2020-04-27

Leung v. Zi Chang Realty Corp.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART B
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GUANG Y. LEUNG, et al.,

Petitioners,

Index No. HP 449/2019

- against -

DECISION/ORDER

ZI CHANG REALTY CORP., et al.,

Respondents.
---------- X

Present: Hon. Jack Stoller
Judge, Housing Court

Guang Y. Leung, Oi Yuk Kong, Ai Yu Shao, Qun Chen, Wai Hei Li, Liu Yi Chen, Xiu Zhen Zhang, Jing Zhao Chen, Kai Lu, and Jerry Li, the petitioners in this proceeding ("Petitioners"), commenced this Housing Part proceeding ("HP proceeding") by order to show cause filed on February 27, 2019 against Zi Chang Realty Corp., Wing Chay Yeung ("Respondent"), and Yu Huang ("Co-Respondent"), the respondents in this proceeding (collectively, "Respondents"), and the Department of Housing Preservation and Development of the City of New York ("HPD"), seeking an order directing Respondents to correct violations at 299 Broome Street, New York, New York ("the subject premises"), in particular in apartments 4, 7, 11, 12, 13, 14, 16, 18, 21, 23 there,[1] and seeking relief on a cause of action sounding in harassment pursuant to N.Y.C. Admin. Code §27-2005(d). Respondents interposed an answer raising defenses of improper parties, at least with regard to Co-Respondent, that conditions do not exist, that conditions are not violations, that conditions have been corrected, and statute of

[1] In this order, the Court shall refer to apartments by their numbers only.

limitations. The Court held a trial of this matter on September 17, 2019, September 30, 2019, October 9, 2019, December 30, 2019, January 8, 2020, and February 4, 2020 and adjourned the matter for post-trial submissions to March 13, 2020.

Pursuant to MDL §328(3), the Court took judicial notice of the following violations of the Housing Maintenance Code: "C" violations for gas in 14 and 21, inadequate hot water in 7, 12, 14, 16, and 21, lack of access to a hearing system, inadequate heat in 4 and 10, an entrance door in 10 and to the common area, rodents in a common area yard, and a lock to the entrance, and "B" violations for smoke detectors in 7 and 10, doors in 10, 11, 12, 14, 16, and 21, bathroom ceilings in 7 and 14, mold in 23, kitchen windows in 21, and bulkhead doors. [2]

Petitioners moved into evidence the following notes in the common area of the subject premises ("the common area"):[3] one from March of 2017 addressed to "whoever was the one who threw this garbage from above," that "I'm going to screw your mother and your ancestor," using language that the official Court interpreter informed the Court was offensive; another telling young people not to flirt, because children can be damaged by what they say, and threatening to show indecent photos of people who are "intimate" in the hallways; another with a curse word; another with a note that said "fuck you" in English and Chinese; another saying that "you" can leave if you don't like it; another accusing a tenant of committing welfare fraud,

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[2] 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 N.Y.3d 459, 463 n.1 (2004).

[3] The notes in evidence referenced in this order, with one exception that the Court will note, are in Chinese characters. The official Court interpreter read translations of the notes into the record.

another saying "fuck your mother and your 18 ancestors"; another stating not to commit low-class acts; and another stating, "send regards to your mother."

One of the petitioners, Qun Chen ("the Apartment 12 tenant"), testified that he moved into the subject premises in 2008 by a lease that Petitioners moved into evidence; that he paid Respondent $10,000 in order to sign the lease at Respondent's request; that he only had one hour a night of heat when he moved in; that at the time he signed the lease, Respondent insisted that he write a note that Petitioners moved into evidence attached to the lease that said that he could not dispute the adequacy of heat and hot water; that he saw this note posted in the common area around Christmas of 2018; that he saw another note posted in the common area of the subject premises that Petitioners moved into evidence consisting of a violation that HPD posted, with handwriting on it that said, "Thank you, a person from Fu Chou county, city of Ting Jian, especially asked DOB to issue this big gift to the landlord, thank you very much"; that he is from Fujian; that he knows that the heat is not on because when the heat is on he can see steam and it is hot to the touch; that Respondent, who lives in the subject premises, had heat in Respondent's apartment; that the inadequate hot water got worse; that he went a month without hot water; that when he complained to Respondent about heat and hot water; that Respondent responded by pointing out that he promised to not complain about heat and telling him that too many people live in the subject premises; and that he heats 12 with a space heater.

Petitioners moved into evidence Con Edison bills for 12, which show bills twice as high in the winter as in the rest of the year.

The Apartment 12 tenant testified that he had a leak in bathroom ceiling and the kitchen sink; that he told Respondent about that; that Respondent changed the ceiling twice, but

Respondent did not address the underlying cause of the leak; that he tendered rent each month by registered mail; that Respondent is not accepting his rent; and that Respondent did not provide him with a renewal lease. Petitioners moved into evidence canceled checks for rent from January through March of 2019 and rent checks returned to him for April, May, July, and September as unclaimed.

The Apartment 12 tenant testified on cross-examination that four people live in 12 and that, at various points in years past, other people lived in 12, such his wife's aunt and a female cousin of his.

The spouse of the Apartment 12 tenant ("the Apartment 12 occupant") testified that they paid Respondent $10,000 in cash and without a receipt at Respondent's request, plus two months' rent with a receipt at Respondent's request; that she saw the Apartment 12 tenant's note about the heat posted in the common area after she had called HPD to complain about heat; and, furthermore, that Co-Respondent banged on her door and cursed at her and said that she had to move out for making trouble; that Respondent demanded, and she paid an additional $100 in cash per month for two years in addition to the rent because a cousin was staying with her, although she has no receipts; that she posted a notice in the common area in an attempt to organize tenants in the subject premises and Respondent tore the notice down; and that Respondent curses at her, yells at her, and photographs her.

