

Fordham Law School

FLASH: The Fordham Law Archive of Scholarship and History

All Decisions

Housing Court Decisions Project

2023-06-06

Osinuga v. Hanley

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

Recommended Citation

"Osinuga v. Hanley" (2023). *All Decisions*. 1004.
https://ir.lawnet.fordham.edu/housing_court_all/1004

This Housing Court Decision is brought to you for free and open access by the Housing Court Decisions Project at FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in All Decisions by an authorized administrator of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF RICHMOND: HOUSING PART Y

-----X

Ayodele Osinuga,

Petitioner,

HP LT- 301646-22/RI

-against-

**Decision/Order
After Inquest**

Chimene Hanley,

Respondent,

and

Department Of Housing Preservation and
Development (DHPD),

Co-Respondent.

-----X

Present: HON. KIMBERLEY SLADE, J.H.C.

Petitioner Ayodele Osinuga commenced this proceeding by an order to show cause, dated April 10, 2023, against Respondent Chimene Hanley, pursuant to N.Y.C. Admin. Code 27-2005(d) and 27-2004(a)(48) alleging harassment relating to Petitioner’s tenancy at 324 Broadway, Basement Apartment, Staten Island, NY 10310 (“premises” or “unit”). Petitioner appeared by counsel. Respondent failed to appear.

Upon Respondent’s failure to appear in this matter on May 2, 2023, the court heard Petitioner’s testimony at inquest. Petitioner testified that he has been the tenant in the basement apartment of 324 Broadway since 2018 for a monthly rent of \$1,400.00. He testified that there are at least nine units at the premises: the basement, 4 separate rentals on each of the 1st and 2nd floors and a unit in the attic, causing it to be, minimally, a *de facto* multiple dwelling (although no finding of *de facto* stabilization is made in this proceeding). He testified that he has been out of possession since October 2022 due to the actions and inactions of Respondent, but that he has never surrendered his tenancy rights in this or any other proceeding. Petitioner introduced a deed into evidence establishing respondent’s ownership of the premises.

Petitioner testified that at some point his unit flooded and that Respondent, Chimene Hanley, restored the unit to livable conditions, but, when it flooded a second time, she refused to make the necessary repairs and instead told him he “should leave.” Thereafter, she removed the door from his primary entrance leaving the apartment open to all including cats and graffiti vandals who entered the unit and engaged in predictable behaviors. The door was only restored after this matter appeared in court once before. Petitioner testified that a total of twenty days came and went with no door.

In addition to removing the door, Petitioner testified that Respondent placed a lock on the exterior gate to which he was neither given the code nor a key and the situation has not been remedied. Respondent has since only been able to access the unit once or twice and when he did, he observed the apartment to be a gutted, empty shell. P4 in evidence reveals that the basement currently appears as a basement typically would without an apartment. The court took judicial notice of the documents on NYSCEF, including 21 (P13), which petitioner testified reflects the condition of the apartment after the second flood and prior to P4 – a sheet rocked, painted and decorated unit; NYSCEF 20 (P12) is the door after it was restored, and NYSCEF 10 (P2) which is a series of text messages where respondent continues to ask for the keys back to the unit and inter alia acknowledges the flood.

As Petitioner’s allegations have not been refuted and they were credibly testified to, and bolstered by the evidence the allegations are fully credited.

N.Y.C. Admin. Code § 27-2004(a)(48) defines harassment as “any act or omission by or on behalf of an owner that (i) causes or is intended to cause any person lawfully entitled to occupancy of a dwelling unit to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy ...”. N.Y.C. Admin. Code § 27-2004(a)(48) then specifies what acts

or omissions constitute harassment within the meaning of section (i) as *inter alia*: "...e. removing the possessions of any person lawfully entitled to occupancy of such dwelling unit; ... f. removing the door at the entrance to an occupied dwelling unit; removing, plugging or otherwise rendering the lock on such entrance door inoperable; or changing the lock on such entrance door without supplying a key to the new lock to the persons lawfully entitled to occupancy of such dwelling unit; ... g. other repeated acts or omissions of such significance as to substantially interfere with or disturb the comfort, repose, peace or quiet of any person lawfully entitled to occupancy of such dwelling unit and that cause or are intended to cause such person to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy, including improperly requiring such person to seek, receive or refrain from submitting to medical treatment in violation of subdivision b of section 26-1201."

