Powell v Luma Realty Corp. LLC
2021 NY Slip Op 33271(U)
November 19, 2021
Civil Court of the City of New York, Kings County
Docket Number: Index No. 1430/2020
Judge: Jack Stoller
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART Q
-- X
DONNA POWELL,

Petitioner, Index No. 1430/2020

- against -

DECISION/ORDER

LUMA REALTY CORPORATION LLC, and HPD,

Respondents.
-- X
Present: Hon. Jack Stoller
Judge, Housing Court

Donna Powell, the petitioner in this proceeding ("Petitioner"), commenced this proceeding against Luma Realty Corporation LLC and Luma Realty LLC ("Respondents") and the Department of Housing Preservation and Development of the City of New York ("HPD") by a petition dated November 4, 2020 pursuant to N.Y.C. Admin. Code §27-2005(d) on an allegation that Respondents have engaged in harassment regarding Petitioner's tenancy at 1361 Nostrand Avenue, Apt. 2B, Brooklyn, New York ("the subject premises"). Respondents interposed an answer. The Court held a trial of this matter on August 16, 2021, August 23, 2021, October 28, 2021, and November 12, 2021.

The trial record

Petitioner introduced into evidence a history of registrations of the subject premises with the New York State Division of Housing and Community Renewal ("DHCR") pursuant to 9 N.Y.C.R.R. §2528.3. The registrations show that Petitioner is a long-term tenant of the subject premises and protected by the Rent Stabilization Law. The registration for 2015, filed on September 15, 2015 and the registration for 2016, filed on April 28, 2017, both show that

Respondents and Petitioner had a lease with a legal regulated rent of $1,180.50 commencing on June 1, 2014 and expiring on May 31, 2016. The registration does not show anything about a preferential rent. Petitioner also introduced into evidence a lease with a monthly rent of $1,180.50 and no mention of a preferential rent, signed on May 23, 2015, that commenced on June 1, 2015 and expired on May 31, 2017.

The registration for 2017, filed on February 23, 2018, shows a lease between the parties commencing on October 1, 2016 and expiring on September 30, 2017 with a purported preferential rent of $1,180.50 and a purported legal regulated rent of $1,508.94. The registrations for 2018, filed on January 15, 2019, and for 2019, filed on August 9, 2019, both show a lease between the parties commencing on October 1, 2017 and expiring on September 30, 2019 with a purported preferential rent of $1,475.00 and a purported legal regulated rent of $1,539.10. Petitioner introduced that lease into evidence. The registration history, which is dated August 21, 2020, shows no registration for 2020.

Petitioner introduced into evidence a predicate notice that Respondents caused to be served on Petitioner purporting to terminate her tenancy.

Petitioner testified that the case originally started in 2017; that she stopped receiving assistance paying her rent, such that she owed $14,000; that Michael Luma, a principal of Respondent ("the Landlord"), and her said that if she agreed to a rent increase, he would upgrade the subject premises and would not evict her; that Respondents received $285 or $295 in a rent increase; that Respondents received $3,000 in rent to do repairs; that the Landlord said that he would repair a refrigerator, a stove, and floors; that she was friends with the Landlord at the time; that she saw Respondents fix apartments other than the subject premises; that Respondents

raised the rent and received $20,000, $3,000 of which was not owed; that she knows the Landlord's habits; that the Landlord does not like to keep his word; that Respondents offered her a lease that she did not sign; that she called 311 and filed complaints about violations in the subject premises; that when she called 311 in 2018, Respondents gave her a seven-day notice saying that she was committing a nuisance; that the Landlord is tired of her and does not want to be bothered with her; that she makes side deals with Respondents all the time; that Respondents took her to Court for nuisance; that all the tenants keep their personal property in the hallway of the building in which the subject premises is located ("the Building"); that Respondents took Petitioner to court for smoking marijuana even though all tenants in the Building smoke marijuana in the hallway of the Building; that Respondents do not do repairs; that Respondents start work but do not complete it; that Petitioner's mailbox is broken and Respondents did not complete a repair of it; that she had a domestic violence case and got an order of protection against that person; that the Landlord brought her personal details in that hearing; that she agreed to replace rent checks; that the lawyers illegally dropped her case and would not defend her; that she has seen mouse droppings; that the mice eat her clothes; that she gets a leak from upstairs; that Respondents painted the bedroom baseboards red; that she asked for the rest of the red paint; that she painted the walls and bannisters red, but Respondents did not want to paint her living room red; that there are cracks and damages in the subject premises; that her bathroom windows are boarded up; that there was scaffolding at her window; that she saw two men standing in her window; that she has been disrespected and harassed by Respondents; that she was seven months' pregnant when being taken to Court for nuisance; that the scaffolding smells like urine; that construction workers are in front of building and block her entry; that a fire escape is not

connected; that the construction affects her fire egress from the subject premises; that Respondents corrected a condition in the living room door saddle; that construction work leaves debris in the window; that her windows have been blocked by construction; and that the Landlord keeps saying he does not have time or money to do repairs, but he works on other things.

