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Department of Hous. Preserv. & Dev. of the City of N.Y. v. Thompson

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[*1]

Department of Hous. Preserv. & Dev. of the City of N.Y. v Thompson
2022 NY Slip Op 50115(U)
Decided on February 16, 2022
Civil Court Of The City Of New York, Queens County
Sanchez, 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This opinion is uncorrected and will not be published in the printed Official Reports.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 February 16, 2022

Civil Court of the City of New York, Queens County

**Department of Housing Preservation and Development of the City
of New York, Petitioner,**

against

Michael Thompson, Dina Brown-Thompson, Respondents.

Index No. HP 307715/21

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Michael Thompson
Respondent Pro-se

Dina Brown-Thompson
Respondent Pro-se

Enedina Pilar Sanchez, J.

Petitioner filed this HP case seeking civil penalties and an order to maintain the hot water at the subject premises located at 122-56 Springfield Boulevard, Queens, NY 11375.

Petitioner's request is based on its findings of lack of hot water on October 5, 2021 and October 9, 2021.

Both respondents appeared in court. The Department of Housing Preservation and Development (DHPD) appeared via Microsoft Teams video conferencing pursuant to the Administrative Orders in place during the COVID-19 pandemic.

It is not disputed that the violations were corrected. the parties were not able to settle the civil penalties portion of the case. DHPD offered to settle the case for a penalty of \$500.00. Respondents rejected the offer and stated that they should not be liable for any penalties.

A hearing ensued.

Testimony

Respondents were sworn in and testified that they are the owners of the subject premises. They testified that because rains caused by Hurricane Ida the entire basement was flooded. The water damaged in the basement destroyed the hot water heater. They were not eligible for any financial assistance because they are not living in the house. They cannot live in the house because there are tenants living in the house. The tenants have not been paying rent, and that has [*2]implicated respondents' budget. The respondents testified that once they were able to gather the funds they purchased and and paid for the installation of a new boiler.

The Court notes that the remnants of Hurricane Ida caused damage in the New York City area and in some areas of Queens catastrophic flooding. Respondent testified that they did not get any assistance from "the City" after the flooding because they "*did not qualify for anything.*"

Petitioner did not cross-examine the respondents. Nor did petitioner dispute that the violations were corrected.

Discussion

Based on the evidence presented by the petitioner and the credible testimony presented by the respondents, under these circumstances the Court must find in favor of the

respondents. Civil penalties are not granted pursuant to *NYC Administrative Code §27-2115 et al.*, (Chapter 2, *NYC Housing Maintenance Code*). The *Housing Maintenance Code*, §27-2115(k)(3) permits an owner to show facts in defense or mitigation of the civil penalties sought by petitioner.

The *Civil Court Act §110 (c)*, describes the essential discretion of the Court to determine the civil penalties to be imposed.

Regardless of the relief originally sought by a party the court may recommend or employ any remedy, program, procedure or sanction authorized by law for the enforcement of housing standards, if it believes they will be more effective to accomplish compliance or to protect and promote the public interest;

Respondents testified as to their defenses and compelling situation caused by the remnants of Hurricane Ida. The Court takes into consideration the facts and circumstances surrounding these violations. With the COVID-19 pandemic, both landlords and tenants have faced adversities of new magnitude. Hurricane Ida affected many New Yorkers and resulted in catastrophic damage throughout many communities. The respondents replaced the boiler and corrected the violation in a relatively short period of time, given the availability of materials. Under these circumstances, civil penalties are not assessed.

Decision and Order

It is ORDERED that MICHAEL THOMPSON and DINA BROWN-THOMPSON, and their agents and employees shall forthwith maintain the following essential services as required by law:

1. Supply every bath, shower, washbasin and sink in every dwelling unit with hot water at a constant minimum temperature of 120 degrees Fahrenheit, twenty-four hours per day.
2. Provide access to the boiler area for the petitioner's inspectors and/or contractors, and post proper notices relating to access to the boiler area pursuant to the Multiple Dwelling Law and the Housing Maintenance Code.
3. Remove any device on the heating system which can cause the system to become inoperable or to provide less than the minimum legal requirements of heat and/or hot water and maintain the system free of any such device, and it is further

This constitutes the Decision and Order of the Court.

So Ordered,
Dated: February 16, 2022
Queens, New York

Enedina Pilar Sanchez
Judge, Housing Court

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