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### H & L Broadway Holding LLC v. Salaj

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[\*1]

<b>H &amp; L Broadway Holding LLC v Salaj</b>
2023 NY Slip Op 51274(U) [81 Misc 3d 1206(A)]
Decided on November 1, 2023
Civil Court Of The City Of New York, Queens County
Guthrie, J.
Published by <a href="#">New York State Law Reporting Bureau</a> pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on November 1, 2023

Civil Court of the City of New York, Queens County

<p><b>H &amp; L Broadway Holding LLC, Petitioner,</b></p> <p><b>against</b></p> <p><b>Alvino Salaj, Danjela Guga, Respondents.</b></p>
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Index No. L&T 314395/22

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Alvino Salaj  
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Respondents, pro se

Clinton J. Guthrie, J.

#### PROCEDURAL HISTORY AND TRIAL

This nonpayment proceeding was filed in September 2022. Respondent Alvino Salaj filed a pro se answer on October 11, 2022. The proceeding was transferred from the

resolution Part on March 3, 2023 for trial and was later scheduled for trial in this Part on October 30, 2023. The trial was conducted and completed on October 30, 2023.

The parties executed a stipulation at the outset of trial, by which respondents (both appearing pro se) consented to petitioner's prima facie case. The stipulation also provided that the rent outstanding in the case constituted six (6) months from April 2022 through and including September 2022, at a rate of \$2,987.65 per month, for a total of \$17,925.90. The stipulation narrowed the trial issue to respondents' defense, which was based on an alleged breach of the warranty of habitability. [\[FN1\]](#)

Both respondents testified at trial. Respondent Alvino Salaj testified first. He testified [\[\\*2\]](#) that there were "issues" in the apartment, including water coming inside from a leak. He stated that respondents notified the "landlord" about the issues. He stated that the "issues" arose at the end of 2019 and ran through October 2022. He stated that there were leaks that the landlord "kept promising" that they would fix.

Mr. Salaj testified that in February 2022, he told the building manager that the last month that respondents would pay rent would be March 2022, until the conditions were repaired. He stated that respondents called the city about the conditions and that a DHPD (Department of Housing Preservation and Development) inspector came out and issued violations. He stated that the violations were issued on October 3, 2022. Mr. Salaj stated that respondents began paying rent once the conditions were repaired. He explained that he "tried to work with" management and had emailed them. He also stated that he asked for a transfer to another unit and proposed asking to break his lease when there were still leaks in his apartment. However, he stated that every proposal was rejected.

On cross-examination, Mr. Salaj confirmed that he continued to live in the apartment despite the conditions and did not move out. When he was asked if he asked to break his lease, he explained that he asked for two (2) months to move out in September 2022. Nonetheless, he did sign his lease on September 23, 2022, for a term of one (1) year. He also confirmed that he had signed the following year's lease.

Respondent Danjela Guga testified second. She began by stating that she paid nearly \$3,000.00 per month to live in a "luxury building" but that every time it rained, it was raining in her apartment. She testified she had to use towels and buckets to clean the leak. She stated that she would have panic attacks and anxiety whenever it rained since she and Mr. Salaj would have to move things in the apartment to avoid the leaks. She stated that the landlord

inspected the apartment but never made repairs until October 2022. She explained that she and Mr. Salaj stopped paying rent because they were not getting the service they were paying for and because they did not feel respected. She testified that the problems lasted for 3 years and that the first year "was COVID." She also stated that she and Mr. Salaj asked for a transfer to another apartment because of the stress of the conditions.

Ms. Guga then offered printouts of DHPD complaints and violations. The court took judicial notice of the exhibits (respondents' Exhibits 2, 3, 4, 5, and 8) pursuant to Multiple Dwelling Law § 328(3) to the extent that they concerned the subject premises. Ms. Guga attempted to put into evidence a series of emails that she stated were sent to management, but she was unable to authenticate the emails and they were not admitted into evidence.

On cross-examination, Ms. Guga was asked if she moved out during the time that she was reporting leaks. She replied that she did not. She also confirmed that she continued to live in the premises and was able to cook. She did state that she sometimes had to clean the leaks. She stated that she had to move her television and cables when it rained. Like Mr. Salaj, she stated that they signed their lease in 2022, but that previously they had requested a one (1) month rent credit and two (2) months to move. She stated that when the conditions were fixed, they started paying rent again and confirmed that they signed a lease in 2023.

