

Fordham Law School

FLASH: The Fordham Law Archive of Scholarship and History

All Decisions

Housing Court Decisions Project

2022-03-14

Roach v. 215 Sterling LLC

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

Recommended Citation

"Roach v. 215 Sterling LLC" (2022). *All Decisions*. 362.
https://ir.lawnet.fordham.edu/housing_court_all/362

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.

[*1]

Roach v 215 Sterling LLC
2022 NY Slip Op 50193(U)
Decided on March 14, 2022
Civil Court Of The City Of New York, Kings County
Stoller, J.
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on March 14, 2022

Civil Court of the City of New York, Kings County

<p>Edmindor Roach, Petitioner,</p> <p>against</p> <p>215 Sterling LLC, Respondent.</p>

Index No. 756/2021

For Petitioner: Pro Se (Edmindor Roach)

For Respondent: Jeremy Poland

Jack Stoller, J.

Edmindor Roach, the petitioner in these proceedings ("Petitioner"), commenced this proceeding against 215 Sterling LLC, the respondent in this proceeding ("Respondent"), seeking an order correcting violations of the New York City Housing Maintenance Code and a judgment on a cause of action for harassment pursuant to N.Y.C. Admin. Code §27-2005(d) with regard to 215 Sterling Street, Apt. A33, Brooklyn, New York ("the subject premises"). Respondent interposed an answer. By an order dated November 4, 2021, the Court directed Respondent to correct violations and referred the matter to the trial part on the harassment

cause of action. The Court held a trial of this matter on January 26, 2022, February 23, 2022, and March 9, 2022.

The trial record

Corey McFadden ("Petitioner's First Witness") testified that he lives elsewhere in Brooklyn; that Petitioner is like a brother to him; that he has known Petitioner for fifteen years; that he has known the building in which the subject premises is located ("the Building") for twelve years; that he has recently seen the subject premises look different; that he has known Petitioner to suffer damages in the bathroom plumbing and when the tub was leaking; that the toilet would not flush; that the living room was leaking; that equipment, such as speakers, a keyboard, a laptop, a guitar, and a turntable were damaged; that Petitioner replaced it more than once; that this has been going on for two or three years; that rainwater was coming from the ceiling seeping through the walls, especially when the weather changed; that he observed walls swelling up; that he saw kitchen floors damaged and swollen from water dripping in the subject premises; that it did not feel healthy; that the kitchen had asbestos and roaches; that leaks were all over the place; that Petitioner is in the music business and Petitioner has a sound set; that Petitioner does maintenance for the City; that Petitioner wears fancy clothes; that Petitioner's clothes are damaged and Petitioner threw them out; that the subject premises has one bedroom; [*2] and that the bedroom was damaged.

Petitioner's First Witness testified on cross-examination that some repairs were done and that about two months ago he saw someone working on the bathroom.

Petitioner's First Witness testified on redirect examination that he does not know if all repairs were done; that the last time he opened the window in the living room it did not work right; and that a lot of air comes in through the window.

Petitioner testified that he brought this case because of the harassment; that Respondent started putting cameras on his floor directed at the door of the subject premises; that Petitioner promised to make repairs; that he reached out to the super well over a year ago; that he texted the super; that Petitioner did not come to fix anything; that his losses were huge; that he works in maintenance at housing; and that when HPD came to do a lead test, "she" was there as a witness to see what is going on.

Petitioner testified that there were fake eviction notices placed on the door; that he made

a 311 complaint about the refrigerator; that Respondent sent a technician to repair the refrigerator after the super could not repair it; that the repairperson came on September 17, 2021 to fix the refrigerator; and that he did not have a refrigerator for two months. Petitioner submitted into evidence a text exchange on September 13 and September 17 with a repairperson. Petitioner submitted into evidence photographs dated in November of 2021 of a refrigerator in a box. Petitioner testified that normally they do not know whose refrigerator it is; that a refrigerator is normally not dropped at the common area; that the super told Petitioner that he had to bring the refrigerator up himself; that he and the super brought the refrigerator up themselves after it sat in the common area of the Building for days if not weeks; that they heaved the refrigerator up four flights; that he has lived in the subject premises for forty years; that he has never seen someone have to do that; and that they had to leave the refrigerator outside the subject premises for a week while the City made repairs and the Respondent's workers then made repairs.

Petitioner submitted into evidence photographs dated in the fall of 2021 of furniture placed in the common areas of the fourth floor of the Building while repairs being done. Petitioner testified that the common area depicted in the photograph is where his couch was; that Respondent's employees removed his couch on the holiday; that the next day the super said that two Russians took the couch out; that he filed two police reports; that the furniture was from his grandmother's, from Florida; that he lost his children's bunk bed; that his couch was thrown out twice; and that there are security cameras on the first floor. Petitioner submitted into evidence a photograph from the fall of 2021 depicting a couch on the street outside the Building. Petitioner testified that after that he called and texted Respondent; that Respondent did not respond; and that Respondent blocked him.

