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11-15 New Montrose Ave. Tenant Assoc. v. 11-15 New Montrose Ave. HDFC

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**11-15 New Montrose Ave. Tenant Assoc. v 11-15
New Montrose Ave. HDFC**

2022 NY Slip Op 32615(U)

July 22, 2022

Civil Court of the City of New York, Kings County

Docket Number: Index No. 309338/21

Judge: Remy Smith

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: PART B2

-----X

11-15 NEW MONTROSE AVENUE TENANT ASSOC., et al.,
Petitioner,

Index No. 309338/21

-against-

DECISION/ORDER

Remy Smith, J.H.C.

11-15 NEW MONTROSE AVENUE HDFC, et al., and
the DEPARTMENT OF HOUSING PRESERVATION
AND DEVELOPMENT,

Respondents.

-----X

Hon. Remy Smith

Recitation, as required by CPLR 2219(a), of the papers considered in the review of petitioners' motion seeking summary judgment in their favor pursuant to CPLR §3212:

Papers:	Numbered
Petitioner's Notice of Motion and supporting papers.	1
Respondent's Affirmation in Opposition	2
Petitioner's Reply Affirmation	3

Petitioners move for summary judgment in their favor pursuant to CPLR §3212 on their claim for harassment in this proceeding seeking an Order to Correct and finding of harassment pursuant to HMC §27-2004(a)(48). Respondents/landlords oppose the motion. The court grants petitioner's motion and issues a finding of harassment and "c" violation for the petitioning apartments collectively and issues fines as set forth below. Since the finding is partially based on open violations, the court orders respondents landlords to correct past due open violations in the subject apartments within 30 days of this order; petitioner can seek appropriate relief in the

event of a default. This court's finding of harassment is not based on any other alleged activity at the premises; to the extent that the petitioning tenant's contest or have not been provided with leases and/or renewals that comply with the Rent Stabilization Code, they are free to seek same at the Division of Housing and Community Renewal ("DHCR").¹

Summary judgment pursuant to CPLR §3212 is a drastic remedy only to be awarded in the absence of issues of fact requiring a trial by the fact-finder. Once the movant establishes entitlement to summary judgment, the burden to raise a triable issue of fact passes to the opponent. In this case, petitioner must establish that respondent landlords violated HMC §27-2004(a)(48), specifically that they failed to timely repair various violations issued by the Department of Housing Preservation and Development ("DHPD") as well as to provide essential services, to wit, gas service. The petitioner need not prove that respondents violated these Code provisions with the intent to cause petitioning tenants to move out, as the building is not a private dwelling and HMC §27-2004(a)(48) creates a rebuttable presumption of intent in such multiple dwellings. Therefore, the respondent landlords must raise a triable issue of fact concerning their ability to rebut that presumption in order to warrant a trial and thus denial of this motion for summary judgment. This court finds, as a matter of law and on the facts provided, that respondent landlords have failed to do so and grants summary judgment pursuant to CPLR §3212 in favor of the petitioners.

There is no dispute that the petitioning tenants did not have gas service to their apartments from summer 2019 to summer 2021.² It is upon this ground that petitioners seek a

¹The court notes that a majority of the petitioners have previously availed themselves of DHCR jurisdiction and DHCR has the ability to determine any conflicts regarding leases, including but not limited to ordering respondent landlords to provide code-compliant leases. Petitioners have not requested this relief in the case-initiating Order to Show Cause, but rather a finding of harassment based on respondent's alleged failure to do so. There is no such cause of action provided by the Housing Maintenance Code.

²Petitioner Sanchez alleges that he was without gas service from summer 2019 until fall 2021.

finding that respondent landlords violated HMC §27-2004(a)(48)(b), (b-1) and (b-2). The court agrees that failure to supply the essential service of gas for cooking for a period of at least two years constitutes a violation of HMC §27-2004(a)(48)(b)(repeated interruptions of essential services for an extended duration) as well as (b-1)(repeated interruptions of essential services in a building where said interruptions have already occurred).

There is also no dispute that various HPD violations still exist in the petitioning tenants' apartments notwithstanding the passage of the expiration dates to correct same. The following violations exist in the corresponding apartments beyond the date for correction as posted on the HPD web site and are corroborated by the petitioners' affidavits submitted to NYSCEF as Documents ##22-28 and all sworn in June 2022:

Apt. 3: 14570977; 14570978

Apt. 26: 14025191

Apt. 43: 14619001; 14396212

Apt. 52: 14570822; 14094525

Apt. 53: 14570798; 14501548; 14087126; 14087137; 14087312;
14080810

Apt. 63: 14330055; 14090098

Apt. 66: 15085068; 15085039; 14570848; 14090313; 14098322;
14090472.

Insofar as the above violations have not been timely corrected, and that same include both "b" and "c" (hazardous and immediately hazardous) violations, the court concludes that

respondent landlords have violated HMC §27-2004(a)(48)(b-2)(repeated failure to correct hazardous or immediately hazardous violations within the time required for such corrections).