Respondents rested upon the conclusion of Ms. Guga's testimony and petitioner declined to put on a rebuttal case. The court reserved decision upon the conclusion of the trial.

## DISCUSSION

As the parties stipulated to petitioner's prima facie case, petitioner established its burden of demonstrating that \$17,925.90 was due for the months April 2022 through September 2022, at [\*3] a rate of \$2,987.65 per month. The burden then shifted to respondents to prove their warranty of habitability defense (*see Bloorian v. Pittman*, 71 Misc 3d 140[A], 2021 NY Slip Op 50520[U], \*2 [App Term, 2d Dept, 2d Dept, 2d, 11th & 13th Jud Dists 2021]).

To prevail on a warranty of habitability defense, a tenant must "offer proof as to the dates, severity and duration of the conditions complained of and show that notice of the conditions was given to the landlord [a]dditionally, the tenant must show that the landlord was provided with access and an opportunity to correct the conditions, yet failed to do so." *Bloorian*, 2021 NY Slip Op 50520[U], \*2 [internal citations omitted]; *see also 34-15 Parsons*

[Blvd., LLC v. Ming Hang Zhao, 74 Misc 3d 134](#)[A], 2022 NY Slip Op 50283[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2022].

While respondents were somewhat imprecise about the dates of the conditions at issue, testifying about a three-year range beginning at the "end of 2019" through October 2022, the dates of the DHPD violations for the subject premises are precise markers of when the conditions arose, insofar as a DHPD violation constitutes prima facie evidence that a corresponding condition exists and constitutes a hazard to life, health, and/or safety ([see Fiondella v. 345 W. 70th Tenants Corp., 217 AD3d 495](#), 496 [1st Dept 2023]; *Dept. of Hous. Preserv. & Dev. v. Knoll*, 120 Misc 2d 813, 814 [App Term, 2d Dept 1983]). According to the DHPD Open Violations report (respondents' Exhibit 8), violations were first placed on September 23, 2021. While respondents' testimonies about notice given to the landlord about the conditions was somewhat vague as to specificity of dates and details, the open violations with notations of notices of violation sent constitute proof of notice to petitioner (a registered agent of the subject building) of the relevant conditions (*see Dept. of Hous. Preserv. and Dev. v. De Bona*, 101 AD2d 875, 876 [2d Dept 1984]; [Dept. of Hous. Preserv. and Dev. v. France, 73 Misc 3d 132](#)[A], 2021 NY Slip Op 50982[U] [App Term, 1st Dept 2021]).

However, respondents did not present any specific testimony or evidence that they provided petitioner with access and an opportunity to correct the violations at issue. The failure is fatal to their warranty of habitability claim (*see Bloorian*, 2021 NY Slip Op 50520[U], \*2; *Callender v. Titus*, 2004 NY Slip Op 50608[U] [App Term, 2d & 11th Jud Dists 2004]). Respondents' warranty of habitability defense is dismissed after trial.

Accordingly, petitioner is granted a final judgment in the amount of \$17,925.90 against respondents Alvino Salaj and Danjela Guga. A warrant shall issue forthwith. Execution of the warrant is stayed through November 21, 2023 for payment of the judgment amount. If the judgment is paid in full by November 21, 2023, the warrant shall be vacated without prejudice to petitioner's rights to seek any post-October 2023 rents due in a separate proceeding. Upon default, petitioner shall be entitled to execute upon the warrant after service of a marshal's notice of eviction (*see RPAPL § 749(2)*). The earliest execution date (EED) shall be November 22, 2023. No pre-service of the marshal's notice is permitted.

This Decision/Order will be filed to NYSCEF and emailed and mailed to respondents. The parties are directed to pick up their exhibits within 35 days or they will be sent to the parties or destroyed at the court's discretion in accordance with DRP-185.

THIS CONSTITUTES THE DECISION & ORDER OF THE COURT.

Dated: November 1, 2023  
Queens, New York  
CLINTON J. GUTHRIE, J.H.C.

## Footnotes

**Footnote 1:** The stipulation was allocuted with respondents, as required by RPAPL § 746.

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