Hibbert v Powell
2021 NY Slip Op 31862(U)
May 19, 2021
Supreme Court, Bronx County
Docket Number: 17578/2020
Judge: Shorab Ibrahim
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX: HOUSING PART H

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EBONY HIBBERT

H&P Index No. 17578/2020

Petitioner-Tenant,

- against -

GAYNOR POWELL, MONIA POWELL

NOTICE OF ENTRY

Respondent-Landlord,

THE DEPARTMENT OF HOUSING
PRESERVATION AND DEVELOPMENT (HPD)

Respondent-City

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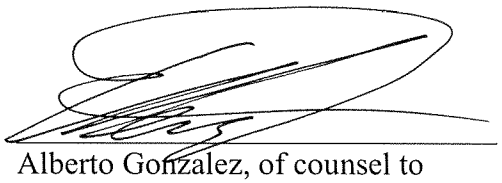
PLEASE TAKE NOTICE, that the within is a true copy of the Decision and Order of the Hon. Shorab Ibrahim, dated May 19, 2021, and entered in the office of the Clerk of the within named Court on the same date.

Date: May 20, 2021
New York, New York



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CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX: HOUSING PART H ----------X EBONY HIBBERT, Petitioner, -against- GAYNOR POWELL & MONIA POWELL, Respondents, and NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT (DHPD), Co-Respondents. ----------X	Index No. 17578/2020 DECISION AND ORDER AFTER TRIAL IBRAHIM, J.:

After trial held on March 24, 2021, April 21, 2021 and May 5, 2021, judgment shall be entered in petitioner's favor pursuant to the terms herein.

THE PARTIES AND THE CLAIMS

Ebony Hibbert, the petitioner in this proceeding ("petitioner"), resides at 4239 Digney Avenue, Bronx, NY 10466, Main Floor ("subject premises"). Gaynor Powell and Monia Powell, the respondents in this proceeding ("respondents"), are the owners of the subject house.

The November 23, 2020 petition seeks an order to correct violations and a finding of harassment. As to harassment, petitioner alleges, *inter alia*, that the respondents violated NYC Admin Code § 27-2005[d] by causing or intending to cause her to vacate the subject premises by (a) using or threatening force; (b) repeatedly stopping or interrupting essential services; (c) changing the lock on the unit door without giving a key to the new lock to the petitioner; (d) repeatedly contacting or visiting the tenant without written consent on weekends, outside of 9am-5pm, or in such a manner that would abuse or harass the tenant and; (e) repeatedly causing or permitting acts or omissions that substantially interfered or disturbed the comfort, peace, or quiet of the tenant.[1] (*see* § 27-2004(48)).

As to specific acts of harassment, the petition alleges petitioner was asked to vacate the premises when she refused to pay a rent increase and refused to pay a percentage of the utility bills. Petitioner further alleges that as soon as her lease ended, her lights were cut off for three (3) days in October 2020, that someone broke in her apartment, and then the landlord changed the

[1] Petitioner "checked off" other items on the court's pre-printed form. However, they proved not to be relevant.

locks while petitioner was at work. Finally, petitioner alleges that respondent turned off all running water to the apartment in early November 2020.

Respondents' December 20, 2020 answer denies the harassment claim. The second affirmative defense, however, acknowledges petitioner's water was turned off. Respondents allege that the water had to be turned off because of a leak and odor allegedly emanating from petitioner's apartment. They claim petitioner's refusal to provide access caused her to be without water. The answer claims petitioner has "unclean hands" and urges the court to consider the other tenants "as they suffer from water leaking from petitioner's apartment" and "the inconvenience of living in a smelly water-soaked apartment."

THE TRIAL

Ebony Hibbert

Petitioner testified as follows: she moved into the subject premises in September 2019, pursuant to a lease dated August 15, 2019.[2] She resides on the main level. The landlord's sister [Ingrid] lives below her and the landlord's sister in law lives above.

She is a twenty-five-year-old (25) patient care technician at the Albert Einstein emergency room and a full-time nursing student.

The lease expired on August 31, 2020. The landlord offered a renewal but rescinded the offer when petitioner did not agree to a rent increase and did not agree to pay a share of utility charges.

On August 23, 2020 she received an email from the landlord telling her to vacate the unit by August 31, 2020.[3] She was working, in school, and it was during the peak of the Covid-19 pandemic. She did not move.

