."].)

Lastly, Petitioner maintained that Respondents' repeated interruption or discontinuance of services, *inter alia*, lack of heat, rose to the level of harassment (*see* 27-2004[a][48][b-b1]). Petitioner testified that on numerous unspecified dates there was insufficient heat at the Premises. However, Moussavi testified that the furnace in the Building is brand new, and that he had determined that the thermostat at the Building had been tampered with. Banks largely confirmed Moussavi's testimony. After examining the petition and the HPD violation report

which was prompted by the filing of the petition, the court notes that Petitioner did not list insufficient heat as a condition that existed, and HPD does not list a violation for it.

Additionally, it is unclear whether the Petitioner's claim of a lack of heat occurred during a time when he was working as the superintendent for the Building, or after he had been terminated. As such, Petitioner has not met its burden to show that Respondents purposefully and repeatedly supplied insufficient heat to the Premises. Ahye additionally testified that the Respondents have put in new windows at the Premises and have addressed an issue with the hinges on the door to the Premises. She also testified that no other problems were present at the Premises. Based on this testimony, the court does not find that Respondents repeatedly interrupted essential services in the Building.

As such, and for the foregoing reasons, as it relates to the harassment claim, the petition is dismissed, with prejudice. This decision and order is without prejudice to the existing order to correct and both parties' rights and obligations thereto, or to any other future or existing proceeding between the parties.

This constitutes the decision and order of the court.

Brooklyn, New York

August 23, 2021

HON. HEELA D. CAPELL, J.H.C.

Footnotes

Footnote 1: Seyed Moussavi is the sole member of 22 Hawthorne Street LLC.

Footnote 2: Petitioner also alleged that conditions exist in the Premises and in the Building that were in need of repair. On November 3, 2020, Judge Weisberg issued an order to correct the open HPD violations at the Premises. (NY St Cts Elec Filing [NYSCEF] Doc No. 9.) On March 3, 2021, Judge Barany ordered that this proceeding be transferred to the trial expediter for trial on the harassment cause of action. (NY St Cts Elec Filing [NYSCEF] Doc No. 10.)

Footnote 3: Although the Department of Housing Preservation and Development of the City of New York is a Respondent in this proceeding, they did not appear for trial nor submit a Post-Trial memorandum.

Footnote 4: Single Room Occupancy (*see* Multiple Dwelling Law § 248)

Footnote 5: The first letter, entitled "Termination of Employment and Vacate" states as follows: "The firm has been retained to collect a debt consisting of termination of your employment as the superintendent for 22 Hawthorne Street, Brooklyn, New York 11225. The below named ex-superintendent, you have been suspended from being the maintenance and the super for above building. (1) You must return all keys to the management office (2) We are giving you up until September 30, 2020 to vacate the premises (3) We were informed you have 1 room to live in, you cannot take up other rooms that is not into agreement with you and the Landlord (4) You cannot harass any workers that are working in the building or intimidate anyone in the building, if so you can be arrested or be forced out of the building based on your behavior. (5) Your spouse is known as a squatter. The agreement you had with Alex that you were to occupy one room, and not have other individuals living with you. You were supposed to get permission. (6) You must remove all personal belongings out of any of the rooms, that you tried to take over for storage. You must remove all personal belongings by this Friday, July 17, 2020 or it will be considered as garbage and junk. (7) If you fail to not vacate by September 30th, This opportunity to dispute the debt is separate from any response that you are required to make or any action you are required to take with respect to any other legal notices you receive. Please respond to any legal notices you may receive within the time frames set forth in those notices. Please contact Property Management Contracting Service, respond to any notice you receive (XXX) XXX-XXXX. Ask to speak to Kenny Banks, the Managing Agency and superintendent of this building."