Petitioner introduced into evidence the following violations[1] of the New York City Housing Maintenance Code, as reported by HPD ("the Violations"):

"B" violations in the common areas:

January 2, 2017

§27-2040 adm code provide adequate lighting at or near the outside of the front entranceway of the building and keep same burning from sunset every day to sunrise on the day following 100 watts minimum required, light fixture present.

October 19, 2020

§ 27-2010, 2011, 2012 adm code remove the accumulation of refuse and/or rubbish and maintain in a clean condition the front court.

"B" violations in the subject premises:

September 16, 2015

§ 27-2005 adm code properly repair with similar material the broken or defective ceramic floor tiles in the kitchen located at apt 2b, 2nd story, 2nd apartment from north at east.

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[1] A class "A" violation is "non-hazardous" pursuant to N.Y.C. Admin. Code §27-2115(c)(1); class "B" violation is "hazardous" pursuant to N.Y.C. Admin. Code §27-2115(c)(2); and a class "C" violation is "immediately hazardous" pursuant to N.Y.C. Admin. Code §27-2115(c)(3). Notre Dame Leasing LLC v. Rosario, 2 N.Y.3d 459, 463 n.1 (2004).

August 21, 2018

§ 27-2046.1 hmc: repair or replace the carbon monoxide detecting device(s). missing. located at apt 2b, 2nd story, 2nd apartment from north at east.

April 18, 2019

§ 27-2005 adm code properly repair with similar material the broken or defective ceramic floor tiles in the kitchen located at apt 2b, 2nd story, apartment at south;

§ 27-2005 adm code properly repair the broken or defective inoperative electrical light switch at north wall in the 4th room from east located at apt 2b, 2nd story, apartment at south;

§ 27-2005 adm code properly repair the broken or defective counter balance at lower sash window 1st from south at west wall in the 5th room from east located at apt 2b, 2nd story, apartment at south.

May 20, 2019

§ 27-2046.1 hmc: repair or replace the carbon monoxide detecting device(s). defective in the entire apartment located at apt 2b, 2nd story, 2nd apartment from north at east.

September 14, 2019

§ 27-2046.1 hmc: repair or replace the carbon monoxide detecting device(s). defective in the entire apartment located at apt 2b, 2nd story, 2nd apartment from north at east;

§ 27-2005 adm code properly repair the broken or defective mail box for apt 2b at lobby, 1st story;

§ 27-2005, 2007 adm code remove all encumbrances consisting of bicycle and houshold items at public hall, 1st story;

§ 27-2005 adm code properly repair the broken or defective .. lower sash window counter

balance at south in the 5th room from east located at apt 2b, 2nd story, 2nd apartment from north at east.

October 13, 2020

§ 27-2005 adm code properly repair with similar material the broken or defective ceramic floor tiles in the kitchen located at apt 2b, 2nd story, 1st apartment from north at east;

§ 27-2005 adm code properly repair the broken or defective, mortise lock on apartment door in the entrance located at apt 2b, 2nd story, 1st apartment from north at east;

§ 27-2046.1 hmc: repair or replace the carbon monoxide detecting device(s), missing at entire apartment, 2nd story, apartment;

§ 27-2045 adm code repair or replace the smoke detector ,missing at entire apartment, 2nd story, apartment.

November 9, 2020

§ 27-2005 adm code properly repair the broken or defective counter balance lower sash east wall window in the 3rd room from east located at apt 2b, 2nd story, 2nd apartment from north at east;

§ 27-2005, 2007 adm code and dept. rules and regulations. remove the encumbrance obstructing egress from fire escapes bicyicle and flower pots presently located at balcony at rear , 2nd story;

§ 27-2005, 2007 adm code fire egress defective. remove the obstruction in fireproof passageway wood panel erected at south due to heavy construction;

§ 27-2005 adm code & 309 m/d law abate the nuisance consisting of building material blocking access to basement at front areaway.