Petitioner submitted into evidence photographs of music equipment dated in mid-November of 2021 in the living room of the subject premises. Petitioner testified that his side business is that he has played music in front of the Building at block parties every year for thirty years; that it is his hobby; and that he feels that Respondent is to blame for the damaged that the equipment sustained.

Petitioner submitted into evidence a video recording dated from the fall of 2021 showing that there is a security camera by the subject premises and not on other floors of the Building. The video recording also depicts a discoloration on the walls.

Petitioner submitted into evidence a video recording dated in November of 2021 [*3] depicting a ladder and debris on the floor of the bathroom in the subject premises.

Petitioner testified that eleven years ago, the City came and repaired lead paint in the subject premises; that he saw the City's worker put up a containment field; that Respondent's workers did not put up a containment field; that he has a child in the subject premises; that he thinks that the failure to put up a containment field is intentional; and that he thinks that Respondent retaliated against him for calling 311 by throwing his couch out. Petitioner submitted into evidence a photograph dated in November of 2021 depicting work being done in a foyer with plastic on a floor. Petitioner submitted into evidence photographs dated June 20, 2019 of couch sets that were damaged, leak damage in the living room, hallway, and bedroom, a stained mattress, a pot collecting water on the top of a bunk bed, floor tiles coming, and discolorations in walls and ceilings. Petitioner submitted into evidence photographs of passports that were damaged and damaged clothes, which Petitioner testified resulted from water damage from Hurricane Ida. Petitioner testified that he could not go to Japan as planned in July; that their passports were in a safe and were damaged; that documents and life insurance papers had to be thrown out; and that the water damage was all throughout the subject premises.

Petitioner testified on cross-examination that Herbert Griffiths is his father; that Petitioner's father used to live in the subject premises; that Petitioner's father left because of the water damage a couple of years or a year and a half ago; that he did not receive notices from Respondent that he had to remove the couch; that the super never told him to remove the couch from the hallway; that the super said everyone needed to remove things from the hallway; that his neighbors told him that there were complaints about removing things from the hallway; that he had fake eviction notices put on the door; that the date of the termination notice did not add up to fifteen days; that it was a document saying that he had to give up the subject premises; that Respondent was not the owner at the time of the video from 2019; that he wanted repairs done; that he was in front of another judge to repair; that the Court issued an order to correct; that Respondent did repairs, but he does not remember when; that Respondent came in to repair after the order to correct; that he spoke to the super after seeing the couch thrown away; that the super said that Respondent did not want it there; that he reached to Respondent after that; that he did not receive letters from Respondent besides the notices; that he never got notices of surveillance cameras; that he got harassing phone calls; that someone said they were here from the City but they did not have credentials; that the couch was not in the subject premises because there were still leaks in the subject premises; and that Respondent never removed possessions from the subject premises.

In response to questions from the Court, Petitioner testified that he paid rent with money orders or cash; that he paid Respondent online; and that his mother and father were tenants of

record.

The parties stipulated that Respondent owned the Building since December 15, 2020.

Jessica Bonds ("Petitioner's Second Witness") testified that she lives elsewhere in Brooklyn; that Petitioner is extended family; that she has known Petitioner for ten years; that she has been inside the subject premises four times a week and sometimes she stays over for a week or longer; that she has seen the subject premises change several times; that in the past year she has observed mold in the bathroom and leaks from the tub; that the tub is outdated; that the shower head had to be changed; that the window is not safe; that if you open the window, it slams back down; that the toilet overflows; that he had to replace the toilet area; that Petitioner had to replace the shower curtain; that the bathroom carpets are musty; that shavers were water-[*4]damaged; that under the sink where shampoos are was always flooded; that personal beauty and health products and hair dryers were damaged; that she has a three-year old child; that she observed water overflowing when she has run the shower; that water has come up out of the toilet tank; that she has cleaned the tub because of back-up; that she has seen repair people come twice in the past year; that she has only seen the super; that Petitioner has four children, three boys and one girl; that the two youngest are ten and eleven years old; that she used to babysit them when they were younger; that his children lived with him; that they slept in the one bedroom; that his children did not always live with him; that he used to live in the bedroom before the children came; that she noticed leak damage in the bedroom ceiling; that clothes were in the bedroom; that Petitioner dresses well; that she saw damage to personal property in the bedroom; that she has been in the bedroom with her daughter; that rain has fallen on her head; that she had to get a bucket and collect it; that under the window there is electricity; that Petitioner has played music the entire time that she knew him; that Petitioner had to replace musical equipment because of leak damage; that there is water damage in almost every room; that pictures of Petitioner's grandparents were destroyed; that she puts formula and food in the refrigerator; that she noticed a new refrigerator a couple of months ago; that the refrigerator that was there before would leak and clock out; that the roach problem was ridiculous; that roaches were in the cereal; that she is familiar with the furniture in the subject premises; that she has seen the furniture outside the subject premises for a month or so; that the furniture was right outside the door; that since there was damage in the living room that Petitioner did not want to put the furniture there until the subject premises was fixed; that Petitioner wanted to keep it in the hallway until repairs were done; that Petitioner had to bring it back; that Petitioner called her and said that the furniture was on the street; that she knows neighbors in adjacent apartments; that they are Seventh-Day Adventists; that he goes to church with his neighbors; that his furniture was

