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165 CONOVER STREET TENANT ASSOCIATION v. THOMPSON

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART

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165 CONOVER STREET TENANT
ASSOCIATION, ET AL,

Index No. 301759/24

Petitioner,

DECISION/ORDER

-against-

Mot. seq. no. 1

ALFRED THOMPSON, ET AL., DEPARTMENT
OF HOUSING PRESERVATION AND
DEVELOPMENT OF THE CITY OF NEW YORK,

Respondents.

-----X

WEISBERG, J.:

The following e-filed documents, listed by NYSCEF document number 24-31; 40-44 (motion no. 1) were read on this motion for partial summary judgment and to dismiss defenses.

Petitioners in this “HP actions/proceedings” have moved for partial summary judgment on their claim for an order to correct, as well as dismissal of Respondents’ affirmative defenses. There is no dispute that Petitioners are tenants of the subject premises as defined by the Housing Maintenance Code and that non-HPD Respondents are owners as defined therein.

The elements of a cause of action for an order to correct conditions that violate the Housing Maintenance Code are 1) the petitioner is a tenant of the subject premises as defined by the HMC; 2) the respondent is an owner of the premises as defined by the HMC; and 3) there are conditions in the premises that violate the HMC. Here, there is no dispute as to the first two elements of the cause of action, and the violation status reports for the premises found on the HPD website (annexed to the motion), which list the conditions found by the HPD inspectors, are prima facie evidence that the conditions listed therein exist in the apartment and violate the HMC (Mult Dwell Law 328[3]). Petitioners have therefore demonstrated prima facie entitlement to an order to correct.

Respondents have failed to raise any triable issue of fact. Though Respondents vaguely allege completion of many repairs, they do not specify which repairs these are, much less provide a shred of any evidence to substantiate their claims. Perplexingly, Respondents allege the submission of affidavits of correction to HPD, but do not annex them to their opposition.

Respondents' vague allegation of completion is insufficient to demonstrate a material issue a triable fact (*see HPD v Knoll*, 120 Misc 2d 813, 814 [App Term, 2d Dept, 2d & 11th Jud Dists 1983] ["To permit a property owner to come into court and merely testify that the violations were removed, without any supporting evidence, would vitiate the impact of the Housing Code"]). As to the tenant against whom Respondents' have a judgment of possession and warrant of eviction, those facts do not give rise to a defense to a claim for an order to correct.

CONCLUSION

Accordingly, it is ORDERED that Petitioners are granted summary judgment on their claim for an order to correct; and it is further

ORDERED that non-HPD Respondents shall correct the conditions in the subject premises for which open violations were listed on the violation status reports annexed to the motion (pertaining to the common areas and Petitioner's apartments) (NYSCEF Docs. 44) within the timeframes required by statute for their listed hazard class; and it is further

ORDERED that the portion of the motion seeking dismissal of Respondents' affirmative defenses is denied as moot.

This is the court's decision and order.

Dated: October 28, 2024



Michael L. Weisberg, JHC