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

VERONICA DOBROVITSKY,
RICHARD YASNIS

Petitioner,

against

BRONSTEINS PROPERTIES, LLC.,
and
NEW YORK CITY DEPARTMENT OF HOUSING
PRESERVATION AND DEVELOPMENT (DHPD),
Respondents,

HP Index No. 553/21

**Decision and Order
After Hearing**

HON. ENEDINA PILAR SANCHEZ,

Petitioner filed this HP case for an order to correct violations, for a finding of harassment and a restraining order. The subject premises are located at 88-50 179th Street, Apartment 1A, Jamaica, NY 11432. The matter first appeared on August 25, 2021. Petitioners appeared in court. Counsels for respondent owner and for respondent Department of Housing Preservation and Development (DHPD) appeared via Microsoft Teams video conference pursuant to the Administrative Orders in place during the COVID-19 pandemic.

On August 25, 2021, an Order to Correct issued upon the consent of the parties. Access dates were selected with the emphasis on the correction of violation no 13989346 issued on January 17, 2021 *“to abate the nuisance consisting of discolored hot water supply at bathtub in the bathroom located at apt 1a, 1st story.”* Additional access dates were to be provided upon 48-hour prior notice via email to the petitioner. (See August 25, 2021 Order to Correct)

In October 2021, petitioners filed an Order to Show Cause to restore the case to the calendar for a compliance hearing and assessment of civil penalties. Petitioners stated that the conditions and violations were not corrected. The Order to Show Cause was granted, the case restored and adjourned with new access dates for respondent to investigate the discolored water in the bathtub.

On December 13, 2021, the adjourned date, respondent alleged that access was denied and for that reason the violation regarding the discolored water in the bathtub was not corrected. Petitioners disputed the allegation that access was denied.

The matter was scheduled for an immediate hearing on December 16, 2021 on the issue of access. On the hearing day, respondent made an oral motion for sanctions against the petitioners and a dismissal of the violation for their refusal to give access. The motion was denied as premature since the dispute regarding access required testimony and adjudication. The parties appeared via Microsoft Teams; respondent DHPD did not appear. The hearing ensued.

December 16, 2021 Testimony

Respondent-owner presented the property manager, Bill Gamba, as its witness. Mr. Gamba was sworn in and testified. Mr. Gamba testified that a plumbing company had inspected the coils in the boiler and had cleaned the coils. In addition, a toilet was replaced in the subject premises. These repairs were performed on or about October 8, 2021 and October 13, 2021. Mr. Gamba further testified that on November 15, 2021, the superintendent and the “glazer” went to petitioners’ apartment and access was denied.

Mr. Gamba testified that he was not present on November 15, 2021 when access was allegedly denied.

Mr. Gamba stated that he was told that access was not given by the petitioners. Mr. Gamba had not been inside the subject premises to inspect the condition of the water in the bathtub. Upon questioning by the petitioner, Mr. Gamba stated that he was not told that there was still “brown water.” Mr. Gamba was asked whether the water was tested after the contractor worked on the boiler. Mr. Gamba did not know whether the water was tested.

Petitioner Richard Yasniss was sworn in and testified. Mr. Yasniss testified that the water in the bathtub is still coming out “brown.” He testified that on November 15, 2021 the superintendent, Lidio, and the glazer came over to the apartment. Mr. Yasniss informed them that the water was still coming out “brown” and that it would not make sense to glaze the tub given the water condition. Mr. Yasniss testified that the super and the glazer agreed with him and that neither asked to inspect the discolored water in the bathtub, and if they had wanted to enter the apartment, they would have been granted access. Petitioner testified that as of December 14, 2021 the super confirmed that the A line apartments still have discolored water supply.

Mr. Yasniss testified for the last 19 months they cannot use their shower or bathe in the tub because of the brown water. Mr. Yasniss stated that they must shower at his mother’s home or other places and a water sample has been taken to a “lab” for analysis. They are waiting for the results.

Discussion and Findings

The Court finds that both witnesses were credible, and that access was not denied.

It is undisputed that the super and the glazer went to the apartment to presumably glaze the bathtub, however, as the water supply was still “brown” glazing the bathtub would not correct the condition of the water. The Court finds that the water supply violation, the crux of this case, identified as of the August 25, 2021 Order to Correct is still an open violation. It is a condition that does not require access to the apartment to correct the source of the problem. Access to check the water supply and to test it would make sense, however, this was not requested. Nor was any testimony offered that access was needed to correct the condition of the water supply. Moreover, access was given. The water supply violation does not seem to originate within the apartment, the problem is outside of the four walls of the apartment. The testimony was that the coils of the boiler were cleaned and that therefore it was believed that it took care of the problem.

The testimony that the contractor cleaned the coils does not mean that the violation was corrected. Other steps are needed “*to abate the nuisance consisting of discolored hot water supply at bathtub in the bathroom located at apt 1a, 1st story.*”

The Court takes judicial notice of the violation report on the DHPD website. <https://www1.nyc.gov/site/hpd/about/hpd-online.page>. The current report when compared to the August 2021 report confirms that some conditions have been corrected but still others continue and are in violation of the *N.Y. C. Administrative Code.(Housing Maintenance Code)*.

Water is an essential service. See, *N.Y. C. Administrative Code §27-2009.2* Pursuant to *N.Y.C. Adm. Code §27-2024* the owner of a dwelling shall provide and maintain a supply of pure and wholesome water sufficient in quantity and at sufficient pressure to keep all plumbing fixtures adequately supplied for their sanitary maintenance.

Pursuant to *NYC Civil Court Act §110*, this Court shall hear matters involving the enforcement of state and local laws for the establishment and maintenance of housing standards, including, but not limited to, the multiple dwelling law and the housing maintenance code, building code and health code of the administrative code of the city of New York.

The *Housing Maintenance Code* is clear as to the minimum requirements regarding the water supply incoming to a dwelling. The obligation “*to abate the nuisance consisting of discolored hot water supply at bathtub,*” is past due. The Court cannot find a rational correlation between correcting the nuisance and the alleged denial of access to the bathroom, since the water supply is outside of the bathroom. Respondent’s argument that petitioners denied access is not supported by the testimony or even germane to the condition of the water that must be abated.

Conclusion

Considering the time that has lapsed since the water supply violation was issued, this matter is adjourned for a status update on the condition of the water. The court will address the balance of the claims in the petition and the Order to Show Cause on the adjourned date.

This case is adjourned to **January 28, 2022 @ 11:00 am**, in courtroom 407. The parties may appear in court virtually using Microsoft Teams and may request a virtual invitation by emailing qn-housing-407@nycourts.gov

It is Ordered that respondent-owner correct violation no. 13989346 and “*abate the nuisance consisting of discolored hot water supply at bathtub in the bathroom located at apt 1a.*”

This Decision and Order is being emailed to the parties.

This constitutes the Decision and Order of the Court.

Dated: December 21, 2021
Queens, New York

So Ordered,

ENEDINA PILAR SANCHEZ
Judge, Housing Court

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