sectional; that there was a reclining chair; that four other chairs reclined; and that water seeped into the couch and damaged it.

Rosario Parlanti ("the Principal") testified that the LLC that is Respondent is his LLC; that he hired a company to place cameras in the Building; that the cameras are placed throughout the common areas of the Building, one by the front, one by the mailbox, and around the perimeter of the Building; that a camera was placed on the same floor as the subject premises; that he purchased the Building in December of 2019; that he hired a company at that time; that eventually they went into the stairwells of each floor and installed cameras there as well; that he installed cameras throughout the hallways and floors; that there were a couple of instances where someone was cutting the wires so he stopped installing cameras; that he was aware of a couch being removed from the common area of the Building; and that numerous notifications were sent to Petitioner to remove the couch. Respondent submitted into evidence undated notices addressed to Petitioner's father saying that if personal belongings are not removed from the common areas that they will be removed. The Principal testified that he sends monthly invoices and other communications; that he created the document; that he slides notices under the door; and that notices included rent billing for July, August and September, compelling the conclusion that Petitioner was notified for quite a while. Respondent submitted into evidence a notice dated June 24, 2021 that he mailed to the subject premises also telling Petitioner to remove his personal property. The Principal testified that Petitioner did not remove the couch from the common areas; that he instructed the super to remove the couch and put it in the courtyard; that he instructed the super to remove the couch again after it was installed in the common area [*5]again; and that he then instructed the super to throw the couch out.

The Principal testified that he became aware of repairs needed in the subject premises because the super told him and because a Housing Part proceeding ("HP Proceeding") was commenced; that he requested access dates from the HP Proceeding; that he "handled" repairs; that all tenants receive the notice about the personal property in the common area; that other tenants complied with that notice; that he saw what the cameras saw; that the view of the camera was half to three-quarters of the fourth floor; that it was not trained only on the subject premises; that the view of the camera was three or four doors; that he did not put cameras on the other residential floors because the cameras were starting to get damaged; that he does not want Petitioner to give up the subject premises; that he never met Petitioner; and that he knows the tenant of record is Petitioner's father.

The Principal testified on cross-examination that the camera on the floor of the subject

premises was particularly damaged; that there were four months in between installation of cameras; that he closed on the Building in December of 2019; that he installed cameras three or four months after that, in the spring of 2020; that he installed cameras on the fourth floor in fall of 2020; that depending on where you locate the camera it is difficult to see the whole floor; that he does not have double-faced cameras; that when notices went out he did not personally do repairs in the subject premises; that he does not know about the Department of Housing Preservation and Development of the City of New York ("HPD") making repairs; that the first notice he had of repairs was from the HP Proceeding; that a phone number that Petitioner gave him was the office cell phone number; that his assistant is responsible for answering the cell phone; that his assistant gives him certain messages unless there was a minor thing that would not concern him; that he has worked with his assistant for five years; that for basic repairs the assistance is instructed to notify the super, except for emergencies; that he was not aware of repairs when he was giving notice about the couch; that his assistant did not give him notice about repairs needed in the subject premises; that before he purchases a building he looks at rent rolls but does not look into repairs; that he inspected common areas, the roof, and the boiler before he bought the Building; that he is not aware of emergency repairs in the Building; that he does not know the dates that workers came to the subject premises but he knows about access dates in HP Proceeding; that he hires a licensed company to remediate lead paint; that his workers do not remove lead paint; that he does not know what practices the lead paint remediators use when working on lead paint; that the super threw out the couches; that he does not know about the super denying that he threw the couches out; that he contacts the super directly; that he is more personally involved with HP Proceedings; that he does not remember if he looked at the HPD website when he bought the Building; that every building has violations; that he never communicated with Petitioner before; that he told the super to let Petitioner know that the couches cannot be left in the hallway; that he understands that the super and Petitioner get along; that he did not contact anyone about inspecting the subject premises; that when he purchased the Building the super had already been there and had not told him about repairs in the subject premises; that it is the super's job to carry the refrigerator up; that he told the super that he knew about Bloods and Crips and that he has talked about that to his super in the context of his business; that he did not ask the super to meet with him; that the super does not have the authority to buy a new refrigerator; that the super does not repair refrigerators; that he did not know that the super attempted to repair a refrigerator; that his assistant sent a repairperson to the subject premises for the refrigerator because it was a part of the HP Proceeding; and that he [*6] became aware of the HP Proceeding about a week after it was filed, in early October of 2021.