Petitioners introduced into evidence a log that the Apartment 12 occupant kept of temperatures in the winter of 2018-2019, showing the following data:

Date	Outside temperature	Inside temperature (all readings in degrees Fahrenheit)
Dec. 18	33	53
Dec. 19	28	50
Dec. 23	42	58
Dec. 28	40	58
Dec. 29	37	52
Jan. 2	38	56
Jan. 4	44	55
Jan. 7	29	50
Jan. 11	27	48
Jan. 14	32	48
Jan. 16	35	48
Feb. 15	53	59
Feb. 17	33	51
Feb. 18	26	48
Feb. 19	33	51
Feb. 20	29	48
March 3	29	48
March 7	29	54
March 10	42	60
March 11	49	60
March 12	42	58
March 13	40	60
March 14	52	65
March 16	45	62
March 17	43	58
March 18	40	58
March 19	41	58
March 21	47	58
March 22	47	58
March 23	46	57
March 25	49	60
March 26	42	59
March 27	43	58

Another petitioner, Jing Zhao Chen ("the Apartment 18 tenant") testified that he has lived in his apartment for thirty-four or thirty-five years; that he was married when he moved in; that his wife's name was on the lease; that he and his wife divorced, but his ex-wife continued to live in the subject premises after they divorced; and that Respondent refused to offer him a renewal

lease that included his ex-wife as a co-tenant.

Petitioners moved into evidence a holdover petition in the matter Zi Chang Realty Corp v. Chen, Index # 69323/2018 (Civ. Ct. N.Y. Co.) that Respondent commenced against the Apartment 18 tenant on the ground that the Apartment 18 tenant did not execute a renewal lease ("the Renewal Holdover"). Petitioners moved into evidence an order dated June 20, 2019 dismissing the Renewal Holdover on the ground that Respondent did not comply with the Rent Stabilization Code as Respondent did not offer the lease on the same terms and conditions as a prior lease given that Respondent did not offer the renewal lease to the Apartment 18 tenant's ex-wife as a co-tenant. Petitioners moved into evidence a renewal lease that Respondent offered the Apartment 18 tenant after the order dismissing the Renewal Holdover that did not have the Apartment 18 tenant's ex-wife on it. Petitioners moved into evidence a summons and complaint of a declaratory judgment against that Respondent commenced against the Apartment 18 tenant and his ex-wife seeking removal of the latter's name from the lease.

The Apartment 18 tenant testified that he felt that the notice Respondent posted in the common area accusing a tenant of committing welfare fraud was a reference to his living situation; that he complained about inadequate heat in the subject premises, which has been a problem for his entire tenancy; and that he only had hot water from 10 a.m. until 4 or 5 p.m.

Another petitioner, Oi Yuk Kong ("the Apartment 7 tenant") testified that she has been a tenant for six or seven years; that she paid Respondent one month's deposit, one month's rent, and $5,000 in cash to get her lease; that Respondent denied her request for a receipt for the payment; that, two years before her testimony, she complained to Respondent about a recurring leak that Respondent had previously addressed; that Respondent and Co-Respondent both told

her at different times that she could move if she did not like it; that she had inadequate heat and hot water; that Respondent increased her rent by $100 because she took in a roommate, which she paid monthly for three years in cash to Co-Respondent with no receipt for by $100; that Respondent told her not to let HPD inspectors in; that Respondent asked her for $50 after she complained about heat for letting in HPD inspectors, which she paid in cash without a receipt; and that Respondent returned her rent checks. Petitioners moved into evidence envelopes of rent for March through September of 2019 that she sent Respondent by certified mail that were returned unclaimed. Petitioners also moved into evidence a photograph of a hole in the ceiling over a toilet in Apartment 7.

On the cross-examination of the Apartment 7 tenant, Respondents moved into evidence a "C" violation that HPD placed on Apartment 7 for a lock on an internal door in a bedroom there. The Apartment 7 tenant testified on cross-examination that she has since removed the lock; and that she has had a mother and child live with her for two years.

Another petitioner, Ai Yu Shao ("the Apartment 11 tenant"), testified that is sixty-two years old; that she moved into her apartment on August 2008; that the Apartment 12 tenant referred her to her apartment; that she paid Respondent $12,000 in cash to get her apartment and Respondent did not provide her with a receipt; that Respondent asked her to pay $200 a month in addition to her rent because her niece lived with; that she paid this amount from October of 2015 through February of 2019; that Respondent also charged her $30 a month for 25 months, until January of 2019, because a younger child in her apartment used diapers that created more garbage; that she made these extra-rent payments in cash and had no receipt; that she complained about inadequate heat and hot water to the precinct; that Respondent retaliated against her by

commencing a holdover proceeding against her, alleging an illegal sublet; that she has inadequate heat and hot water; that she uses an electric heater that incurs costs that she has to pay; that Respondent and Co-Respondent both told her that she can move if she is not happy; that Co-Respondent once accosted her immediately after she let in HPD inspector into her apartment; and that Respondent commenced two summary proceedings against her. The record does not contain evidence of the resolution of those summary proceedings.

Petitioners introduced into evidence a log that the Apartment 11 tenant kept of temperatures in the winter of 2018-2019, showing the following data:

Date	Outside temperature	Inside temperature (all readings in degrees Fahrenheit)
Dec. 18	32	51
Dec. 19	29	48
Dec. 20	50	55
Dec. 23	43	59
Dec. 25	43	44
Dec. 26	45	58
Dec. 27	39	50
Dec. 28	38	48
Dec. 29	43	48
Dec. 30	45	45
Dec. 31	48	illegible

Another petitioner, Wai Hei Li ("the Apartment 13 tenant") testified that he has lived in his apartment for twelve years; that hot water and heat were inadequate for a long time; that he has used electric heaters in the subject premises; that his sister lived with him for over a year; and that he paid an extra $100 per month in cash without a receipt at Respondent's insistence because of that, sometimes with checks and sometimes with cash.

