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CONTRERAS v. LIN

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS: HOUSING PART C

LESLIE CAROLINA CONTRERAS,
Petitioner,

Index No. HP 302550/20

against

**Decision and Order
After Hearing**

CHI HAO LIN,
and
NEW YORK CITY DEPARTMENT OF HOUSING
PRESERVATION AND DEVELOPMENT (DHPD),
Respondents.

HON. ENEDINA PILAR SANCHEZ,

Petitioner filed this HP case seeking a finding of harassment and for all relief available pursuant to §27-2005 *et. al.*, of the *New York City Administrative Code*.

Petitioner appeared by counsel. Respondent did not appear. Petitioner presented proof of service. Service was proper. The Department of Housing Preservation and Development (DHPD) does not take a position on this harassment claim.

Petitioner had filed a prior HP action naming this respondent and seeking an order to correct.¹ Respondent appeared by counsel in the prior case and filed a cross motion to dismiss. The February 26, 2021 Decision/Order denied the cross motion. In the interest of judicial economy both matters were scheduled for a hearing. Notice of the hearing was given to respondent and to respondent's counsel. Respondent did not appear on the hearing date and the hearing ensued.

Hearing on the Harassment Claim

Petitioner appeared by Microsoft Teams pursuant to the Administrative Rules in place during this COVID-19 pandemic. Petitioner was sworn in and testified that she resides in the 2nd Floor Apartment at the premises known as 137-27 Holly Avenue, Flushing, New York 11355. Petitioner testified that she has been residing at this apartment for ten years. The respondent resides in the 1st Floor Apartment.

Petitioner testified that in May 2020, she informed the respondent that there was mold in the apartment. In the summer of 2020, petitioner reported the mold condition to DHPD. Petitioner testified that after the condition was reported, respondent commenced shutting off the electricity and the water supply to her apartment. Petitioner testified that until December 2020 she was often without electricity and water. Petitioner further testified that the electricity and the water supply were shut off often and at different times of the day. She began to keep notes and would record the occurrences contemporaneously. Petitioner testified to numerous dates from June through December 2020 when the water and/or the electricity were shut off.

¹ Contreras v. Chi Hao Lin and DHPD, Index No. HP 6086/20.

Sometimes the services were shut off for a couple of hours and other times it was for the entire day. Petitioner testified that the hot water was also shut off.

Petitioner stated that she called the police a few times. Petitioner believes that the police would talk to respondent-owner. Petitioner testified that in December 2020 when she called the police again, a detective got involved. The detective spoke to the respondent. Petitioner testified and believes that because the detective spoke to the respondent, the electricity, and hot and cold water have not been shut off since that date.

Petitioner testified that because of the repeated shut-off of electricity and water her family situation was negatively affected. Her daughter had to move out. Petitioner testified that she could not prepare meals at home or use the bathroom.

Finding of Harassment

Section 27-2005(d) of the NYC Admin Code states that "[t]he owner of a dwelling shall not harass any tenants or persons lawfully entitled to occupancy of such dwelling." Harassment is defined 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 such dwelling unit or to surrender or waive any rights in relation to such occupancy." (NYC Admin Code § 27-2004 [a][48]). Harassment includes, "repeated interruptions or discontinuances of essential services, or an interruption or discontinuance of an essential service for an extended duration or of such significance as to substantially impair the habitability of such dwelling unit" NYC Admin Code § 27-2004 [a][48][2][b], and "an interruption or discontinuance of an essential service that (i) affects such dwelling unit and (ii) occurs in a building where repeated interruptions or discontinuances of essential services have occurred "NYC Admin Code § 27-2004 [a][48][2][b-1]. Upon a finding of harassment, tenants may seek an order from a court restraining an owner from engaging in such conduct, and to impose civil penalties of not less than \$2,000.00 and not more than \$10,000.00 NYC Admin Code § 27-2115 [m][2].