On September 30, 2020, the landlord sent a text message informing her the eviction process would start, including garnishment of wages, reporting to credit agencies, and seeking legal fees.

In the beginning of October 2020, her electricity was shut completely off for three (3) days. She had not lost power before. She alerted Gaynor Powell and her sister, Ingrid, who lives downstairs. They told her a technician was coming. She called the police each day and on the third day the police gained access to the basement and turned on the lights.

Petitioner testified she had to shower in the dark, could not charge her cellphone and had to buy flashlights.

After the power was turned back on, the apartment was burglarized on October 5, 2020 and three thousand dollars ($3,000) was stolen.[4] Petitioner called the police and knocked on Ingrid's door. Ingrid laughed and closed the door.

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[2] The lease is in evidence [see NYSCEF Doc No. 25].
[3] The email is in evidence [see NYSCEF Doc No. 27].
[4] A video showing the alleged burglar attempting to gain access to the premises is in evidence.

After the alleged burglary, the landlord left a notice on the front door that she wanted access to petitioner's apartment to make repairs. The October 7, 2020 "Notice to Enter Premises" indicates the landlord intends to access the apartment on October 11 and 12, 2020 9AM to 5PM "for the purposes of inspecting the condition of the premises, identifying and completing selected repairs."[5]

There was nothing wrong in the apartment as of October 7, 2020 and petitioner had not complained of any repairs being needed inside the apartment. She had to work on October 11, a Sunday.

Petitioner installed a camera after the break-in. She was able to see Gaynor Powell, Ingrid [Powell], and a white male at the entrance. The male was attempting to drill the *home's* front entrance lock. Petitioner left work and took a cab home. She was "written up" for leaving work.

Petitioner called the police. She arrived from work and saw the lock was missing. She could not get into her apartment. The police came. They [the landlord] changed the lock and gave a key to petitioner's boyfriend.[6]

Petitioner states she did not ask the landlord to change the lock and did not give consent for the lock being changed. By this time, petitioner thought being in the apartment was "messing up her life."

Thereafter, the landlord posted a second "Notice to Enter Premises" dated October 21, 2020, wherein the landlord indicates she intends to access the premises on October 24, 25 [Saturday and Sunday] and 31 and November 1, 2020 [Saturday and Sunday] from 9AM to 8PM. Petitioner stayed home this time, although there were still no repairs needed inside her apartment, as she did not want a repeat of what happened on October 11. Nobody showed up. Petitioner calculates she lost around $890 dollars in wages by not working those days. She makes twenty-eight dollars ($28) per hour and usually works sixteen (16) hours each weekend day.

On November 9, 2020 [a Monday], petitioner received a text message from Gaynor Powell at 6:59 AM advising that a plumber was going to the apartment [presumably to assess the "very serious plumbing issue" mentioned in a November 8, 2020 text].[7] However, petitioner could not give access most of that day because she was taking an on-line midterm exam and would be penalized if she was not on camera. Despite this, petitioner answered, and Ingrid informed her they needed access for a plumbing issue. When Ingrid allegedly tried to push her way in, petitioner felt threatened and called the police.

After that, there was no water [hot or cold] in the apartment. Petitioner texted the landlord at 4:51 PM on November 9, 2020 that the plumber could access the apartment. The landlord responded by text at 8:51 PM: "As required by law, I notified you via email and text that there is a serious plumbing problem and a technician would be coming by. At this point I am following the directions provided by the police officer that you called today, after you refused to let the technician in. I have already contacted our lawyer to work on getting the judge's order. I

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[5] The October 7, 2020 Notice is in evidence [see NYSCEF DOC. No. 23].
[6] Several videos [Pet Ex. L, M, N and O] in evidence relate to this incident.
[7] These texts are in evidence [see NYSCEF DOC No. 19].

will do nothing, until I get directions from his office."[8] Petitioner was the only person in the building without water.

Petitioner resorted to purchasing water to do things like flushing the toilet. She went to other people's homes, hotels, and work to use bathrooms. She could not cook and had to eat out. Even handwashing became difficult without clean running water. She was spending $300 per week on water. Not being able to shower affected her work [at the ER], was belittling and she became depressed; she had no peace at home at that time.