Roxy Chang, a community organizer at Asian Americans for Equality ("the community organizer") testified that she has been working with some of Petitioners. Petitioners introduced

into evidence a letter dated December 18, 2018 that she wrote Respondent complaining about inadequate heat and hot water. The community organizer testified that she was at a meeting at the subject premises in mid-January of 2019; that Respondent tried to talk to her in the common area at that time, raising his voice; and that Respondent and Co-Respondent came to her office the following day, trying to get the community organizer to stop organizing the subject premises. The community organizer testified on cross-examination that before January 14, 2019, she was in the subject premises two times; that Respondent did not interrupt her in those two prior visits; and that Respondent did not stop her interaction with Petitioners in other subsequent occasions at the subject premises after she had seen him.

Another petitioner, Lu Kai ("the Apartment 21 tenant"), testified that he has lived in the subject premises since 2014. Petitioners moved into evidence the leases that the Apartment 21 Tenant and Respondents executed. The first renewal lease is not on a form prescribed from the New York State Division of Housing and Community Renewal ("DHCR") and does not give the Apartment 21 Tenant an option of a one- or a two-year renewal.

The Apartment 21 tenant testified that he paid Respondent $10,000 in cash and without a receipt at Respondent's insistence to get a lease; that a tenant downstairs from him notified him of a leak that was coming down; that Respondent would not fix the leak; that he realized that the tub had rotted because it was painted over; that he fixed it himself; that Respondent did not fix a living room for many years, until the end of March, when the community organizer helped Petitioners; that Respondent did not fix his stove, which had a gas leak and which Con Edison turned off; that, even though he did not have heat in his apartment, that he was in Respondent's apartment in the subject premises and it was warm; that Respondent told him to move out when

he complained about conditions; that there is always a month in the winter when there is no hot water; and that Respondent interfered with a babysitter coming to his apartment for his grandchild, causing the babysitter to stop working for the Apartment 21 tenant.

Petitioners moved into evidence a log that the Apartment 21 tenant kept of days in 2018 when he had no hot water: October 12, 13, 14, 15, 16, 17, 18, 28, and 29, November 1, 3, 4, 9, 12, 16, 19, 25, and 29, and December 4, 5, 6, 7, 8, 9, 12, 17, 18, 20, 21, 23, and 26.

Petitioners introduced into evidence a log that the Apartment 21 tenant kept of temperatures in the winter of 2018, showing the following data:

Date	Outside temperature	Inside temperature (all readings in degrees Fahrenheit)
Nov. 8	35	59
Nov. 9	33	55
Nov. 12	33	57
Nov. 19	37	61
Nov. 30	33	58
Dec. 4	38	51
Dec. 17	28	57
Dec. 19	18	57
Dec. 20	31	61
Dec. 21	30	61

Zhang Li Zhu, the wife of the Apartment 21 tenant, testified that Respondent told her and the Apartment 21 tenant to pay $10,050 or $10,500 to sign a lease for their apartment; that their stove was shut off for two months; that Respondent did not fix it and said that there was nothing wrong; that Respondent did send someone to fix the stove, but that person was not a licensed plumber; that there is inadequate heat and hot water; and that Respondent harassed their babysitter.

Another petitioner, Chun Yi Liu ("the Apartment 14 tenant") testified that he moved there

in March or April of 2016; that, in addition to a first month's rent and security deposit, he paid Respondent and Co-Respondent $10,000 in cash and did not get a receipt; that his apartment did not have adequate heat and hot water from when he first moved in; that he complained to Respondent; that Respondent told him that he could move if he did not like it; that he used a space heater to heat his apartment; and that his gas meter leaked, causing his cooking gas to be shut off. The Apartment 14 tenant testified on cross-examination that the tenants of 12 who referred his apartment to him did not tell him about problems with the heat and hot water.

Respondents introduced into evidence a number of complaints made to HPD about heat and hot water that did not result in violations being placed.

Respondent testified that he lives in Apartment 2 of the subject premises; that he does not have a separate boiler or water heater for his apartment; that, in 2013, the boiler in the subject premises was not working right; that looked for a worker immediately; that, in 2017, he purchased a boiler; that there was an issue with boiler; that the boiler had a ten-year warranty; that he replaced the boiler eleven months after he purchased it; and that he engaged another company to come in March 2019 who advised him to get a licensed plumber.

Respondents introduced into evidence receipts dated January 18, 2017 for $6,332 for work on the boiler, an undated receipt for $6,280 for more work on the boiler, a receipt dated December 18, 2018 for $6,913.82 spent on the boiler, a receipt for $304.85 paid for boiler maintenance; invoices dated January 20, 2019 for $297.23 for boiler maintenance; an invoice dated March 13, 2019 from a different boiler maintenance company; and invoices dated March

17, 2019 for $600 for boiler maintenance.[4]

Respondent testified that no one phoned him about repairs; that he never asked tenants for bribes above and beyond rent and a security deposit to sign a lease; that he did not have tenants sign documents saying that there would be no heat and hot water at night; that the Apartment 12 tenant and the Apartment 12 occupant were upset at him because a violation was placed for their own conversion of a two-bedroom into a three-bedroom apartment in 2013 or 2014; that he hired people to remove that partition; that he gave the Apartment 21 tenant a lease in Court; that the Apartment 7 tenant was a subtenant who took over the tenancy who had a similar violation for constructing a partition there; that he commenced a holdover proceeding against the Apartment 11 tenant about a partition there as well; that he does not know who lives in 21; that the Apartment 21 tenant subdivided and sublet 21; that someone, possibly the son of the Apartment 21 tenant, pushed him and caused him to have to go to the hospital; that he posts signs in the common area to inform people; that people throw garbage from upstairs; that garbage was put in front of his door; that he placed signs with profanities on them in the common area because tenants cursed at him and his mother, because tenants put bottles filled with urine in the common area, and because garbage was thrown at him; that he saw the community organizer in the common area; that she was a stranger; that he asked her who she was and she would not say; that he did not block her exit or confront her physically; that he felt threatened by her; that he cannot walk; that he did not know who the babysitter referenced by the Apartment 21 tenant was; that he is 75 years old; that tenants of 4, 10, and 21 do not owe rent; and that the tenants of 11, 12, and

[4] A receipt for a boiler can be admissible as a typical business record for a landlord. Taylor v. 72A Realty Assocs., L.P., 151 A.D.3d 95, 104 (1st Dept. 2017).

