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### SEGRE v. MOHABIR

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

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TANISHA SEGRE,

Petitioner,

HP Index No. 592/20

against

**Decision/Order  
After Hearing**

JOSEPH S. MOHABIR,

and

NEW YORK CITY DEPARTMENT OF HOUSING  
PRESERVATION AND DEVELOPMENT (HPD),

Respondents,  
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HON. ENEDINA PILAR SANCHEZ,

Petitioner filed this HP case for repairs and the restoration of a gas stove to the subject premises located at 191-20 113<sup>th</sup> Road, Basement Apartment, St. Albans, NY 11412. On September 30, 2020, after conference with the Court, the case was adjourned for a hearing.

On October 8, 2020 the hearing ensued. Petitioner appeared in court. Respondent Mohabir, petitioner's counsel, and counsel for respondent New York City 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.

After the hearing, the petition is denied without prejudice to any claim petitioner may have against respondent arising from the landlord-tenant relationship.

Testimony and Evidence Presented

The parties were sworn in and testified. It was not disputed that petitioner and respondent entered into a one year written rental agreement on or about January 2020. Petitioner testified that she rented the basement apartment with a stove, refrigerator, full kitchen sink, and full bathroom. Sometime in July 2020, petitioner returned to the apartment and found that her personal belongings were packed in boxes, the stove was removed, the kitchen sink was disconnected, and the locks were changed. She could not get into the apartment.

Petitioner called the police. Petitioner testified that the police asked respondent to give petitioner the key. On or about July 30, 2020, petitioner filed a "lock-out" case in the Housing Court. On August 4, 2020, petitioner withdrew her illegal lockout case.

Petitioner seeks an order directing respondent to restore the gas stove at the premises.

Respondent Mohabir testified that when he purchased the house, the basement was already finished but did not have a stove. Later he added a stove. Mohabir then referenced two documents from the Department of Buildings (DOB). These two documents were entered into evidence as Respondent's A. One document shows that on or about May 21, 2020, the Department of

Buildings issued a *Partial Vacate Order for the Cellar Level*. The second document is a *Peremptory Vacate Order, Q 1163/20* calling for a partial vacate and signed by the Borough Commissioner and the Administrative Chief Construction Inspector on May 22, 2020.

The Court then took judicial notice of the DOB violations regarding the subject premises.

The building information system shows that on or about January 24, 2020 there was a complaint “*that a legal one family is illegally renting out the basement as an apartment.*” On February 24, 2020 and on May 4, 2020 an inspector was unable to gain access to the subject premises. On May 21, 2020, an inspector gained access and issued the DOB violation for “*illegal conversion.*” The comments include: “*legal 1 family converted into 2 families by creating 1 additional class A apt. at the cellar level with sleeping quarters, kitchen with electric cooking equipment and 3-piece bathroom. Vacate cellar.*” This violation triggered two OATH/ECB Violations: 3541-3916N and 3541-3917P. An Environmental Control Board (ECB) hearing was held on September 8, 2020 and a penalty of \$1,250 was imposed.

The Court took judicial notice of the DHPD website and saw that there are no violations issued under the Housing Maintenance Code.

#### Discussion

The Court finds that as there are no violations issued by DHPD under the Housing Maintenance Code, there can be no order to correct. Instead of DHPD violations, the order from DOB commands a partial vacate as the conversion into a two-family house was done without a permit. The DOB order also references insufficient light and ventilation, no secondary means of egress and no sprinkler system. See *N.Y.C. Adm. Code §28-201.1; §28-202.1 et seq.*

It seems that between May 21, 2020 (when the DOB partial vacate issued) and July 30, 2020 (when petitioner filed the alleged illegal lockout case), petitioner continued in possession with all the amenities in place. The Court can only guess that as the hearing before the Environmental Control Board (ECB) was approaching, respondent may have attempted to rectify the violations and removed the stove, refrigerator and door from the basement apartment. There was no testimony to explain what transpired between May 21 and July 30, 2020.

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 Court must address and enforce the New York City Building Code (Building Code) just like the Housing Maintenance Code. See *Espino v. NYCHA*, 60 Misc.3d 667; *Allen v. 219 24<sup>th</sup> St. LLC*, 2020 NY Slip Op 50513 (U), 2020 NY Misc. Lexis 1753. Absent a rule indicating that the Housing Maintenance Code supersedes the Building Code, the violations pursuant to the Building Code cannot be disregarded. Petitioner seeks an order directing respondent to correct violations. The correction of the DOB violations, however, is the antithesis of the remedy sought by petitioner. The DOB violation calls for the area to be vacated because a “*legal (1) family*,

*(2.50) story NFP building had been converted into (2) families. At cellar level, created class 'A' apartment. Cellar level has insufficient light and ventilation no secondary means of egress. Building has no sprinkler system. No permits or certified occupancy issued for this conversion."*

Petitioner seeks to have the stove restored. To restore the stove would mean a further violation of the Building Code.

If the Court were to grant petitioner's request, the Court must order respondent to violate the Building Code or order respondent to comply with the Building Code by filing a permit to legalize the cellar into a class "A" apartment. An order to convert the cellar apartment into a legal apartment is not the actual remedy to correct the violation that was issued by DOB. The Court would be going beyond the violation if it ordered respondent to file plans with the DOB and secure a permit to convert the one family into a two-family dwelling. Based on the description of the premises in the vacate order, it is not clear if the basement can be converted to a class "A" dwelling.

This Court cannot grant petitioner's request.

The untold story seems to be that this homeowner rented the basement as a dwelling. The homeowner benefits by the income generated and the tenant benefits by having an affordable place to live. The arrangement may have been a symbiotic relationship between the homeowner and tenant until the DOB conducted its inspection based upon a report of using a one family home as a two-family dwelling.<sup>1</sup>

Absent a change in the Building Code, this Court cannot order respondent to restore the stove unless and until respondent secures a proper certificate of occupancy showing that the cellar may be occupied as a class "A" dwelling.

Petitioner's request for "such other relief as may seem just and proper," however, may be viable in a plenary action. Petitioner testified that she rented the space pursuant to residential lease agreement. She explained the space came with a stove and a refrigerator and now she cannot prepare meals at home. During this COVID-19 pandemic, the Housing Court is aware and understands the benefits of staying at home and preparing meals at home. The Court is mindful of the stresses created by this pandemic and the stress and expense created by having to order out or eating out.

### Conclusion

It is Ordered that the petition is denied without prejudice to petitioner's right to seek damages in a plenary action for breach of lease or any remedies that may be just and proper.

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<sup>1</sup> During this COVID-19 pandemic, these relationships and arrangements may have deteriorated more so, and the dilemma and conflict may come before the Court as a case seeking enforcement of the Housing Maintenance Code. The proximity of living so close together during the "stay at home" mandate, the remote learning offered to students placing a greater demand on broadband and the loss of employment have impacted and further revealed these housing conditions and stresses in a way that no one may have anticipated.

This Decision/Order is being emailed to the attorneys and to the respondent.

This constitutes the Decision/Order of the Court.

Dated: November 12, 2020  
Queens, New York

So ordered,

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ENEDINA PILAR SANCHEZ  
Judge, Housing Court

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