The Principal testified on redirect examination that he puts cameras in the Building for the tenants' security; that he did not put the camera on the fourth floor to spy on Petitioner or to make tenants uncomfortable; that he has conversations with employees that are not always about business; that he has such conversations with other employees also; that he never meant to imply any threat to Petitioner by a mention of Bloods or Crips; that HPD placed violations of items in the hallways, so he instructed the super to remove the items; that when he hires a lead paint or mold remediator they are an independent third party by law and he has no control over how they do work; and that he would not instruct the super to have a tenant help the super with the super's duties.

In rebuttal, Petitioner submitted into evidence a text exchange between super and him, where the super says that the "boss" would like to inspect the subject premises on September 7. Petitioner testified that this meeting never took place.

Petitioner testified on cross-examination that the phone number in the text is to "his" business; that he understood that this meant that the Principal would come to the subject premises; that there were no texts between September 7 and September 16; that he did not hear from Principal; that he is close with the super; and that he has known the super at least five years.

The Court judicial notice of the following violations of the New York City Housing Maintenance Code that HPD placed on the subject premises:

A "B" violation [\[FNI\]](#) dated January 9, 2022, as follows: §27-2017.3 hmc: trace and repair the source and abate the visible mold condition... approx. 5 sq. ft. at the west wall and 1st window frame from south at west in the kitchen located at apt a33, 4th story, 1st apartment from south at west, section at west original violation 14545844 issued 08-sep-21 has been upgraded to class b per administrative code §27-2017.3a(3)(a) or (b);

"B" violations dated October 13, 2021:

§27-2005 adm code repair the roof so that it will not leak above ceiling inside the closet in the 4th room from north located at apt a33, 4th story, 1st apartment from south at west;

§27-2005 adm code repair the roof so that it will not leak above ceiling in the private hallway located at apt a33, 4th story, 1st apartment from south at west;

§27-2046.1 hmc: repair or replace the carbon monoxide detecting device(s). missing in

the entire apartment located at apt a33, 4th story, 1st apartment from south at west

A "C" violation dated October 13, 2021, as follows: hmc adm code: § 27-2017.4 abate the infestation consisting of roaches in the entire apartment located at apt a33, 4th story, 1st apartment from south at west;

"B" violations dated September 8, 2021:

§27-2005 adm code properly repair with similar material the broken or defective wood floor in the 4th room from north located at apt a33, 4th story, 1st apartment from south at west , section at west;

§27-2005 adm code properly repair the broken or defective wood base sink cabinet inner and outer surfaces in the kitchen located at apt a33, 4th story, 1st apartment from south at west , section at west;

§27-2005 adm code replace with new the broken or defective gasket around refrigerator door in the kitchen located at apt a33, 4th story, 1st apartment from south at west , section at west;

§27-2017.3 hmc: trace and repair the source and abate the visible mold condition... approx. 10 sq. ft. at the west wall and 1st window frame from south at west in the bathroom located at apt a33, 4th story, 1st apartment from south at west , section at west;

§27-2005 adm code repair the roof so that it will not leak over the ceiling in the bathroom located at apt a33, 4th story, 1st apartment from south at west , section at west;

§27-2005 adm code repair the broken or defective plastered surfaces and paint in a uniform color the ceiling in the foyer located at apt a33, 4th story, 1st apartment from south at west , section at west;

§27-2005 adm code properly repair with similar material the broken or defective wood floor in the 1st room from north located at apt a33, 4th story, 1st apartment from south at west , section at west;

§27-2005 adm code repair the roof so that it will not leak over the ceiling in the 1st room from north located at apt a33, 4th story, 1st apartment from south at west , section at west;

"C" violations dated August 4, 2020:

§27-2005, 2007, 204.1 hmc code: arrange and make self-closing the doors in the entrance located at apt a33, 4th story, 1st apartment from south at west , section at west;