16 owe rent.

On cross-examination, Respondent refused to answer a question about whether he owns another building on Broome Street in Manhattan, on the same block as the subject premises. Respondent testified on cross-examination that he does not have heaters in his apartment; that he does not have access to a shower at another building on Broome Street; that Co-Respondent is his girlfriend; that he does not know if Co-Respondent lives at another building on Broome Street; and that, when he certified with HPD that he corrected violations of the Housing Maintenance Code, he listed Co-Respondent as being at another address on Broome Street.

Petitioners moved into evidence Respondent's certification of correction of violations filed with HPD, naming Co-Respondent as his agent and listing her address as 288 Broome Street, New York, New York.

Respondent testified on cross-examination that he gets requests for repairs over the phone; that he got information about the boiler right away; that he used offensive language in the notices posted in the common areas because his tenants used offensive language first; that he would not characterize language as offensive or inoffensive; that the notices worked in that tenants stopped throwing garbage; that tenants want more occupants because they do not want to pay rent; that the Apartment 18 tenant and his ex-wife were cheating the government, as they were divorced long ago; that he does not know if he got rent by certified mail because he cannot walk; that he does not go to the post office to pick up certified mail because he does not know that there's rent there; that Co-Respondent helps him with the subject premises; that the invoice regarding the boiler just includes materials, not labor; that the boiler was installed with a permit and had a ten-year warranty; and that he put up a sign in the common area threatening to call

immigration authorities on tenants as a warning.

Respondent testified on redirect examination that when there is no hot water in the subject premises, he does not have hot water; that, in 2019, he wrote checks to eight or nine tenants, including Guang Yu Leung ("the Apartment 4 Tenant"), including to compensate them for extra gas used to boil water when there was no hot water; that he did not reimburse tenants who sublet because they are making money; and that the boiler vendor he uses is an authorized installer who provides a warranty.

In rebuttal, Petitioners moved into evidence an order to correct dated April 9, 2019 in the matter HPD v. Yeung and Zi Chang Realty Corp., Index # HP 148/19 (Civ. Ct. N.Y. Co.) that fined Respondent $10,000 for heat and hot water violations.

N.Y.C. Admin. Code §27-2004(a)(48) defines "harassment" as, *inter alia*, any act by or on behalf of an owner to cause any tenant to surrender rights. The statute provides a number of examples of such acts, including an interruption of essential services. Heat and hot water constitutes "essential services." See Salvan v. 127 Mgmt. Corp., 101 A.D.2d 721 (1st Dept. 1984), Cartagena v. Rhodes 2 LLC, 2020 N.Y. Slip Op. 30290(U)(S. Ct. N.Y. Co.), In re Gladys Garcia, 2002 N.Y. Slip Op. 50497(U)(Civ. Ct. Kings Co.). HPD placed immediately hazardous violations on the subject premises for a lack of heat and hot water, violations which are entitled to presumptive effect. MDL §328(3). Tenants of no less than six apartments in the subject premises testified to deprivations of heat and hot water, three tenants maintained contemporaneous logs, and Respondent's own testimony shows that the boiler in the subject premises was not working properly. While Respondent testified that the heat in the subject premises affected his own living as well, seemingly in an effort to convey that harassment did not

motivate the inadequacy of heat and hot water, the Court draws a negative inference from Respondent's refusal to answer questions about Co-Respondent's access to another building on the same block as the subject premises, which could provide a place for Respondent and Co-Respondent to enjoy heat and hot water.

Threats constitute an example of harassment. N.Y.C. Admin. Code §27-2004(a)(48). The most obvious source of threats in the subject premises are the notes with offensive language Respondent admitted that he posted in the common area, including the note written by the Apartment 12 tenant ostensibly forgoing his statutory right to adequate heat in his apartment. Threats specific to alienage status and marital status also constitutes harassment. Id. Respondent posted signs in the common area threatening tenants based upon their immigration status and posted signs referring to the marital status of the Apartment 18 tenant as well. Indeed, Respondent confirmed that in his testimony expressing grievance over the continued co-residency of the Apartment 18 tenant with his ex-wife after they divorced, raising the question as to why their marital status was his concern, other than for purposes of harassment.

Other instances of Respondents' conduct do not fit neatly into the statute's examples of harassment: the unrebutted testimony that Co-Respondent verbally attacked tenants for complaining to HPD and that Co-Respondent told tenants that they can move if they were dissatisfied with the inadequate heat and hot water in the subject premises. As a landlord, however, Respondents bear an unwaivable duty to maintain services in the subject premises, RPL §235-b, including heat, N.Y.C. Admin. Code §27-2028, and tenants' redress to government authorities regarding those services is protected activity. See RPL §223-b. Even though tenants have a statutory to right have roommates, RPL §235-f, and the subject premises is subject to the

Rent Stabilization Law, Petitioners proved that Respondents demanded and collected extra charges when roommates moved in with some of Petitioners. This conduct could conceivably consist of "providing false or misleading information," an example of harassment according to N.Y.C. Admin. Code §27-2004(a)(48), but better fits the statute's catch-all definition of harassment as "other repeated acts ... of such significance as to substantially interfere with or disturb the comfort, reposes, peace, or quiet of any tenant."