Footnote 6: The second letter, entitled "Final Notice" states as follows: "I am writing this letter to inform you for the past month and a half. We have been trying to get into your apartment and various times you have refused to give us access to do the repairs, assigned by court order. I am informing you that, if we cannot access this apartment next week, you are in default of this stipulation and court order. This apartment will be considered after Tuesday, December 22, 2020 will be a hazardous site and the Court will take further action against you. P.S. if you have any questions about this, contact Kenney Banks at (XXX) XXX-XXXX, his office location is next door to your apartment/room." It is signed "Seyed Moussavi/22 Hawthorne Street, LLC."

Footnote 7: Although Petitioner did not testify about the alleged lack of hot water, Moussavi stated that his plumber did not identify an issue with the hot water heater, so he surmised that someone was "running the water" in the Building and using up the hot water.

Footnote 8: Banks stated that the hot water was being run in the 3rd floor bathroom sink, and that is the reason why the hot water may have been insufficient. Banks testified that he believed Petitioner was running the sink to drain the hot water heater. Because of this issue, he arranged for a second hot water tank.

Footnote 9: This finding is without prejudice to Respondents' claims, if any, in a holdover proceeding, and Petitioner's defenses thereto.

Footnote 10: This finding is without prejudice to Respondents' claims, if any, in a holdover

proceeding, and Petitioner's defenses thereto.

Footnote 11:a. using force against, or making express or implied threats that force will be used against, any person lawfully entitled to occupancy of such dwelling unit;

a-1. knowingly providing to any person lawfully entitled to occupancy of a dwelling unit false or misleading information relating to the occupancy of such unit;

a-2. making a false statement or misrepresentation as to a material fact regarding the current occupancy or the rent stabilization status of a building or dwelling unit on any application or construction documents for a permit for work which is to be performed in the building containing the dwelling unit of any person lawfully entitled to occupancy of such dwelling unit if such building is governed by the New York city construction codes;

b. repeated interruptions or discontinuances of essential services, or an interruption or discontinuance of an essential service for an extended duration or of such significance as to substantially impair the habitability of such dwelling unit;

b-1. an interruption or discontinuance of an essential service that (i) affects such dwelling unit and (ii) occurs in a building where repeated interruptions or discontinuances of essential services have occurred;

b-2. repeated failures to correct hazardous or immediately hazardous violations of this code or major or immediately hazardous violations of the New York city construction codes, relating to the dwelling unit or the common areas of the building containing such dwelling unit, within the time required for such corrections;

b-3. repeated false certifications that a violation of this code or the New York city construction codes, relating to the building containing such dwelling unit, has been corrected;

b-4. engaging in repeated conduct within the building in violation of section 28-105.1 of the New York city construction codes;

c. failing to comply with the provisions of subdivision c of section 27-2140 of this chapter;

d. commencing repeated baseless or frivolous court proceedings against any person lawfully entitled to occupancy of such dwelling unit;

d-1. commencing a baseless or frivolous court proceeding against a person lawfully entitled to occupancy of such dwelling unit if repeated baseless or frivolous court proceedings have been commenced against other persons lawfully entitled to occupancy in the building containing such dwelling unit;

e. removing the possessions of any person lawfully entitled to occupancy of such dwelling unit;

f. removing the door at the entrance to an occupied dwelling unit; removing, plugging or otherwise rendering the lock on such entrance door inoperable; or changing the lock on such entrance door without supplying a key to the new lock to the persons lawfully entitled to occupancy of such dwelling unit;

f-1. contacting any person lawfully entitled to occupancy of such dwelling unit, or any relative of such person, to offer money or other valuable consideration to induce such person to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy, for 180 days after the owner has been notified, in writing, that such person does not wish to receive any such offers, except that the owner may contact such person regarding such an offer if given express permission by a court of competent jurisdiction or if notified in writing by such person of an interest in receiving such an offer;

f-2. contacting any person lawfully entitled to occupancy of such dwelling unit to offer money or other valuable consideration to induce such person to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy, unless such owner discloses to such person in writing (i) at the time of the initial contact, and (ii) in the event that contacts continue more than 180 days after the prior written disclosure, at the time of the first contact occurring more than 180 days after the prior written disclosure:

(1) the purpose of such contact,

(2) that such person may reject any such offer and may continue to occupy such dwelling unit,

(3) that such person may seek the guidance of an attorney regarding any such offer and may, for information on accessing legal services, refer to The ABCs of Housing guide on the department's website,

(4) that such contact is made by or on behalf of such owner,

(5) that such person may, in writing, refuse any such contact and such refusal would bar such contact for 180 days, except that the owner may contact such person regarding such an offer if given express permission by a court of competent jurisdiction or if notified in writing by such person of an interest in receiving such an offer,

(6) (i) the median asking rent for a dwelling unit in the same community district, provided that the department has reported such data pursuant to section 27-2096.2, within the previous twelve-month period; or (ii) the median asking rent for a dwelling unit in the same community district with the same number of bedrooms, provided that the department has reported such data, pursuant to section 27-2096.2, within the previous twelve-month period,

(7) that there is no guarantee that such person will be able to rent a dwelling unit in the same community district with the same number of bedrooms as the dwelling unit that such person is currently lawfully entitled to occupancy of, for the same rent such person is paying at the time of such contact, and

(8) that additional factors may impact the ability of such person to rent a dwelling unit, including, but not limited to, the current employment and credit history of such person;

f-3. offering money or other valuable consideration to a person lawfully entitled to occupancy of such dwelling unit to induce such person to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy while engaging in any of the following types of conduct:

(1) threatening, intimidating or using obscene language;

(2) initiating communication with such frequency, at such unusual hours or in such a manner as can reasonably be expected to abuse or harass such person;

(3) initiating communication at the place of employment of such person without the prior written consent of such person; or

(4) knowingly falsifying or misrepresenting any information provided to such person;

f-4. repeatedly contacting or visiting any person lawfully entitled to occupancy of such unit (i) on Saturdays, Sundays or legal holidays, (ii) at times other than the hours between 9 a.m. and 5 p.m. or (iii) in such a manner as can reasonably be expected to abuse or harass such person, provided that if such person has notified such owner in writing that such person consents to being contacted or visited at specified hours or in a specified manner, such owner may also contact or visit such person during such specified hours and in such specified manner, and provided further that an owner may contact or visit such person for reasons specifically authorized or mandated by law or rule;

f-5. threatening any person lawfully entitled to occupancy of such dwelling unit based on such person's actual or perceived age, race, creed, color, national origin, gender, disability, marital status, partnership status, caregiver status, uniformed service, sexual orientation, alienage or citizenship status, status as a victim of domestic violence, status as a victim of sex offenses or stalking, lawful source of income or because children are, may be or would be residing in such dwelling unit, as such terms are defined in sections 8-102 and 8-107.1 of the code;

f-6. requesting identifying documentation for any person lawfully entitled to occupancy of such dwelling unit that would disclose the citizenship status of such person, when such person has provided the owner with a current form of government-issued personal identification, as such term is defined in section 21-908, unless such documentation is otherwise required by law or is requested for a specific and limited purpose not inconsistent with this paragraph; or

f-7. threatening any person lawfully entitled to occupancy of such dwelling unit based on such person's actual or perceived status as an essential employee, status as a person impacted by COVID-19, or receipt of a rent concession or forbearance for any rent owed during the

COVID-19 period . . .; or

(v) such person became primarily responsible for providing financial support for the household of such person because the previous head of the household died as a direct result of COVID-19;

g. other repeated acts or omissions of such significance as to substantially interfere with or disturb the comfort, repose, peace or quiet of any person lawfully entitled to occupancy of such dwelling unit and that cause or are intended to cause such person to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy, including improperly requiring such person to seek, receive or refrain from submitting to medical treatment in violation of subdivision b of section 26-1201.

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