§27-2005 adm code replace with new the broken or defective refrigerator gasket at upper and lower door in the kitchen located at apt a33, 3rd story, section "west";

A "B" violation dated July 2, 2020: § 27-2005 adm code replace with new the broken or defective refrigerator gasket at upper and lower door in the kitchen located at apt a33, 3rd story, section "west";

"B" violations dated May 14, 2020:

§27-2017.3 hmc: trace and repair the source and abate the visible mold condition... at the window frame in the kitchen located at apt a33, 4th story, apartment at west , section at west original violation 13538755 issued 07-jan-20 has been upgraded to class b per administrative code §27-2017.3a(3)(a) or (b);

§27-2017.3 hmc: trace and repair the source and abate the visible mold condition... at the window frame in the kitchen located at apt a33, 4th story, apartment at west , section at west original violation 13538757 issued 07-jan-20 has been upgraded to class b per administrative code §27-2017.3a(3)(a) or (b);

"B" violations dated April 9, 2020:

§27-2005 adm code properly repair the broken or defective strike plate at door jamb in the entrance located at apt a33, 4th story, 1st apartment from south at west;

§27-2005 adm code properly repair the broken or defective counter balance at lower sash north window at west wall in the 1st room from north located at apt a33, 4th story, 1st apartment from south at west;

§27-2018 admin. code: abate the nuisance consisting of roaches in the entire apartment located at apt a33, 4th story, 1st apartment from south at west;

§27-2005 adm code repair the roof so that it will not leak over ceiling in the 4th room [*7] from north located at apt a33, 4th story, 1st apartment from south at west;

§27-2005 adm code repair the broken or defective plastered surfaces and paint in a uniform color the west wall in the 4th room from north located at apt a33, 4th story, 1st

apartment from south at west;

A "C" violation dated November 19, 2011, as follows: §27-2056.6 adm code - correct the lead-based paint hazard - paint that tested positive for lead content and that is peeling or on a deteriorated subsurface - using work practices set forth in 28 rcny §11-06(b)(2) south wall in the kitchen located at apt a33, 4th story, 1st apartment from south at west.

"C" violations dated February 19, 2011:

§27-2056.6 adm code - correct the lead-based paint hazard - presumed lead paint that is peeling or on a deteriorated subsurface using work practices set forth in 28 rcny §11-06(b)(2) 1st dumb waiter from west at north wall in the private hallway located at apt a33, 4th story, 1st apartment from south at west;

§27-2056.6 adm code - correct the lead-based paint hazard - paint that tested positive for lead content and that is peeling or on a deteriorated subsurface - using work practices set forth in 28 rcny §11-06(b)(2) north wall in the private hallway located at apt a33, 4th story, 1st apartment from south at west;

§27-2056.6 adm code - correct the lead-based paint hazard - paint that tested positive for lead content and that is peeling or on a deteriorated subsurface - using work practices set forth in 28 rcny §11-06(b)(2) north wall, south wall, east wall, west wall in the 4th room from north located at apt a33, 4th story, 1st apartment from south at west;

§27-2056.6 adm code - correct the lead-based paint hazard - paint that tested positive for lead content and that is peeling or on a deteriorated subsurface - using work practices set forth in 28 rcny §11-06(b)(2) east wall, west wall in the foyer located at apt a33, 4th story, 1st apartment from south at west;

§27-2056.6 adm code - correct the lead-based paint hazard - paint that tested positive for lead content and that is peeling or on a deteriorated subsurface - using work practices set forth in 28 rcny §11-06(b)(2) north wall, south wall, east wall, west wall in the kitchen located at apt a33, 4th story, 1st apartment from south at west; and

§27-2056.6 adm code - correct the lead-based paint hazard - paint that tested positive for lead content and that is peeling or on a deteriorated subsurface - using work practices set forth in 28 rcny §11-06(b)(2) north wall, south wall, east wall, west wall in the 1st room from north located at apt a33, 4th story, 1st apartment from south at west.

In addition to those violations, HPD placed a "B" violation on the Building on June 21, 2021 to "remove all encumbrances consisting of household items at public hall, 4th story, section 'west.' "

Discussion

N.Y.C. Admin. Code §27-2004(a)(48) defines "harassment" as any act or omission by or on behalf of an owner that causes or is intended to cause any person lawfully entitled to occupancy of a dwelling unit to vacate or surrender rights and if an occupant does not vacate or surrender rights, includes repeated failures to correct "B" and "C" violations, *Id.* at §27-2004(a)(48)(b-2), repeated commencement of baseless court proceedings, *Id.* at §27-2004(a)(48)(d), or other repeated acts or omissions of such significance as to substantially interfere with or disturb the comfort, repose, peace, or quiet of any tenant, *Id.* at §27-2004(a)(48)(g), proof of which gives rise to a rebuttable presumption that the landlord intended [*8] to cause the tenant to vacate or surrender rights.