While Petitioners sought to prove that Respondents repeatedly failed to correct violations, another statutory example of harassment, in support of which Petitioners introduced into evidence violations that HPD placed on the subject premises, Petitioners' testimonial evidence of Respondents' "repeated" failure to correct violations was insufficient to prove by a preponderance of evidence this instance of harassment.

N.Y.C. Admin. Code §27-2004(a)(48) also defines harassment as a repeated commencement of baseless court proceedings against tenants. Arguably, the Renewal Holdover falls into this category, as the Court dismissed the proceeding under circumstances that support Petitioners' position. However, the other proceedings that Respondents commenced either resolved with stipulations or are still pending. Finding such proceedings to be baseless requires this Court to determine the merits of collateral matters, an inquiry any Court is obviously less equipped to determine than the Court that adjudicated the collateral matter itself. Cf. Matter of Agola, 128 A.D.3d 78, 83 (4th Dept. 2015), *leave to appeal denied*, 26 N.Y.3d 919, *cert. denied*, 136 S. Ct. 2473 (2016)(a finding of frivolous conduct in District Court did not collaterally estop the attorney accused of the frivolous conduct from challenging the finding in a disciplinary proceeding when the Circuit Court found that the District Court applied the wrong standard).

Not that an aggrieved tenant may never prove that a landlord commenced baseless proceedings, but that such proof requires more of a showing than just the disposition of the purportedly baseless proceeding. Assuming *arguendo* the baselessness of the Renewal Holdover, that one proceeding otherwise fails to suffice to show "repeated" commencement of baseless proceedings. Martinez v. Pinnacle Grp., 34 Misc.3d 131(A)(App. Term 1st Dept. 2011), Khazanov v. 2800 Coyle St. Owners Corp., 2015 N.Y. Slip Op. 31437(U), ¶¶ 8-9 (S. Ct. Kings Co.).

Petitioners proved by a preponderance of the evidence that Respondents charged numerous Petitioners sums as a condition of entering into leases well in excess of what is legal under the Rent Stabilization Law. See 9 N.Y.C.R.R. §2525.4. However much such conduct violates the Rent Stabilization Law or other law, it does not fit into any of the statutory examples of harassment. Indeed, the very purpose of the harassment statute was to keep landlords from using proscribed tactics to force tenants out of their homes. Prometheus Realty Corp. v. City of N.Y., 80 A.D.3d 206, 213 (1st Dept. 2010), Aguaiza v. Vantage Props., LLC, 69 A.D.3d 422, 423 (1st Dept. 2010). As much of a violation of the Rent Stabilization Law as Respondents' charges may have been, they do not constitute a means by which to force tenants out of their homes, as they are a part of making them tenants in the first place.

Be that as it may, Petitioners have still proven harassment as a prima facie matter with regard to denial of essential services, threats, both generally speaking and with regard to protected categories, and other acts that interfered with Petitioners' repose. Respondents' answer raised a number of defenses to Petitioners' causes of action. The first defense in Respondents' answer raised a defense of improper party. The prohibition against harassment applies to "owners." N.Y.C. Admin. Code §27-2005(d). The Housing Maintenance Code defines "owner"

broadly to encompass any person directly or indirectly in control of a dwelling. N.Y.C. Admin. Code §27-2004(a)(45). The purpose of this language is to impose liability on any entity or person with some say in the operation of a building, Schlam Stone & Dolan, LLP v. Howard R. Poch, 40 Misc.3d 1213(A)(S. Ct. N.Y. Co. 2013), such as an officer of a corporate landlord, Dep't of Hous. Pres. & Dev. of the City of N.Y. v. Chana Realty Corp., 1993 N.Y. Misc. LEXIS 659, at *1-2 (App. Term 1st Dept. 1993), or a registered managing agent. Dep't of Hous. Pres. & Dev. v. 2515 LLC, 6 Misc.3d 1039(A)(Civ. Ct. N.Y. Co. 2005), *citing* DHPD v. Livingston, 169 Misc.2d 660, 661 (App. Term 2nd Dept. 1996). The unrebutted evidence at trial shows that Respondents all were in a position to have some say in the operation of the subject premises.

Respondents' second defense is that they did not receive a notice of violations. This defense misapprehends the nature of a harassment proceeding or a tenant-initiated HP proceeding as opposed to an HPD-initiated HP proceeding. The Code does require HPD to serve a notice of violation upon an owner, N.Y.C. Admin. Code §27-2115(b), and a failure to do so can constitute a defense to an HPD-initiated HP proceeding. D'Agostino v. Forty-Three E. Equities Corp., 12 Misc.3d 486, 489-90 (Civ. Ct. N.Y. Co. 2006), *aff'd on other grounds*, 16 Misc.3d 59 (App. Term 1st Dept. 2007). However, a tenant "may ... apply to the [H]ousing [P]art for an order" if HPD "fail[s] to issue a notice of violation ...." N.Y.C. Admin. Code §27-2115(h)(1). In a tenant-initiated HP proceeding, then, HPD's putative failure to serve a notice of violation can constitute a basis for a tenant's cause of action, not a defense to the tenant-initiated proceeding, according to which HPD is a respondent as well. Vargas v. 112 Suffolk St. Apt. Corp., 66 Misc. 3d 1214(A)(Civ. Ct. N.Y. Co. 2020).

Respondents' third defense is that the conditions are not violations and Respondents' fifth

defense is that violations have been corrected. The violations in evidence, however constitute prima facie proof of the converse proposition. MDL §328(3). Respondents' evidence at trial did not rebut this proposition.

Respondents' fourth defense is lack of access. However, this defense is not a defense to an order to correct as a matter of law, or to a harassment proceeding. D'Agostino, supra, 12 Misc.3d at 489-90.

Respondents' sixth defense is that Petitioners have overcrowded the subject premises, burdening their ability to provide inadequate hot water. However, Respondents did not prove as a factual matter the carrying capacity of the subject premises in this regard counterposed against the number of occupants in the subject premises. Nor did Respondents cite a proposition of law in support of their defense.