The water was restored "shortly before Christmas." In the interim, DHPD and DOB [the Department of Buildings] inspected the apartment and both agencies placed violations for lack of water at the fixtures.[9]

On cross-examination, petitioner testified she did not receive the November 9, 2020 text [6:59 AM text] wherein the landlord states a plumber is coming to the apartment, because she had blocked the landlord's texts at that time. She tried to arrange access later in the day after speaking to the landlord's sister [Ingrid], when she showed up during her exam.

Petitioner acknowledged that the door where the lock was changed led to a common area. It was not her apartment door. She acknowledged she had changed the lock to that "outside door" before the events shown in the videos without the landlord's permission.

Regarding the three days without electricity, petitioner acknowledged she did not know who caused the outage but reiterated the landlord did nothing to fix it. The police were able to turn it on once they had access to the basement.

Azanda Mkhwanazi

Ms. Mckwanazi testified as follows: she lives in the apartment above petitioner. Ingrid [Powell] is her sister in law. Ingrid lives in the basement with her two children. Ingrid manages the property when Gaynor Powell is not around.[10]

In October 2020 her lights went off for about two (2) hours. She knew that petitioner's lights were off because the police came and knocked on her door. She told them the "controls" were in the basement. She knew the "controls" were there because she had seen them and had, on occasion, turned them on and off.

She believed petitioner's power was restored three (3) days later because that is what the police told her. She did not lose water service at any time, though she knows petitioner did not have any water for over a month. She knows the water "controls" are in the basement; she has seen them and believes there is a "knob" [that controls the water] to each floor of the house.

On cross-examination, Ms. Mckwanazi testified she is Gaynor Powell's sister in law, though her husband moved out in January 2020.

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[8] *Id.*

[9] Subpoenaed DHPD and DOB records are in evidence. The DHPD notices of violation issued November 12, 2020. The DOB inspection was December 3, 2020 with a violation served December 7, 2020.

[10] In evidence is a "Notice of Authority" dated June 29, 2020, wherein the respondents grant Ingrid Powell the authority to "make changes to the property" as authorized by them.

She acknowledged the lights have gone out in the past when multiple appliances were in use. She used to occupy the main floor and upper floor. Normally she would go to the electrical panel in the basement and turn the power back on, but that was before Ingrid installed a door.

Ingrid Powell-Cerease ("Ingrid")

Ingrid[11] testified as follows: she has lived at the subject building since April 2004. Her mom and sister own the property. She lives in the basement. She enters through a side door. She cannot access her apartment through the front entrance.

The utilities are in the basement, including the electrical panel and water meters. She has control of them. Though she has control of the breaker box, she has no idea how it works.

She became aware of the electrical issue in October 2020 when the police showed up. She called Gaynor Powell who then called Con-Edison. She believes the electricity was restored after that because no one bothered her about it. She denied doing anything to cause petitioner to lose power.

She denied any knowledge of the alleged burglary of petitioner's apartment prior to seeing a video of the suspect. She does not know the person in the video.

On November 6, 2020 she called Ms. Powell about a foul smell coming into the basement apartment. Petitioner did not give access to her apartment, cursed at her and slammed the door. Petitioner called the police. Ingrid told them about a smell and a leak and explained the water would need to be turned off if access was not granted.

Ingrid introduced a video, wherein an NYPD officer informs Ms. Powell that petitioner does not want any repairs, that a key should be provided [for the changed lock] and they should go to court to get petitioner out.

Ingrid acknowledged they turned off the water to solve a leak. Eventually, the landlord obtained access and fixed a loose toilet and the water was turned back on.

On cross-examination, Ingrid acknowledged only petitioner uses the house's front entrance door. She acknowledged she did not personally turn on the electricity. She did not personally tell petitioner the plumber was going to the apartment.

Michael Couch Jr.

Mr. Couch Jr. testified as follows: he has more than twenty years of experience in electrical engineering.[12] He viewed the home's breaker-box and saw it was a 60-amp system. He surmised that the house needs an upgrade to "200 Amps" because there are three (3) apartments. He explained that a "breaker-box" will "trip" to protect against possible fire when there is high electric usage. A layman can flip the breaker back, but it is better that an electrician do it.

On cross-examination, Mr. Couch Jr. acknowledged he was the person shown in videos drilling into the front entrance door. He is a close friend to Gaynor Powell.

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[11] The court refers to Ms. Powell-Cerease by her first name only to avoid confusion.
[12] Mr. Couch Jr. was qualified as an expert in the electrical field.