The Court draws the inference that Petitioner's couch was one the household items whose storage in the common areas caused HPD to place a hazardous violation on the Building on June 21, 2021. By Petitioner's testimony, Respondent did not effectuate a removal of Petitioner's couch until the fall of 2021. Petitioner did not rebut the Principal's testimony that Respondent caused notices to be delivered to Respondent to remove Petitioner's couch. Respondent's removal of Petitioner's couch therefore corrected a violation of the Housing Maintenance Code. Imposing harassment liability on a landlord for correcting a violation would undermine an important purpose of the statute.

Petitioner argues that Respondent's installation of a security camera on his floor trained on the subject premises constitutes an element of harassment. As the statute does not identify the placement of a security camera as one of the grounds of harassment, such an installation can only constitute harassment if it is an "act[] of such significance as to substantially interfere with or disturb the tenant ." *Id.* at §27-2004(a)(48)(g). Security cameras, however, are an amenity for tenants insofar as they enhance safety in a building. *See Benitez v. Whitehall Apartments Co., LLC*, 19 Misc 3d 1120(A)(S. Ct. NY Co. 2008), *aff'd sub nom. Ruth B. v. Whitehall Apartment Co., LLC*, 56 AD3d 273 (1st Dept. 2008)(tenants have a cause of action against a landlord who assures a tenant that security cameras render a tenant safe if the landlord fails to monitor the security camera footage). The New York State Division of Housing and Community Renewal ("DHCR") has deemed a landlord's failure to install a security camera to be a denial of services to rent-stabilized tenants that entails a rent

reduction order pursuant to 9 N.Y.C.R.R. §2523.4, *Matter of Douglas Elliman Prop. Mgmt. v. Div. of Hous. & Cmty. Renewal*, 2009 NY Slip Op. 30008(U)(S. Ct. NY Co.), and awarded a landlord a Major Capital Improvement rent increase for rent-stabilized apartments pursuant to 9 N.Y.C.R.R. §2522.4(a)(2) for an installation of a security camera system. *Matter of 250 Riverside Drive Tenants' Ass'n v. NY State Div. of Hous. & Cmty. Renewal*, 41 Misc 3d 1209(A)(S. Ct. NY Co. 2013).

The beneficial properties of security cameras are consistent with the unobjectionable use of security cameras to support a cause of action sounding in nonprimary residence, *Aurora Associates LLC v. Marquez*, N.Y.L.J. August 2, 2010 at 18:3 (Civ. Ct. NY Co.), *aff'd*, 2011 NY Slip Op. 51658(U)(App. Term 1st Dept. 2011), *leave to appeal denied*, 2012 NY Slip Op. 72480(U)(App. Div. 1st Dept.), *leave to appeal dismissed*, 19 NY3d 989 (2012), [*Bedford Equities, LLC v. Newton*, 32 Misc 3d 145\(A\)\(App. Term 1st Dept. 2011\)](#), [*521 E. 5th LLC v. Brandon*, 25 Misc 3d 134\(A\)\(App. Term 1st Dept. 2009\)](#), a tenant's exposure to nuisance liability for removal of a security camera, *Beuhler 1992 Family Tr. v. Longo*, 63 Misc 3d 508 (Civ. Ct. Kings Co. 2019), and an elderly rent-controlled tenant's guardian's exposure to criminal liability for removal of a security camera. *People v. Schwartz*, 50 Misc 3d 1213(A) (Crim. Ct. NY Co. 2016). The Court cannot reconcile these propositions, particularly that security cameras provide a benefit to tenants to the point that DHCR penalizes a landlord for denying them, with the proposition that an installation of a security is an act of such significance as to constitute harassment.

Petitioner characterized a notice that he received as harassment. Petitioner, however, did not submit the notice into evidence. To the extent that the notice that Petitioner referred to could have been a predicate to a summary proceeding, the statute defines harassment in part as "repeated" commencements of frivolous Court proceedings, N.Y.C. Admin. Code § 27-[*9]2004(a)(48)(d), which entails the commencement of a plural number of Court proceedings. *Khazanov v. 2800 Coyle St. Owners Corp.*, 2015 NY Slip Op. 31437(U), ¶¶ 8-9 (S. Ct. Kings Co.)(Toussaint, J.), [*Martinez v. Pinnacle Grp.*, 34 Misc 3d 131\(A\)\(App. Term 1st Dept. 2011\)](#). If the failure to commence more than one proceeding does not constitute harassment, then the service of a predicate notice to one proceeding without commencing the actual proceeding itself is not harassment by the definition of the statute. [*Garcia v. Adams*, 71 Misc 3d 1205\(A\)\(Civ. Ct. Kings Co. 2021\)](#).