Respondents' last defense is that Petitioners failed to state a cause of action which is not the case as Petitioners proved their cause of action at trial. Accordingly, the Court dismisses Respondents' defenses, without prejudice to Respondents' defenses against any civil penalties motion or contempt motion that may ensue in this matter or in any other HP proceeding.

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, N.Y.C. Admin. Code §27-2115(m)(2), compensatory damages, punitive damages, and attorneys' fees. N.Y.C. Admin. Code 27-2115(o). Compensatory damages on a finding of harassment manifest as a rent abatement. T & G Realty Co. v. Hawthorn, 64 Misc.3d 1214(A)(Civ. Ct. N.Y. Co. 2019). The measure of damages for breach of the warranty of habitability is the difference between the rent reserved

under the lease and the value of the premises during the period of the breach. Park West Management Corp. v. Mitchell, 47 N.Y.2d 316, 329, cert. denied, 444 U.S. 992 (1979), Elkman v. Southgate Owners Corp., 233 A.D.2d 104, 105 (1st Dept. 1996). Petitioners seek a 12 percent rent abatement retroactive to March of 2013, i.e., six years prior to the filing of the petition, and a 20 percent abatement during the heating season. Given the level of harassment that the Court found herein, a 12 percent rate is consistent with the dimunition of the habitability of the subject premises during this time. Compare T & G Realty Co., supra, 64 Misc.3d at 1214(A)(awarding a 10 percent rent abatement on a harassment counterclaim where the conduct was of a lesser scale than that adduced herein). Petitioners' demand for a 20 percent abatement for inadequate heat similarly comports with accepted findings of an appropriate rent abatement for heat, Parker 72nd Assocs. v. Isaacs, 109 Misc.2d 57, 58 (Civ. Ct. N.Y. Co. 1980), although the Court notes that heating season technically lasts from October through May, N.Y.C. Admin. Code §27-2029(a), encompassing several months in which a tenant may not actually need heat. The logs in evidence do not show inadequate heat in months of October, April, or May. Rather, the preponderance of the evidence supports a rent abatement of twenty percent from November through March of the applicable years.

The Apartment 12 tenant showed a lease commencing on January 1, 2019 with a monthly rent of $1,534.82.[5] While Petitioners seek a rent abatement retroactive to 2013, as "the rent

[5] Although the lease is only signed by the Apartment 12 tenant and not Respondents, Respondents could in theory obtain a judgment for nonpayment of rent against the Apartment 12 tenant on a lease signed only by him. Tuscan Realty Corp. v. O'Neill, 189 Misc.2d 349, 350 (App. Term 2nd Dept. 2001), *citing* Crabtree v. Elizabeth Arden Sales Corp., 305 N.Y. 48, 56 (1953), APS Food Sys. v Ward Foods, 70 AD2d 483 (1st Dept. 1979). See Also Jacreg Realty Corp. v. Barnes, 284 A.D.2d 280, 280-281 (1st Dept. 2001), 123 W. 15, LLC v. Compton, 4 Misc.3d 138(A) (App. Term 1st Dept. 2004), Hakim v. Muller, 2002 N.Y. Misc. LEXIS 1092

reserved under the lease" provides a baseline upon which to calculate a rent abatement, Park West Management Corp., supra, 47 N.Y.2d at 329, Elkman, supra, 233 A.D.2d at 105, and the only lease in evidence for 12 commences in January of 2019, and is therefore the only basis for an award of a rent abatement for the Apartment 12 tenant. Burgos v. Harry Realty LLC, 38 Misc.3d 147(A)(App. Term 1st Dept. 2013), Brown v. 315 E. 69 St. Owners Corp., 11 Misc.3d 1069(A)(Civ. Ct. N.Y. Co. 2006). Twelve percent of the monthly rent of $1,534.82 from January of 2019 through February of 2020, when the record closed, adds up to $2,578.50. Twenty percent of the monthly rent of $1,534.82 from January through March of 2019 and from November of 2019 through February of 2020 adds up to $2,148.75. The sum of these rent abatements is $4,727.25.

In addition to that, Respondents did not rebut that the Apartment 12 tenant paid Respondents an aggregate of $2,400.00, or $100.00 a month for twenty-four months, as an illegal penalty for having a roommate. The Apartment 12 tenant is entitled to compensation for payment of this amount as well. Adding the $2,400.00 to the $4,727.25 leaves an amount of $7,127.25.

Petitioners moved into evidence a lease for the Apartment 18 tenant with a monthly rent of $1,077.79 commencing in March of 2016. As noted above, the Court held by an order dated June 20, 2019 that Respondents had not properly made an offer to renew the Apartment 18 tenant's lease, and the record at trial does not show that Respondents complied as such. A tenant

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(App. Term 1st Dept. 2002), Perez Realties, LLC v. Ottley, 42 Misc.3d 148(A)(App. Term 2nd Dept. 2014), Derderian v. Hoffman, 2001 N.Y. Misc. LEXIS 1267 (Civ. Ct. N.Y. Co. 2001)(a landlord's offer of a renewal lease and a tenant's signature is sufficient to bind the landlord without the landlord's signature).

does not have to execute a lease if the renewal lease offer was not proper, Haberman v. Neumann and Broderick, N.Y.L.J. Jan. 28, 2003 at 18:2 (App. Term 1st Dept.); KSB Broadway Assocs., LLC v. Sanders, 191 Misc.2d 651, 652 (App. Term 1st Dept. 2002), *leave to appeal denied*, 2003 N.Y. App. Div. LEXIS 6042 (1st Dept. 2003); Mitchell Place Inc. v. Capetillo, N.Y.L.J. May 30, 2001 at 20:1 (App. Term 2nd Dept.); East 122 Realty LLC v. Perez, 23 Misc. 3d 1131(A)(Civ. Ct. N.Y. Co. 2009); First Lenox Terrace Assoc. v. Hill, 13 Misc.3d 488, 491 (Civ. Ct. N.Y. Co. 2006), in particular if the lease offer is not made on the same terms and conditions as the expiring lease, Fishbein v. Mackay, 36 Misc.3d 1228(A)(Civ. Ct. N.Y. Co. 2012), as the Court found in the Renewal Holdover. If a landlord does not properly renew a rent-stabilized lease, the landlord/tenant relationship continues on the same terms and conditions as the prior lease, including the monthly rent. NYSANDY12 CBP7 LLC v. Negron, 64 Misc.3d 1238(A)(Civ. Ct. Bronx Co. 2019), *citing* 9 N.Y.C.R.R. 2523.5(d), FAV 45 LLC v. McBain, 42 Misc.3d 1231(A) (Civ. Ct. N.Y. Co. 2014).