Gaynor Powell

Gaynor Powell testified as follows: she is an owner of the property. She confirmed three (3) spaces are currently occupied. She authorized Ingrid to deal with repairs at the property.

Ms. Powell testified she tried to gain access to petitioner's apartment in August 2020 with an electrician but was not granted access, despite giving a four (4) day notice.

As to the changed front door lock, Ms. Powell testified the lock on the door had been changed without her permission and a key not provided to her, so she replaced it and immediately gave a key to petitioner, with the assistance of the NYPD.

Ms. Powell does not know the person seen breaking into petitioner's apartment. She was in Georgia at the time.

On November 7, 2020 Ms. Powell received a phone call from Ingrid [about a smell]. She called a plumber who had been to the property before and texted petitioner about access [first for November 8, then changed to November 9]. When petitioner did not provide access, the water [to petitioner's apartment] was turned off.

Ms. Powell acknowledged that petitioner texted her later that day, informing her she could send the plumber. However, she informed petitioner they had to go to court because that is what the police officer told her to do. She is aware that DHPD and DOB served her with violations. DOB, however, dismissed the case.[13]

On cross-examination, Ms. Powell agreed she withdrew a lease renewal offer when petitioner did not agree to pay increases. She also asked petitioner to vacate the property by August 31, 2020.

Ms. Powell disputed that petitioner's electricity was ever "cut" off. She acknowledged that only petitioner's apartment is accessed through the building's front door. She acknowledged she did not inform petitioner prior to changing that door lock.

Ms. Powell was aware that petitioner did not want repairs. She understands that a house-wide upgrade to the electrical system is required, but that is a "major repair."

As to the four (4) weekend dates for access referenced in her October 21, 2020 Notice, Ms. Powell acknowledged she did not send anyone to petitioner's apartment. On re-direct, Ms. Powell testified she did not show up on those access dates because she chose to go the "legal" route.

DISCUSSION

The Law and Its Application

NYC Admin Code § 27-2004(48) defines "harassment", *inter alia*, as "any act or omission by or on behalf of an owner that (i) causes or is intended to cause any person lawfully entitled to occupancy of a dwelling unit to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy and (ii) includes one or more of the following acts or omissions… a. using force against, or making express or implied threats that force will be used

[13] Respondent's exhibit 5 is a copy of the OATH Decision.

against, any person lawfully entitled to occupancy of such dwelling unit; b. repeated interruptions or discontinuances of essential services, or an interruption or discontinuance of an essential service for an extended duration or of such significance as to substantially impair the habitability of such dwelling unit;b-1. an interruption or discontinuance of an essential service that (i) affects such dwelling unit and (ii) occurs in a building where repeated interruptions or discontinuances of essential services have occurred; b-2. repeated failures to correct hazardous or immediately hazardous violations of this code[14] or major or immediately hazardous violations of the New York city construction codes, relating to the dwelling unit or the common areas of the building containing such dwelling unit, within the time required for such corrections;… g. other repeated acts or omissions of such significance as to substantially interfere with or disturb the comfort, repose, peace or quiet of any person lawfully entitled to occupancy of such dwelling unit and that cause or are intended to cause such person to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy…"

Here, the preponderance of the credible evidence, (*see 133 W 145 LLC v Davis*, 63 Misc. 3d 158[A], 2019 NY Slip Op 50850[U] [App Term, 1st Dept 2019]; *3657 Realty Co. LLC v Jones*, 52 AD3d 272, 859 NYS2d 434 [1st Dept 2008]), established that respondents harassed petitioner, as defined in the HMC.

Despite a three-day virtual trial with five witnesses and dozens of exhibits, the *facts* establishing harassment are clear and not seriously in dispute. The court found petitioner mostly credible while respondents' witnesses, particularly Gaynor Powell, were not.

Deprivation of an essential service may constitute harassment. (HMC § 27-2004(48)(2)(b); (*see Garcia v Adams*, 71 Misc. 3d 1205[A] at *6, 2021 NY Slip Op 50283[U] [Civ Ct, Kings County 2021]).

Running water is an essential service. (*see Cartegena v Rhodes 2 LLC*, 2020 WL 554359, at *5, 2020 NY Slip Op 30290[U] [Sup Ct, New York County 2020]; *Department of Housing Preservation & Development of City of New York v Debona*, 101 AD2d 875, 875-876, 476 NYS2d 190 [2nd Dept 1984]). Respondents do not dispute they are required to provide running water to petitioner.