January 19, 2021

§ 27-2005 adm code properly repair the broken or defective lower window sash counter balance at west wall in the 5th room from east located at apt 2b, 2nd story, 2nd apartment from north at east;

§ 27-2005 adm code properly repair the broken or defective lower window sash counter balance at east wall in the kitchen located at apt 2b, 2nd story, 2nd apartment from north at east;

§ 27-2005 adm code properly repair with similar material the broken or defective ceramic tiles floor in the kitchen located at apt 2b, 2nd story, 2nd apartment from north at east

"C" violations placed in the subject premises:

February 20, 2021

§ 27-2005 adm code properly repair with similar material the broken or defective wood subfloor in the private hallway located at apt 2b, 2nd story, 2nd apartment from north at east;

§ 27-2005 adm code properly repair with similar material the broken or defective wood flooring in the 3rd room from east located at apt 2b, 2nd story, 2nd apartment from north at east;

§ 27-2005 adm code properly repair with similar material the broken or defective wood flooring in the 5th room from east located at apt 2b, 2nd story, 2nd apartment from north at east;

§ 27-2026, 2027 hmc: properly repair the source and abate the evidence of a water leak at the east window frame in the 3rd room from east located at apt 2b, 2nd story, 2nd apartment from north at east.

April 18, 2019

hmc adm code: § 27-2017.4 abate the infestation consisting of roaches in the entire apartment located at apt 2b, 2nd story, apartment at south;

hmc adm code: § 27-2017.4 abate the infestation consisting of mice in the entire apartment located at apt 2b, 2nd story, apartment at south.

October 13, 2020

hmc adm code: § 27-2017.4 abate the infestation consisting of mice at entire apartment, 2nd story, apartment;

hmc adm code: § 27-2017.4 abate the infestation consisting of roaches at entire apartment, 2nd story, apartment.

November 9, 2020

hmc adm code: § 27-2017.4 abate the infestation consisting of mice in the entire apartment located at apt 2b, 2nd story, 2nd apartment from north at east;

§ 27-2005 adm code & 309 m/d law abate the nuisance consisting of hot water exceeds the maximum allowable operating temperature of 130f (135f found) in the kitchen located at apt 2b, 2nd story, 2nd apartment from north at east.

January 19, 2021

hmc adm code: § 27-2017.4 abate the infestation consisting of mice in the entire apartment located at apt 2b, 2nd story, 2nd apartment from north at east.

February 20, 2021

§ 27-2005, 2007 adm code arrange and make self-closing the doors in the entrance located at apt 2b, 2nd story, 2nd apartment from north at east;

§ 27-2005 adm code properly repair the broken or defective lower sash counterbalance at east window in the kitchen located at apt 2b, 2nd story, 2nd apartment from north at east;

hmc adm code: § 27-2017.4 abate the infestation consisting of mice in the entire

apartment located at apt 2b, 2nd story, 2nd apartment from north at east;

§ 27-2005 adm code properly repair the broken or defective lower sash counterbalance at the 2nd window from south at west in the 5th room from east located at apt 2b, 2nd story, 2nd apartment from north at east;

§ 27-2005, 2007 adm code arrange and make self-closing the doors , door at east in the entrance located at apt 2b, 2nd story, 2nd apartment from north at east;

§ 27-2005 adm code replace with new the missing / uncapped radiator steam pipe at south wall in the 3rd room from east located at apt 2b, 2nd story, 2nd apartment from north at east.

Petitioner introduced into evidence photographs of the following: a hole in saddle in the bedroom door; of other tenants' personal property in the common areas of the Building; of scaffolding; of a mouse hole in her daughters' bedroom; of a light fixture that she testified that Respondents do not fix; of a condition in a saddle of the living room door; of the intercom; of a crack in doors from the construction work; of an area beneath a kitchen window, of the Building entrance and scaffolding, of a ladder on a roof of the Building, of workers in front of the Building; and of scaffolding outside Petitioner's bedroom, taken in July of 2021

Petitioner testified on cross-examination that her rent was $1,180 in a lease; that her rent should still be $1,180 but she made a deal with Respondents; that Respondents did not keep their end of it; that by a "deal" it was not a written agreement; that she made a threat about work going on a Saturday and that she would "let it rain"; that she did not pour water downstairs as alleged in the notice; that there was heat this winter; that she did not get heat before this winter; that she only wrote about heat, a broken front door, broken windows, and water leak in the petition

because the app she used only allowed for four entries; that HPD fixed the front door to the living room; that she gives notice to Respondents by talking in person; that she did not send Respondents a letter; that she used to text the Landlord about repairs; that they were friends; that they fell out because he was not doing repairs; that her goal from starting this case was to hit the Landlord where it hurt, in the Landlord's pocket and by jail time, and to get a livable apartment; that she left the subject premises because of a breathing problem with the construction; that in 2014 the Court ordered Respondents to repair the floors; that Respondents removed the baseboards; that mice that Respondents had previously gotten rid of later returned to the subject premises; that Respondents fixed the bathroom but it was not the best job and a leak came down again; that an access date was set up; that the workers did not finish the work; that there were times when she did not give access, when she cannot deal with workers who start work but do not finish it; that the Landlord said that Petitioenr was supposed to get a new stove and a refrigerator and the floors were not fixed; and that besides the bathroom, Respondents did not complete the other repairs.