The Court finds that petitioner's testimony was credible. Petitioner's testimony established that she and her family were subjected to an ongoing course of conduct from the respondent and that caused an interruption of essential services. There were no explanations as how the electricity and the water supply to 2nd floor apartment would or could be shut off. Respondent's failure to appear and to respond to the allegations warrants a negative inference as to how the electricity and water services were interrupted.

There does not seem to be a reasonable or plausible explanation of how the electricity and water services were turned off and then turned back again a few hours later or the next day. Respondent did not appear to testify and to offer contrary evidence. See *St Owner, L.P. v. Novog*, 31 Misc. 3d 680 (Civ. Ct. New York Co. 2011). Furthermore, in December 2020 DHPD conducted an inspection and entered violations against the respondent for failure to supply electricity, hot and cold water to the subject premises. See, *Wallace 18 LLC v Tucker*, 66 Misc. 3d 1209(A) (Civ. Ct. Bronx Co. 2020). "A negative inference may be drawn from the absence of reasonably anticipated testimony when there is some independent evidence presented which allows the court to make such an inference."

Petitioner's credible and substantial testimony supports the Court making a negative inference. The actions described are the very actions that are described in the *Housing Maintenance Code* as conduct that constitutes harassment. The "repeated interruptions or discontinuances of essential services, or an interruption or discontinuance of an essential service for an extended duration or of such significance as to substantially impair the habitability of such dwelling unit," establishes that harassment occurred. Petitioner testified that these repeated and ongoing interruptions of services negatively affected her family. The situation caused her daughter to move out. During the height of the COVID-19 pandemic, when we were asked to stay home to contain the spread of the virus, petitioner was faced with having no electricity and/or water supply on an ongoing basis. The repeated interference with essential services also constitutes a breach of the warranty of habitability. *New York Real Property Law § 235-b* provides for an implied warranty of habitability. It requires landlords of residential premises to keep the premises "fit for human habitation" and free of conditions that are dangerous to the life, health, or safety of the tenants. *Park West Management Corp v Mitchell*, 47 NY2d 316 (1979).

The Court finds that respondent, Chi Hao Lin, engaged in conduct that constitutes harassment pursuant to §27-2005 *et.al.*, of the *New York City Administrative Code*.

Correction of Violations

The Court was asked to take judicial notice of the HP case between these parties under Index Number HP 6086/20. Petitioner seeks an order to correct. Respondent has failed to appear on this matter although respondent's counsel appeared.

The Court takes judicial notice of the violation report on the DHPD website <https://www1.nyc.gov/site/hpd/about/hpd-online.page>. The report confirms that conditions exist in the apartment and are in violation of the *Housing Maintenance Code (HMC)*. The report is hereby incorporated into this Order.

The respondent is directed to correct the violations as required by law.

Conclusion

The Court is required to impose a civil penalty under the harassment law. The law requires a minimum penalty of \$2,000. The penalty of \$4,000 is imposed against the respondent Chi Hao Lin.

It is **Ordered** that respondent-owner harassed petitioner in violation of *NYC Admin Code §27-2005* and that a "C" violation exist. New York City Department of Housing Preservation and Development shall enter a "C" violation on this premises; and it is further

Ordered that the civil penalty of \$4,000.00 is assessed against the respondent Chi Hao Lin and payable to the New York City Department of Housing Preservation and Development; and it is further

Ordered that respondent is enjoined and restrained from engaging in any acts that constitute harassment as prohibited by the harassment law; and it is further

Ordered that respondent restore and maintain essential services, and correct the violations of record as required by law; and it is further

Ordered that petitioner is awarded compensatory damages against the respondent Chi Hao Lin in the sum of \$1,000.00.

Petitioner's counsel shall mail a copy of this Decision/Order to the respondent by First Class Mail.

This constitutes the Decision and Order of this Court.

Dated: June 15, 2021
Queens, New York

So ordered,

ENEDINA PILAR SANCHEZ
Judge, Housing Court