There is no dispute that respondents turned off all running water to petitioner's apartment on or about November 9, 2020 and did not restore it until shortly before Christmas [approximately six (6) weeks]. Petitioner credibly testified that her emotional state and physical well-being were affected. She did not have peace at home; she could not function properly at work.

Respondents, however, argue they had justification for their actions—that there was a leak and odor emanating from petitioner's apartment and causing damage to the basement apartment and that petitioner's refusal to grant access to her apartment necessitated shutting her water off.

Respondents, however, did not produce one iota of evidence to substantiate the self-serving claim there had been a leak of such significance and an odor of such significance that all

[14] Class "B" violations are "hazardous" pursuant to NYC Admin. Code § 27-2115(c)(2); and Class "C" violations are "immediately hazardous" pursuant to NYC Admin. Code § 27-2115(c)(3). (*Notre Dame Leasing LLC v Rosario*, 2 NY3d 459, 463 n.1 [2004]).

running water [only to petitioner's apartment] was shut off. Respondents knew that the Covid-19 pandemic was ongoing, and that petitioner worked in the emergency room at a nearby hospital.

Respondents did not produce a single photograph or video of the alleged leak, much less of a "water-soaked apartment."[15] They did not produce the plumber who allegedly identified and resolved the issue. They did not produce any evidence that they paid a plumber to identify and resolve the issue.

As to the suggestion that *petitioner's* failure to provide access led to the complete loss of her water, the court is unconvinced. When respondents first arrived at the premises with an [alleged] plumber, petitioner had been given, at most, a few hours' notice. The court credits petitioner's testimony that she was taking an on-line exam and could not provide access on November 9, 2020 [at that time]. Critically, petitioner had not requested any repairs and there was no proof submitted that anything was wrong in her apartment at that time. Later in the day, it was petitioner who told respondent the plumber could come.

Thus, even if this court credits respondents' witnesses' testimony, the petitioner refused access to a plumber [on short notice] when there was nothing wrong in petitioner's apartment, but later offered access to the plumber anyway. Respondents' position that they would do nothing and would deal with the issue in court is entirely unreasonable.

The court notes, however, that respondents' witnesses were less than credible, as shown by their self-serving, entirely unsupported, claims about the alleged odor and leak.

Gaynor Powell apparently also referred to petitioner as a squatter to the OATH hearing officer and NYPD officers investigating the alleged burglary.[16] Petitioner is not a squatter. (*see Florgus Realty Corporation v Reynolds*, 187 NYS 188, 189 [App Term, 1st Dept 1921] ["A squatter is one who settles or locates on land without legal permission. The original occupancy having been by permission of the landlord, the tenant here can, under no principle of law, be deemed a squatter."]).

Nor did respondents provide any evidence they had taken the "legal" route. There was no written notice given to petitioner [regarding access to restore the water], although respondents had given multiple written "access letters" to fix non-existent items previously. The only "legal" document the court was made aware of is the "90-Day" termination notice attached to respondents' answer. It is unclear how respondents intended to obtain access to the subject premises to restore water and remove violations [placed by DHPD] by serving this notice.

Respondents did not offer any testimony or evidence of efforts made to obtain access to the subject premises [so that they could restore running water] after November 9, 2020. By that time, DHPD had inspected the premises and issued violations [notices of violations dated November 10, 2020], which respondents acknowledge receiving. The class "C" violations require repair within twenty-four (24) hours and respondents face daily fines in not restoring water, (*see* NYC Admin Code § 27-2115(c)(3)), yet respondents did not make any effort after the DHPD violations were placed to obtain access.

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[15] Answer at par. 31.
[16] See Oath decision and NYPD records in evidence [tracking no. 60698172].

Having caused the condition [and therefore the violation], it is apparent that respondents did nothing to resolve the immediately hazardous conditions.

Consequently, the record established respondents' "repeated failures to correct hazardous or immediately hazardous violations …, relating to the dwelling unit …, within the time required for such corrections. (*see* NYC Admin Code § 27-2004(b-2)).

Must Petitioner Prove Respondents' Intent?

When a tenant or occupant proves a qualifying act or acts or omissions, HMC § 27-2004(48) holds, "that there shall be a rebuttable presumption that such acts or omissions were intended to cause such person to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy, except that such presumption shall not apply to such acts or omissions with respect to a private dwelling, as defined in paragraph six of subdivision a of section 27-2004."