Since petitioning tenants do not need to prove intent and have established respondent landlords' misconduct pursuant to the Housing Maintenance Code, the latter must now raise a triable issue of fact that they can rebut the presumption of intent to cause petitioners to vacate their apartments. Respondent landlords fail to do so.

In opposition to petitioners' motion, the manager of 11-15 New Montrose Avenue HDFC attests that neither she nor anyone on behalf of respondent landlords are trying to oust the petitioning tenants because there is no profit motive, as this is low-income non-profit private housing. She also attests that the building faced difficulty over the past few years and that COVID-19 pandemic made it worse. This self-serving affidavit failed to refer to or include any facts regarding steps taken to restore the gas during the two-year period or correct the HPD violations of record³. There is no proof of economic infeasibility or lack of access. There is no reference to any documentation to support impediments to repairing the conditions. Ms. Rivera's statement alone that she does not intend to cause the petitioning tenants to move is insufficient to create an issue of fact concerning the rebuttable presumption of intent. See Affidavit of Maria Rivera dated July 1, 2022 (NYSCEF Doc. #61).

Counsel for respondent refers to various impediments to restoring the gas and correcting the violations; he does not include any documentary support for this. There are no photographs to show that the conditions reflected in the open violations are corrected, or a statement from someone with personal knowledge that petitioners denied access or otherwise frustrated respondents efforts. There is no proof of their efforts at all. His reference to difficulty in

³Proof of respondent landlord's request from HPD to conduct a dismissal inspection is not the same thing as proof that the violations are corrected.

restoring the gas service is also devoid of documentary support; petitioners are not alleging that respondents caused the interruptions but rather that respondents failed to timely correct the condition. The record on the motion, however, does show that HPD issued violations for insufficient cooking gas in August 2019 (NYSCEF Doc. 59); respondent obtained a permit from the Department of Buildings on November 13, 2020, over a year later, to replace or repair existing gas piping throughout the building (NYSCEF Doc. #44). Another permit was obtained in March 2021 (NYSCEF Doc. #49). There is no proof that any other steps were taken prior to November 2020 to restore the gas. Therefore, the court finds that, as a matter of law and based on the fact that they took no meaningful steps for over a year to restore cooking gas, respondent landlords cannot raise an issue of fact to rebut the presumption of intent.

The court does not base its summary judgment award on respondent landlords' alleged failure to provide correct leases. Petitioners claim that this alleged behavior falls under HMC §27-2004(a)(48)(a-1), the court disagrees. The petitioning tenants have lived in this building for no less than thirteen years (Mora) and up to 48 years (Perez). All of the tenants substantially agree that they were given an original lease but, over the years, they were not timely offered proper renewals, specifically that they were not given a 2-year option or that they were not given copies. There is no proof of any correspondence during those many years requesting leases, nor is there any proof in the record that they were the subject of failure-to-renew holdover proceedings. While some of petitioning tenants sought relief from DHCR for rent reduction orders⁴, there is no record of the petitioning tenants seeking proper lease renewals or challenging the rents. The respondent landlords' failure to comply with the Rent Stabilization Law


⁴Apts. 26, 43, 63 and 66 and reflected in NYSCEF Docs. #57.

regarding timely provision of proper renewals⁵, especially under the circumstances of decades-long history of petitioners' failure to seek relief, does not amount to "knowingly providing to any person lawfully entitled to occupancy of a dwelling unit false or misleading information relating to the occupancy of such unit." The court notes that there is no proof of said statements.

The court grants petitioners' motion for summary judgment and finds that respondents violated HMC §27-2004(a)(48). HPD is directed to issue a "c" violation pursuant to HMC §27-2005(d) for each unit in this petition as well as enters a money judgment in favor of HPD for \$14,000.00 representing \$2000.00 per unit pursuant to HMC §27-2115(m) and for \$7000.00 in favor of the petitioners representing \$1000.00 per unit pursuant to HMC §27-2115(*o). The court declines to award punitive damages based on the record presented on this motion and finds that the record is devoid of any proof to warrant an award of compensatory damages. The two judgments for \$14,000.00 and \$7000.00 shall be a lien against Block 2465, Lot 11 in Kings County, New York City. The judgments are joint and several against all respondents except for HPD.

The foregoing is the Decision/Order of this court and the clerk shall enter judgment accordingly. This summary judgment motion, as same does not seek partial summary judgment, disposes of the entire proceeding.

Dated: Brooklyn, New York
July 22, 2022

BY: 
Remy Smith, J.H.C.

⁵There has been no finding that any of the current leases held by petitioning tenants are incorrect at this time, although tenants are free to seek such an adjudication in the appropriate forum. The court notes that apartments 3, 43, 52 and 66 have current leases. Tenant at 26 acknowledges that she has a current 2 year lease and apt. 63 a one-year lease. It appears that apt. 53 does not have a lease but there is no proof that respondent landlords failed to offer her a proper one.