Twelve percent of the monthly rent of $1,077.79 from March of 2016 through February of 2020, adds up to $6,280.07. Twenty percent of the monthly rent of $1,077.79 of the nineteen months from November through March of the winters of 2016-2017, 2017-2018, and 2018-2019, and from November of 2019 through February of 2020 adds up to $4,095.60. The sum of these rent abatements is $10,375.67.

Petitioners moved into evidence the following leases for the Apartment 7 tenant: a two-year lease commencing February of 2012 with a monthly rent of $1,400.00; a one-year lease commencing February 1, 2018 with a monthly rent of $1,518.70; and a one-year lease commencing February 1, 2019 with a monthly rent of $1,541.48. As noted above, "the rent

reserved under the lease" provides a baseline upon which to calculate a rent abatement, Park West Management Corp., supra, 47 N.Y.2d at 329, Elkman, supra, 233 A.D.2d at 105, and a failure to renew a rent-stabilized lease has the effect of having the tenancy continue on the same terms and conditions as the prior lease, including the monthly rent. NYSANDY12 CBP7 LLC, supra, 64 Misc.3d at 1238(A), FAV 45 LLC, supra, 42 Misc.3d at 1231(A). While there may have been ensuing interim renewal leases, then, the most that Petitioners have proven with regard to the Apartment 7 tenant's rent liability is a monthly rent of $1,400.00 until February 1, 2018, and would be $1,541.48 for February of 2020.

Based on those figures, the Apartment 7 tenant's aggregate rent liability from March of 2013 through February of 2020 would be $122,263.64. Twelve percent of $122,263.64 is $14,671.64. Twenty percent of the thirty-four months' of rent from November through March in the winters of 2013-2014, 2014-2015, 2015-2016, 2016-2017, 2017-2018, and 2018-2019, and from November of 2019 through February of 2020 adds up to $9,504.74. The sum of these rent abatements is $24,176.38. In addition to that, Petitioners proved that the Apartment 7 tenant paid Respondents illegal penalties for having roommates totaling $4,150.00. Adding the rent abatement to restitution for these charges totals $28,326.38.

Petitioners moved into evidence the following leases for the Apartment 11 tenant: a one-year lease commencing August 1, 2017 with a monthly rent of $1,606.64 and another one-year lease commencing August 1, 2018 with a monthly rent of $1,627.44. The Apartment 7 tenant's aggregate rent liability from August of 2017 through February of 2020 would be $48,573.60. Twelve percent of $48,573.60 is $5,828.83. Twenty percent of the fourteen months' of rent from November through March in the winters of 2017-2018 and 2018-2019, and

from November of 2019 through February of 2020 adds up to $4,536.03. The sum of these rent abatements is $10,364.86. In addition to that, Petitioners proved that the Apartment 11 tenant paid Respondents illegal penalties for having roommates totaling $8,950.00. Adding the rent abatement to restitution for these charges totals $19,314.86.

Petitioners moved into evidence a lease for the Apartment 13 tenant commencing April 1, 2018 with a monthly rent of $1,513.89. Twelve percent of the Apartment 13 tenant's aggregate rent liability from April of 2018 through February of 2020 is $4,178.34. Twenty percent of the nine months' rent from November of 2018 through March of 2019 and from November of 2019 through February of 2020 totals $1,635.00. The sum of these rent abatements is $5,813.34.

Petitioners moved into evidence the following leases for the Apartment 21 tenant: a one-year lease commencing November 1, 2014 with a monthly rent of $1,580.00, a two-year lease commencing November 1, 2015 with a monthly rent of $1,611.60, and a two-year lease commencing November 1, 2017 with a monthly rent of $1,643.82. The Apartment 21 tenant's aggregate rent liability from November of 2014 through February of 2020 is $103,665.46. Twelve percent of $103.665.46 is $12,439.86. Twenty percent of the twenty-nine months' of rent from November through March in the winters of 2014-2015, 2015-2016, 2016-2017, 2017-2018, and 2018-2019, and from November of 2019 through February of 2020 adds up to $9,405.90. The sum of these rent abatements is $21,845.76.

Petitioners moved into evidence the following one-year leases for the Apartment 14 tenant: a one commencing November 1, 2017 with a monthly rent of $1,650.38, one commencing November 1, 2018 with a monthly rent of $1,675.14, and a one commencing November 1, 2019 with a monthly rent of $1,700.27. The Apartment 14 tenant's aggregate rent liability from

November of 2017 through February of 2020 is $46,707.32. Twelve percent of $46,707.32 is $5,604.88. Twenty percent of the fourteen months' of rent from November through March in the winters of 2017-2018 and 2018-2019, and from November of 2019 through February of 2020 adds up to $1,215.19. The sum of these rent abatements is $6,820.07.

Petitioners moved into evidence a two-year lease for the Apartment 4 tenant commencing June 1, 2018 with a monthly rent of $1,432.19. Twelve percent of the Apartment tenant's aggregate rent from June of 2018 through February of 2020 is $3,609.19. Twenty percent of the nine months from November of 2018 through March of 2019 and November of 2019 through February of 2020 is $2,577.94. The sum of these rent abatements is $6,187.13.