§ 27-2004(6), in turn, defines a private dwelling as "any building or structure designed *and* occupied for residential purposes by not more than two families." [emphasis added]. While the subject building is apparently a legal one-family home,[17] three (3) distinct units are admittedly occupied for residential purposes. As such, the presumption of intent to harass attached. Respondents offered no credible evidence or testimony to rebut this presumption.

Even if the presumption did not attach, the result would not change. Here, the essential service ceased shortly after the lease expired and petitioner stopped paying rent. Based on respondents' causing the condition and then doing nothing to correct the condition, the court determines that respondents' goal was to make petitioner vacate the premises.

Consequently, the court finds that respondents harassed petitioner by not providing running water for six weeks.

Other Allegations of Harassment

As to the other allegations in the petition, the court finds they do not rise to the level of harassment as defined by HMC § 27-2004(48).

Respondents' request that petitioner pay more rent and share in the utility costs cannot constitute harassment. The parties were clearly negotiating a new lease term. When those negotiations apparently failed, respondent did "threaten" petitioner with the legal process. This "threat," occurring post lease, with petitioner in arrears, does not fall within the definitions of harassment.

As to the alleged burglary of petitioner's apartment, there is no evidence that respondents participated in it or had any pre-knowledge of it. This incident does not support a finding of harassment.

The changed lock also cannot support harassment. There is no dispute that *petitioner* installed a new lock on the front entrance door. She did so without the landlord's permission, and she did not provide a copy of the key to respondents. Whatever their motivation, respondents had

[17] DHPD records in evidence reflect the premises are a two story, one-unit building.

the right to install their own lock. Given that a key to the newly installed lock was provided [although it may have taken NYPD intervention], this is not an act of harassment.

The loss of electric power over a three-day span presents a closer call, where these other incidents [outside of the water shut-off] do not. However, the court credits Ms. Mkhwanazi's and Mr. Couch Jr.'s testimony.

There is no indication that respondents caused the breaker-box to trip. While Ingrid's hesitancy to attempt to turn the power back on herself is problematic since she was put in charge or maintenance issues, it is believable. It is also troubling that Ms. Mkhwanazi lost power for two hours, while petitioner went without for three (3) days. However, this issue has not repeated since. In any event, petitioner did not testify that these events caused her to want to vacate the premises or that it affected her in nearly the same way as the complete lack of running water did.

The court notes that the allegations of repeated weekend visits to the apartment, (see HMC § 27-2004(48)(f-4), are not made in the petition and there was no motion made to amend the petition. In any event, respondent did not actually visit the apartment pursuant to the October 21, 2020 Notice.

Penalties

The court finds that respondents have engaged in harassment as defined by HMC § 27-2004(48)(b) and (b-2) as discussed supra.

Upon a finding of harassment, tenants may seek an order from a court restraining an owner from engaging in such conduct. The court is mandated to impose civil penalties of not less than $2,000.00 and not more than $10,000.00 (NYC Admin Code § 27-2115 (m)(2); *see 351-359 East 163rd Street Tenants Assoc. v East 163 LLC*, 70 Misc. 3d 1212[A], *8, 2021 NY Slip Op 50055[U} [Civ Ct, Bronx County 2021]; *Cartagena v Rhodes 2 LLC*, 2020 WL 554359 at *5, 2020 NY Slip Op 30290[U] [Sup Ct, New York County 2020])

Here, the record establishes egregious actions and/or omissions by respondents. As such, civil penalties of $3,000.00 payable to the New York City Commissioner of Finance are appropriate. (*see ABJ Milano v Howell*, 61 Misc. 3d 1037, 1042, 86 NYS3d 389 [Civ Ct, New York County 2018]). This assessment is supported by the record. The failure to provide running water for six weeks during the Covid-19 pandemic cannot be sanctioned by the court. The record leaves no doubt that respondents' actions and omissions have substantially interfered with and disturbed petitioner's comfort, repose, peace and quiet.

As to compensatory damages, Ms. Hibbert is awarded $1,000.00 pursuant to HMC § 27-2115(o). No actual damages were proven. (*see Allen v 219 24th Street LLC*, *supra* at *20, *citing E.J. Brooks Company v Cambridge Security Seals*, 31 NY3d 441, 80 NYS3d 162 [2018]).

