

Fordham Law School

FLASH: The Fordham Law Archive of Scholarship and History

[All Decisions](#)

[Housing Court Decisions Project](#)

2021-04-15

NUREDIN v. KOUFA REALTY CORP.

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

Recommended Citation

"NUREDIN v. KOUFA REALTY CORP." (2021). *All Decisions*. 1120.
https://ir.lawnet.fordham.edu/housing_court_all/1120

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 QUEENS: HOUSING PART C

Motion Sequence #1

RAQUEL NUREDIN,
Petitioner,

Index No. HP 604/20

Decision and Order

against

KOUFA REALTY CORP.
JOHN PSARA,
BIG CITY PROPERTY MANAGEMENT, INC.,
MARIA ALEXIOU,
and
THE NEW YORK CITY DEPARTMENT OF
HOUSING PRESERVATION AND
DEVELOPMENT (DHPD),
Respondents.

HON. ENEDINA PILAR SANCHEZ,

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion

<u>Papers</u>	<u>Numbered</u>
Notice of Motion, Affirmation, Affidavit in Support	___1___
Cross Motion, Opposing and Supporting Affirmation	___2___
Replying Affirmation, Opposition to Cross	___3___

Petitioner filed this HP case seeking an order to correct violations pursuant to the *New York City Housing Maintenance Code*. The subject premises are located at 31-14 42nd Street, Apartment #4, Astoria, New York 11103. The parties are represented by counsel and have appeared via Microsoft Teams video conferencing pursuant to the Administrative Orders in place during this COVID-19 pandemic.

After numerous conferences, including a stipulation addressing conditions and violations in need of repairs, petitioner moves by notice of motion seeking an order directing respondents to provide a “*reasonable accommodation to the bathtub and bathroom commode located at the subject premises pursuant to the New York City Administrative Code §8-107(15)*.”¹

In summary, petitioner argues that the claw foot bathtub in the apartment is an old fashioned tub; that petitioner cannot easily use this tub and respondents must replace it.

It is undisputed that petitioner is a rent-controlled tenant and has resided in the apartment for close to 60 years. There is no dispute that petitioner has reached an age where daily activities take more time. Petitioner is 87 years old and states that getting in and out of the

¹ The Court is informed that the issue of the bathroom commode is resolved.

bathub is not as simple as before. “She can only bathe herself when her neighbors, who have showers in their apartments, are kind enough to let petitioner use their showers.” Pet. Affidavit.

The question is whether respondents are required to replace the existing claw foot tub with a walk-in shower to accommodate petitioner’s reduced mobility.

Petitioner states that the landlord was asked to provide this accommodation and she submitted a letter from her physician. Petitioner then filed a complaint with the New York City Commission on Human Rights (“CCHR”). After a pre-complaint investigation process, CCHR recommended a reasonable accommodation in the form of a bathtub that “has a cut-out on the side, or a walk-in shower.” (Respondent’s Cross-Motion Exhibit B.) CCHR, however, has not taken any action to enforce its recommendation. CCHR closed the case on June 6, 2020 as the “Accommodation [was] Provided.” (Resp. Exhibit B.)

The accommodation was not provided. Petitioner seeks an order from this Court directing respondent to replace the claw foot tub pursuant to *New York City Administrative Code §8-107(15)*.

Petitioner’s Argument:

This Court has jurisdiction pursuant to *Civil Court Act §110* to enforce the housing maintenance code and therefore to direct the respondent to replace a claw foot tub with a walk-in shower as a reasonable accommodation for petitioner’s impaired mobility. Petitioner relies upon case law where the landlord was directed to provide a wheelchair ramp at the building entrance. See, *Espino v. New York City Housing Authority*, 60 Misc.3d 667(2018).