As noted above, repeated failures to correct "B" and "C" violations constitute harassment. N.Y.C. Admin. Code §27-2004(a)(48)(b-2). The persistence of violations in HPD's database noted above compels the conclusion that Respondent has not certified the

violations as corrected. N.Y.C. Admin. Code §27-2115(f)(7). In addition to that, HPD's report of the same conditions as repeated violations proves that Respondent did not correct those violations, MDL §328(3), *Dept. of Hous. Pres. & Dev. v. Knoll*, 120 Misc 2d 813, 814 (App. Term 2nd Dept. 1983), as was the case for a roach infestation, for which HPD placed a "B" violation on April 9, 2020 and a "C" violation on October 13, 2021, mold on a kitchen window, for which HPD placed "B" violations on May 14, 2020 and January 9, 2022, and the defective refrigerator gasket, for which HPD placed "B" violations on July 2, 2020, August 4, 2020, and September 8, 2021. Petitioner proved an aggravating circumstance regarding the latter violation for the refrigerator given his proof that his replacement refrigerator needlessly waited in the common areas of the Building for a protracted period of time before the super and Petitioner brought it up to the subject premises.

Proof of one of the predicates of harassment shifts the burden to the landlord to prove that the owner did not intend to make a tenant vacate or surrender rights. *Cartagena v. Rhodes 2 LLC*, 2020 NY Slip Op. 30290(U)(S. Ct. NY Co.), 351-359 E. 163rd St. Tenants Assoc. v. E. 163 LLC, 2021 NY Slip Op. 50055(U), ¶ 7 (Civ. Ct. Bronx Co.). With regard to the violations, Respondent makes essentially two arguments as a defense to a finding of harassment: one, that violations arose before Respondent purchased the Building, and two, that Respondent corrected the violations.

"[A landlord] cannot escape responsibility for [a] building's precarious condition when acquired, since the documentation was documented in outstanding violations, and 'the need to make repairs could have been anticipated' before the purchase." [128 Hester LLC v. NY State Div. of Hous. & Cmty. Renewal](#), 146 AD3d 706, 707 (1st Dept. 2017), citing *Eyedent v. Vickers Mgmt.*, 150 AD2d 202, 205 (1st Dept. 1989), *Lamberty v. Papamichael and Pandyland*, 2013 N.Y.L.J. LEXIS 7380 (S. Ct. NY Co.), *Allen v. 219 24th St. LLC*, 67 Misc 3d 1212(A) (Civ. Ct. NY Co. 2020). Accordingly, a landlord can potentially be liable for harassment even if it succeeds in interest to a landlord who had committed acts that formed a predicate for harassment. *See, e.g., 659 Vt. St. Tenants' Ass'n v. Vt. Realty*, 2018 N.Y.L.J. LEXIS 4413 (Civ. Ct. Kings Co.).

Granted, a new owner is not always liable for harassment upon a purchase of a building with violations, particularly if a new owner were to promptly undergo correction of violations upon a purchase. But the record in this case does not show that. Indeed, the Principal testified that he could not even remember checking HPD's website, publicly available to anyone with a browser, for violations upon his purchase of the Building, a surprising admission given that a purpose of the New York City Housing Maintenance Code

is enforcement of health and safety standards in general, N.Y.C. Admin. Code §27-2002, and that the Building in particular had [*10]more than 100 violations.

The Principal testified he delegated responsibility for repairs to his employees, but the record does not contain any evidence of their actions at least until the order to correct in November of 2021. Notably, despite the absence of evidence of action to correct violations for almost a year, the Principal somehow both knew about the HPD violation regarding Petitioner's couch in the common area and involved himself personally in the correction of that violation to the degree of personally sliding notices to remove the couch under Petitioner's door. Respondent's conduct as such demonstrates a level of, most charitably, indifference to the "B" and "C" violations upon Respondent's purchase of the Building incompatible with a rebuttal of the prima facie case for harassment that Petitioner demonstrated, particularly in light of the Principal's trivialization of Housing Maintenance Code violations when he contextualized his failure to consult the HPD website upon purchase of the Building by testifying that all buildings have violations.

What evidence there is of repairs is vague. Petitioner's First Witness testified that about two months before his testimony he saw someone working on the bathroom but did not know if all repairs were done. Petitioner testified about repairs, but the testimony was not specific. The Principal had no personal knowledge of any repairs done. This record is insufficient to prove a correction of specific "B" and "C" violations in evidence. Even if the Court drew an inference most favorable to Respondent from this testimonial evidence, the record would still show "B" and "C" violations persisting long past the legal time frames for their correction [FN2] with the commencement of this proceeding being Respondent's only motivation to start with a correction.