While proof of these predicates gives rise to a presumption that an owner/landlord intended to cause a tenant to vacate or surrender rights, this presumption does not apply to "private dwellings" defined in N.Y.C. Admin. Code § 27-2004(a)(6) as structures designed and occupied for residential purpose by no more than two families. Here, although the subject dwelling is legally a two-family house, Petitioner credibly testified that there are at least nine units at the premises: the basement, 4 separate rentals on each of the 1st and 2nd floors and a unit in the attic. Consequently, the dwelling is being used as a *de-facto* multiple dwelling and therefore, the presumption applies in this instance.

Accordingly, the court finds, under the totality of circumstances, that Respondent's actions rise to the level of harassment as defined by N.Y.C. Administrative Code § 27-2004(a)(48). A tenant who proves harassment may obtain placement of housing maintenance code violations, an injunction restraining a landlord from engaging in such conduct, and civil

penalties payable to the NYC Commissioner of Finance. (See, N.Y.C Admin. Code § 27-2115(m)(2)). Additionally, a tenant may be entitled to obtain compensatory damages, punitive damages, and attorneys' fees. (See, N.Y.C. Admin. Code §27-2115(o). The petition seeks all such remedies.

Therefore, the court directs Respondent/Owner to forthwith cease from engaging in any conduct in violation of N.Y.C. Admin. Code § 27-2004(a)(48) towards Petitioner and directs DHPD 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 of no less than \$2,000.00 and no more than \$10,000.00. Therefore, the court awards HPD civil penalties in the amount of \$2,000.00 against Respondents.

Compensatory damages, including relocation costs, are permissible in an HP proceeding. However, the award cannot be contingent or speculative and must be ascertainable to a degree of reasonable certainty. (See, Allen v. 219 24th Street LLC, 67 Misc. 3d 1212(A) [Civ. Ct. NY 2020]; see also, E.J Brooks Co. v. Cambridge Sec. Seals, 31 NYS 3d 441, 448-49 (2018); Revilla v. 620 W 182nd St. Heights Assocs. LLC, 47 Misc. 3d 1211 (a) [Civ. Ct. NY 2015]; Gonzalez v. Kwik Realty LLC, 42 Misc.3d 433 [Civ. Ct. NY Co. 213]). On the other hand, punitive damages both punish and set an example to others. (See, Allen v. 219 24th Street LLC, *supra* citing Bi Economy Mkt. Inc v. Harleystville Inc. Co. of NY, 10 NY3d 187, 193-94 [2008]). Although, punitive damages are not calculated using a set formula, they should bear a reasonable relation to the harm done. (See, Allen v. 219 24th Street LLC, *supra*).

Petitioner did not prove specific compensatory damages. As such, in the absence of such proof the court shall award Petitioner compensatory damages of \$1,000.00. (See, N.Y.C Admin. Code § 27-2115(o)).

Based on the credible testimony of continued and persistent harassment, the court awards punitive damages to Petitioner in the sum of \$7,500.00.

Therefore, the court awards Petitioner a total money judgment in the amount of \$8,5000.00 (\$1,000.00 in compensatory damages plus \$7,5000.00 in punitive damages).

Finally, given that Petitioner was represented by a legal service provider at no cost to him, the court does not award attorneys' fees at this time. However, that application may be renewed in the event of further litigation of this proceeding.

ACCORDINGLY, IT IS ORDERED that the court makes a finding that Respondents have engaged in harassment against Petitioner in violation of N.Y.C. Admin. Code § 27-2004(a)(48) (e), (f) and 27-2004(a)(48)(g), and its 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

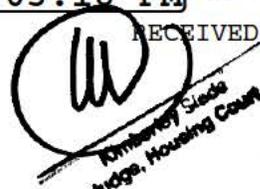
ORDERED that the Court directs Respondents to cease all harassment against Petitioner as defined in N.Y.C. Admin. Code § 27-2004(a)(48); and it is further

ORDERED that the Court awards Petitioner a judgment in the amount of \$1,000.00 against Respondent, as compensatory damages; and it is further

ORDERED that the Court awards Petitioner a judgment in the amount of \$7,5000.00 against Respondent, as punitive damages; 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 207 Lot 69 in the county of Richmond, and it is further

This constitutes the Decision/Order of this court, a copy of which is uploaded to NYSCEF and shall be mailed to all sides.



Date: Richmond, New York
May 12, 2023

Hon. Kimberley Slade, J.H.C.