In addition to these compensatory damages, Petitioners pray for an award of punitive damages. Punitive damages are assessed by way of punishment to the wrongdoer and example to others. Bi-Economy Mkt., Inc. v. Harleysville Ins. Co. of N.Y., 10 N.Y.3d 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. Respondents have certainly displayed disdain for any of the legal responsibilities that come with ownership and operation of residential multiple dwellings, from demanding payment of illegal surcharges to posting threatening and offensive notes in the common areas to berating tenants who bring violations to the attention of code enforcement agencies. The amply-documented denial of heat and hot water only compounds Respondents' mistreatment of the tenants in the subject premises.

When a landlord engaged in harassment to a somewhat greater degree, i.e., changing locks and discarding personal property, a Court awarded punitive damages in the amount of $5,000.00 per tenant, Caban v. Silver, 2019 NYLJ LEXIS 458, *17 (Civ. Ct. Kings Co.), an

amount the Court finds appropriate. Respondents' conduct, while clearly harassing, did not reach this level and Respondents' apparent attempts to remedy the boiler mitigates the harassment to some measure. Discounting the punitive value of Respondents' harassment by ten percent off of the conduct found in Caban, supra, an award of $4,500.00 for each of the household in the group of Petitioners.

The Court further enters into an injunction against Respondents directing that all of the offensive notices introduced into evidence at trial in the common area be removed therefrom forthwith and further restraining Respondents from posting any notices in the common area using profanity and/or referencing family members of any tenant and/or threatening tenants with regard to any alienage status of any occupant of the subject premises. The Court also restrains Respondents from engaging in any proscribed conduct stated in N.Y.C. Admin. Code §§27-2005(d) and 27-2004(a)(48). The Court directs HPD to place a "C" violation on the subject premises for harassment. Furthermore, N.Y.C. Admin. Code §27-2115(m)(2) mandates an award of civil penalties. The Court awards HPD civil penalties in the amount of $2,000.00 against Respondents.

The Court also grants Petitioners' motion for attorneys' fees to the extent of finding that, pursuant to N.Y.C. Admin. Code §27-2115(o), Petitioners are entitled to a judgment against Respondents for attorneys' fees, to be determined at a hearing.

Accordingly, it is

ORDERED that the Court awards the Apartment 12 tenant (Qun Chen) and the Apartment 12 occupant (Chan Lin), jointly and severally, a judgment against Respondents, jointly and severally, in the amount of $11,627.25; and it is further

ORDERED that the Court awards the Apartment 18 tenant (Jing Zhao Chen) a judgment against

Respondents, jointly and severally, in the amount of $14,875.67; and it is further

ORDERED that the Court awards the Apartment 7 tenant (Oi Yuk Kong) a judgment against Respondents, jointly and severally, in the amount of $32,826.38; and it is further

ORDERED that the Court awards the Apartment 11 tenant (Ai Yu Shao) a judgment against Respondents, jointly and severally, in the amount of $23,814.86; and it is further

ORDERED that the Court awards the Apartment 13 tenant (Wai Hei Li) a judgment against Respondents, jointly and severally, in the amount of $10,313.34; and it is further

ORDERED that the Court awards the Apartment 21 tenant (Lu Kai) a judgment against Respondents, jointly and severally, in the amount of $26,345.76; and it is further

ORDERED that the Court awards the Apartment 14 tenant (Chun Yi Liu) a judgment against Respondents, jointly and severally, in the amount of $10,320.07; and it is further

ORDERED that the Court awards the Apartment 4 tenant (Guang Yu Leung) a judgment against Respondents, jointly and severally, in the amount of $10,687.13; and it is further

ORDERED that HPD shall place a "C" violation on the subject premises for harassment; and it is further

ORDERED that HPD has a final judgment against Respondents, jointly and severally, in the amount of $2,000.00; and it is further

ORDERED that, as soon as is practicable and in compliance with extant social distancing guidelines, Respondents shall remove from the common areas forthwith all of the offensive notices introduced into evidence at trial; and it is further

ORDERED that Respondents shall not post any notices in the common area using profanity and/or referencing family members of any tenant and/or threatening tenants with regard to any alienage status of any occupant of the subject premises and that Respondents shall not engage in any proscribed conduct stated in N.Y.C. Admin. Code §§27-2005(d) and 27-2004(a)(48); and it is further

ORDERED that, as soon as is practicable and in compliance with extant social distancing guidelines, Respondents shall correct all extant "C" violations in individual apartments on the first access date that the parties can arrange between them by counsel; all extant "B" violations in individual apartments on or before 30 days after said first access date; all extant "A" violations in individual apartments on or before 90 days after said first access date; all extant "C" violations in the common area on or before one day following the service of a copy of this order together with notice of entry by any party upon any other party ("Notice of Entry Date"); all extant "B"

violations in the common areas on or before 30 days after the Notice of Entry Date; and all extant "A" violations in the common areas on or before 90 days after the Notice of Entry Date; with access to be arranged by counsel for the parties, without prejudice to any defense that Respondents may have to a motion for such relief; and it is further

ORDERED that this order is without prejudice to any remedy that any of Petitioners may have for payment of an amount in excess of a first month's rent and security deposit other than a harassment proceeding in any appropriate forum, and without prejudice to Respondents' defenses thereto; and it is further

ORDERED that Petitioner's prayer for attorneys' fees is granted to the extent of calendaring the matter for a hearing to be held on a date that the parties and the Court (part B of Civil Court of the City of New York, New York County) shall mutually arrange.

The parties are directed to pick up their exhibits within thirty days or they will either be sent to the parties or destroyed at the Court's discretion in compliance with DRP-185.

This constitutes the decision and order of this Court.

Dated: New York, New York
April 27, 2020

HON. JACK STOLLER
J.H.C.