Petitioner testified on redirect examination that the Landlord redid the entire bathroom; that the Landlord fixed the violation, but if the Landlord does not maintain it, it has to be done again; that the Landlord has repaired a wall more than seven times; that it is fixed in three different places; that the bathroom ceiling is still coming down; that the neighbor blames her for it; that the Landlord does shoddy work; that his workers are incompetent; that when they had an agreement to increase the rent, the Landlord agreed to give her a new stove and a black refrigerator that dispenses water; that he gave Petitioner brown and black kitchen cabinets and did not do the floors; that one year the Landlord increased her rent by $50 when she was already

under contract with him; that he overcharged her; that he owed her $8,000 in rent credits because she was a tenant at a different apartment; that the last work that the Landlord did involved breaking up floors, putting down cement, and removing baseboards; that he did not complete the work, and that is the reason why the same violations persist from 2014 until the present; that her lawyers did shoddy work without assuring that work got done; that the Landlord singled her out when he knew that other people put things in the hallway; and that the workers on scaffolding saw her naked.

Petitioner testified on recross examination that the Landlord does not own the next door property; that the workers are not the Landlord's workers; that the Landlord gave them permission to loiter on the property, which she knows because the Landlord has not responded to her complaints and because their equipment is stored on the roof of the Building; that the workers are there to do their job but in that process they have become a part of the harassment and that they are an inconvenience; that she was not notified about the work, which is a form of harassment; that she is inconvenienced in that she smells urine and cigarettes and in that she has to pass through a group of men to get to her house; and that they block her entry into the Building.

The Landlord testified on Petitioner's case that Petitioner's rent went up because a preferential rent expired; that he remembered agreeing to provide kitchen cabinet but he did not promise to provide a refrigerator; that Petitioner got a new refrigerator but he never promised her a refrigerator with ice and water; that a tenant underneath her complained about her purposely dropping water; that he thought that the owners next door gave notice of construction; that those owners are the ones who did the construction work, not him; and that workers did not return

because she denied access.

The Landlord testified on cross-examination that the City stopped paying; that he started a nonpayment proceeding against her; and that he charged the legal regulated rent.

Princess Mennen ("Petitioner's daughter") testified that she lives in the subject premises; that she has not had a good experience in recent years because the Landlord was originally good but things started to turn; that her neighbor upstairs dropped urine on her; that there are rodents in the subject premises; that a rat came into the subject premises from the scaffolding; that mice ate her clothes; that she cannot eat cereal because there might be a roach there; that she cannot go into certain rooms because she did not have privacy in her room or the bathroom and she had to keep the windows closed; that the workers work at 7 a.m.; that workers loiter in front of the building and block access; that the workers litter in the stairs; that the workers play loud music and leave cigarette butts around; that she texted the Landlord about workers seeing her naked; that after the Landlord fixes the ceiling the problem recurs; that inside the kitchen the Landlord gave them cabinets; that the cabinets are backward; that they do not open opposite of each other; that there was a roach inside the refrigerator on the morning of her testimony; that there is no light in her bedroom; that she notified the Landlord's secretary; that she has a small lamp; that she slipped on the stairs this winter because it was not salted and she broke a speaker in her phone and hurt herself; that she complained to the Landlord; that the Landlord said he would address the situation; that a neighbor's niece stole her sneakers; that the Landlord asked her to give him a chance, unlike Petitioner; that the Landlord said he would replace them but he never did; and that one of his workers broke a dresser of theirs.

Petitioner's daughter testified on cross-examination that she does not tell Respondents

about repairs; that she speaks to Petitioner about it; that Respondents addressed the ceiling leak regarding the urine although the problem recurred; that Respondents sent someone into the subject premises to do work; that the workers do a shoddy job; that the Landlord did not check on the quality of work that was done; that the cabinet door handles do not work; that water leaks and collects in the refrigerator; and that the workers on the scaffolding were not Petitioner's workers.

Petitioner's daughter testified on redirect examination that workers saw her naked three times; that the locks on the windows do not work; and that she does not have guests because of the condition.