Accordingly, Respondent has not rebutted Petitioner's prima facie case for harassment consisting of a repeated failure to correct "B" and "C" violations. Tenants who prove harassment may obtain placement of housing maintenance code violations, an injunction restraining a landlord from engaging in such conduct, civil penalties payable to the New York City Commissioner of Finance not less than \$2,000 nor more than \$10,000, N.Y.C. Admin. Code §27-2115(m)(2), compensatory damages, and punitive damages. N.Y.C. Admin. Code §27-2115(o). While Petitioner proved damage to his personal property, compensatory damages must be ascertainable to a degree of reasonable certainty, [E.J. Brooks Co. v. Cambridge Sec. Seals, 31 NY3d 441](#), 448-49 (2018), and the record does not contain any proof as to the amount of damages Petitioner sustained to his personal property. In the absence of such proof, the Court can award Petitioners compensatory damages of \$1,000.00.

N.Y.C. Admin. Code §27-2115(o).

Punitive damages are assessed by way of punishment to the wrongdoer and example to others. *Bi-Economy Mkt., Inc. v. Harleystville Ins. Co. of NY*, 10 NY3d 187, 193-94 (2008). While no rigid formula fixes punitive damages, they should bear some reasonable relation to the harm done and the flagrancy of the conduct causing it. *Id.* Punitive damages in the housing context in particular can deter conduct which undermines housing maintenance standards. *Gruber v. Craig*, 208 AD2d 900, 901 (2nd Dept. 1994), *Minjak Co. v. Randolph*, 140 AD2d 245, 249 (1st Dept. 1988). In setting punitive damages, the Court balances the relatively short time that Respondent has owned the Building and the absence of other instances of harassment against a policy of incentivizing owners to engage in the minimal diligence it takes to consult the [*11]HPD website upon the purchase of a multiple dwelling and arrange for the correction of violations without making tenants resort to litigation.

More egregious harassment, i.e., changing locks and discarding personal property, warranted punitive damages of \$5,000 per tenant, *Caban v. Silver*, 2019 N.Y.L.J. LEXIS 458, *17 (Civ. Ct. Kings Co.). Posting offensive notes in the common areas, attacking tenants on the basis of alienage and marital status, denying essential services, and attacking tenants for contacting code enforcement agencies, warranted punitive damages of \$4,500 per tenant. *Guang Y. Leung v. Zi Chang Realty Corp.*, 2022 NY Slip Op. 50034(U)(App. Term 1st Dept.). As demonstrated above, Respondent's conduct does not rise to this level and the Court therefore awards Petitioner \$2,000 in punitive damages. For similar reasons, the Court awards \$2,000 in civil penalties.

Accordingly, it is

ORDERED that the Court makes a finding that Respondents have engaged in harassment of Petitioner by Respondents' repeated failure to correct "B" and "C" violations in violation of N.Y.C. Admin. Code §§27-2004(a)(48)(b-2), and 27-2005(d), and it is further

ORDERED that HPD place a "C" violation for harassment on the subject premises, upon service of a copy of this order together with notice of entry by any party on HPD, and it is further

ORDERED that the Court directs Respondents to cease all harassment against Petitioner, and it is further

ORDERED that the Court awards Petitioner a judgment in the amount of \$3,000.00 as

against Respondents, jointly and severally, and it is further

ORDERED that the Court awards HPD civil penalties against Respondents in the amount of \$2,000.00, to be enforced as against the Building, at Block 1314, Lot 50 of the borough of Brooklyn, and it is further

ORDERED that Petitioner's remedies upon a failure to correct violations as per the order to correct in this matter may be had upon a motion for civil penalties and/or a motion for contempt in the HP part.

This constitutes the decision and order of this Court.

Dated: March 14, 2022
Brooklyn, New York
HON. JACK STOLLER
J.H.C.

Footnotes

Footnote 1: A class "A" violation is "non-hazardous" pursuant to N.Y.C. Admin. Code §27-2115(c)(1); class "B" violation is "hazardous" pursuant to N.Y.C. Admin. Code §27-2115(c)(2); and a class "C" violation is "immediately hazardous" pursuant to N.Y.C. Admin. Code §27-2115(c)(3). [*Notre Dame Leasing LLC v. Rosario*, 2 NY3d 459](#), 463 n.1 (2004).

Footnote 2: An owner must correct "B" violations within thirty days and "C" violations within twenty-four hours. N.Y.C. Admin. Code §27-2115(c)(1).

[Return to Decision List](#)