As to punitive damages, the court notes that HMC § 27-2115(o) leaves an award of punitive damages to the court's sole discretion. The purpose of assessing punitive damages is to punish the individual wrongdoer and to deter others from engaging in similar conduct. (*Smart Coffee, Inc. v Sprauer*, 2021 NY Slip Op 21004 at *8 [Civ Ct, Queens County 2021] *citing Walker v Sheldon*,10 NY2d 401, 405, 223 NYS2d 488, 491 [1961]). Punitive damages have been awarded when a landlord has failed to adhere to housing code standards. (*see 351-359 East 163rd Street Tenants Assoc. v East 163 LLC*, 70 Misc. 3d 1212[A], *8, *citing Minjak v Randolph*, 140

AD2d 245, 249, 528 NYS2d 554 [1st Dept 1988] ["With respect to this State's strict housing code standards and statutes, made enforceable through civil and criminal sanctions and other statutory remedies, it is within the public interest to deter conduct which undermines those standards when that conduct rises to the level of high moral culpability or indifference to a landlord's civil obligations."]; *Kingsborough Realty Corp v Goldbetter*, 81 Misc. 2d 1054, 1058, 367 NYS2d 916 [Civ Ct, New York County 1975]).

Here, punitive damages are appropriate given respondents' conduct, (*see Allen v 219 24th Street LLC*, *supra* at *21), and its effect on petitioner's life.

As to the amount of punitive damages, they should bear some reasonable relation to the harm done and the flagrancy of the conduct causing it. The record establishes the respondents cut running water to petitioner's apartment and did not restore it for six (6) weeks. Respondents did not provide any evidence this drastic action was legitimately taken or that they undertook to correct the condition in a timely manner. For these reasons, the court awards Ms. Hibbert $3,000.00 as punitive damages.

CONCLUSION

Based on the foregoing, it is

ORDERED, a class "C" violation for harassment is placed at the subject premises by DHPD; and it is further

ORDERED, that respondents are enjoined from engaging in any harassing conduct prohibited by NYC Admin. Code § 27-2005(d) and defined in NYC Admin. Code § 27-2004(a)(48), and it is further

ORDERED, that DHPD is awarded a final judgment in the amount of $3,000.00, which may be enforced as a lien against Block 5005, Lot 20, in the borough of the Bronx, NY; and it is further

ORDERED, that the Court awards Ebony Hibbert, residing in apartment main floor [a/k/a apt. 1], a judgment against respondents, jointly and severally, in the total amount of $4,000.00.

This constitutes the Decision and Order of the court. The court will email copies to counsel.[18]

Dated: May 19, 2021

Bronx, NY

SO ORDERED,

/S/

SHORAB IBRAHIM, JHC

[18] As petitioner did not identify any repairs currently needed at the subject premises, the court does not issue an order to correct as requested in the order to show cause commencing this proceeding.

To: Alberto Gonzalez, Esq.

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&

Delroy Murray, Esq.

Attorney for Respondents

Email: delroymurraypllc@gmail.com

&

DHPD

Attn: Mirta Yurnet-Thomas, Esq,

Email: Yurnetm@hpd.nyc.gov

cc: Emily Veale, Esq.

Email: VealeE@hpd.nyc.gov

NOTICE OF ENTRY

PLEASE take notice that the within is a (*certified*)
true copy of a(n)
duly entered in the office of the clerk of the within
named court on , 2020

Dated,

Yours, etc.,

Attorney for

Office and Post Office Address
MOBILIZATION FOR JUSTICE, INC.
100 William Street, 6th Floor
New York, NY 10038

To

Attorney(s) for

NOTICE OF SETTLEMENT

PLEASE take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on 2021
at
Dated,

Yours, etc.,

Attorney for

Office and Post Office Address
MOBILIZATION FOR JUSTICE, INC.
100 William Street, 6th Floor
New York, NY 10038

To
Attorney(s) for

INDEX NO. 17578/2020

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX: HOUSING PART H

EBONY HIBBERT

Petitioner,

-against-

GAYNOR POWELL, MONIA POWELL

Respondent,

NOTICE OF ENTRY

Alberto Gonzalez, Esq., of counsel to
TIFFANY LISTON, Esq.

Office and Post Office Address
MOBILIZATION FOR JUSTICE, INC.
100 William Street, 6th Floor
New York, NY 10038
(212) 417-3700

To:

Service of a copy of the within
is hereby admitted
Dated,
.....

Attorney(s) for