Respondents’ Argument:

Respondents cross-move for access to the subject premises to correct the violations or in the alternative to dismiss of the case. Violations exist in the apartment and respondents state that petitioner refuses to grant access for other repairs until the claw foot tub is replaced with a walk-in shower. Respondents argue that there are no violations of the Housing Maintenance Code or the Building Code to support the entry of an order directing the owner to replace the claw foot tub with a walk-in shower.

Legal Discussion:

The power of the Housing Court to issue an order pursuant to *Civil Court Act §110* is broad and consistent with the objective found in the very language of the Act. *Section 110* provides, the 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.*

Petitioner cites *Espino v. New York City Housing Authority*, *supra*, in support of the argument that petitioner is entitled to an order directing respondent to replace the claw foot tub with a walk-in shower in order to fulfil the mandates of New York City Human Rights Law. In *Espino v. New York City Housing Authority*, the Court specifically relied upon *Section 27-357*

(d) of the Building Code, which section provides, that at minimum one primary entrance shall be accessible and usable by individuals who use wheelchairs.

Petitioner has not cited any provision of the Housing Maintenance Code, the Building Code, the Health Code, or the Multiple Dwelling Law to support her position. Absent such a provision, this Court does not have any basis to issue such an order creating a reasonable accommodation.² Issuing such an order would be directing changes to residential premises on an ad-hoc basis. Respondent shows that the accommodation sought by petitioner is possible, but that it is not mandated by the Housing Maintenance Code

The Court takes judicial notice of the DHPD inspection report found on the DHPD website, www.nyc.gov/hpd. The inspection report confirms that conditions in the apartment are in violation of the Housing Maintenance Code (HMC), however, there are no violations regarding the bathtub. The relief sought by petitioner, the replacement of the claw foot tub, does not correlate to violations or requirements of the Housing Maintenance Code or the Building Code.

The broad powers of the Housing Court do not include the power to make a declaratory judgment. Petitioner seeks an order that a condition or a disability faced by an occupant requires a modification or an alteration, and that is not provided for by the existing laws enforced pursuant to *Civil Court Act Section 110*.³

The Court is familiar with the case law referenced in petitioner's moving papers. Petitioner's motion does not support the request to have the Court issue an order directing respondents to replace the claw foot tub with a walk-in shower as a reasonable accommodation. The finding and recommendation from the agency do not constitute an administrative order.

Furthermore, the definition of a disability as discussed in *Espino v. New York City Housing Authority*, *supra*, is connected to the mandates of the Building Code requiring that at least one primary building egress be accessible and usable by individuals who use wheelchairs.

The Court's broad powers to enforce the various codes include the power to make a finding that a violation exist. Such a finding would need to correlate to a provision in the Housing Maintenance Code, the Building Code, the Multiple Dwelling Law, or the Health Code. (See, *HMC Bathrooms* §27–2066.) Petitioner, however, has not presented any evidence that the claw foot tub constitutes a violation under applicable codes.

In conclusion, petitioner's motion for a reasonable accommodation directing respondent to replace the claw foot tub with a walk-in shower must be denied.

² The Court notes that there may be other options that will have a more practical outcome for both sides and still allow petitioner use of her tub.

³ The Court is mindful that as residents age and live a longer life in our community, the need to change or modify the housing stock may become the norm.

Respondent's cross-motion is also denied. The allegations regarding refusal to grant access were denied by petitioner with sufficient details.

The parties are directed to arrange access dates to correct the violations in the subject premises. All work shall follow COVID-19 safety protocols.

Upon default, petitioner may restore this case to the calendar for all appropriate relief.

This constitutes the Decision and Order of this Court/

Dated: April 15, 2021
Queens, New York

So ordered,

ENEDINA PILAR SANCHEZ
Judge, Housing Court

Matthew Reichert, Esq.
Queens Legal Services
Attorneys for Petitioner
mxreichert@lsnyc.org

Evey Baltrunas, Esq.
Attorneys for Respondents
eveybee777@aol.com

Helen Lai, Esq.
Attorney for Respondent-DHPD
laih@hpd.nyc.gov