The Landlord testified on Respondents' case that Petitioner moved into the subject premises in 2008; that their relationship is hard at times; that he tries to address issues in the subject premises; that if things are not done the way that Petitioner wants it done it is hard for him and his workers; that she has not consistently paid rent; that Petitioner texts him about repairs or Petitioner lets his assistant know or he finds out from HPD before Petitioner tells him; that he is familiar with a nuisance holdover proceeding; that he started the case because tenants in the Building were complaining about water being thrown down, noise, and the smell of marijuana; and that Petitioner texted him that she was going to throw water downstairs.

Respondents introduced into evidence the petition of a nuisance holdover proceeding, Luma Realty LLC v. Powell, Index # L/T 86139/19 (Civ. Ct. Kings Co.). Respondents introduced into evidence a text that Petitioner sent the Landlord on December 15, 2018, saying "I am sending water downstairs every hour that they are there, two pots of water next hour four". The Landlord testified that the tenant in apartment below is named Marie Mersey and that she

provided a written statement about that.

The Landlord testified on cross-examination that he took Petitioner to Court because she was an issue to some of the tenants in the building, including the woman who lived downstairs from her; that he did not see Petitioner pour water; that he and his attorney decided not to pursue the case; that there were access dates to do work in the holdover case; that he did the repairs; that he had an exterminator come to the subject premises; that he did not send a specialized deep-cleaning worker; that he painted the subject premises; that to his knowledge it was completed until Petitioner stopped him from doing the work; that he was aware that construction next to the Building caused walls to shift and crack; that he did not call if he received a request to pay for paint that Petitioner had spent money on; that he does not know about an intercom; that he does not have documentation that Petitioner refused access; that Petitioner said that a light fixture did not work; that he knew that Petitioner had issues with a refrigerator; that he called a warranty company about the refrigerator; that it took some time to fix the refrigerator; that he knew that Petitioner complained about electrical problems; that he has heard Petitioner complain about a water leak from a tenant upstairs from the subject premises; that Petitioner's kitchen cabinets are black and brown; that he bought a black cabinet for Petitioner; that he did not agree to give Petitioner a full set of kitchen cabinets; that he cannot remember the last time that the stove that he owned was in the subject premises; that he does not remember what happened to the stove that was originally in the subject premises; that he remembers that Petitioner rejected a replacement stove; that Petitioner removed the stove from the subject premises; that the stove in the subject premises belongs to Petitioner; that it is not unreasonable for Petitioner to request a new stove from him; that Petitioner does not have a stove because Petitioner did not allow him to

bring a stove upstairs because he had to finish the floors first; that there was a rent increase because of new appliances; that Petitioner does not let work get done when things are not done to Petitioner's liking; that in 2017 he received a check from the city for back rent in an excess of $20,000; that he has no problem doing repairs; that he does not know about a violation for a defective fire escape; that he does not need access to the subject premises to fix a mailbox; that there is nothing wrong with the garbage cans; that he does not need access to the subject premises to maintain the public area of the Building; that Petitioner has a right to well-maintained and clean hallways; that he was not aware of damage in her clothes and furniture from mice; that he does not remember reimbursing her for that damage; that he remembers fixing a drawer; that he was aware of a mouse infestation; that he hired an exterminator to exterminate for mice; that he did not give Petitioner money to address damage resulting from a rodent infestation; that Petitioner did not let him complete work on the floors because he did not have a stove; that when Petitioner complains that the work was not properly done he does not follow up to look at the work; that he recalls saying to Petitioner, "let me eat first" before taking care of her issues; and that he did not know if Petitioner had the right to know about the construction of a building next door to the subject premises.

The Landlord testified on redirect examination that there were court-appointed access days; that they were supposed to work on the floors first; that the floors were not completed on the first day, so that when they came to work on the floors on the second day, Petitioner would not let them in because she did not see a stove with them; that this sequence of events was after the commencement of this case and by access dates set by this case; that he started work on the kitchen; that he leveled out the cement on the floor so that they could lay the tiles; that he does

not recall any time that he reimbursed Petitioner for damages for repairs; that he fixed a damaged drawer for Petitioner; that he discontinued the holdover case because he could not get tenants to testify in Court; and that the discontinuance was by a stipulation according to which Petitioner agreed not to perpetuate a nuisance.

Respondents introduced into evidence a stipulation dated October 8, 2020, discontinuing the holdover proceeding without prejudice to claims arising after January of 2018 and providing that Respondent would cooperate in the reissuance of checks from the Human Resources Administration (“HRA”).

The Landlord testified on recross examination that he did not notify Petitioner of rent arrears.

Angus James (“the Handyman”) testified that he works for the Landlord; that he has been working with the Landlord for a little over three years; that he does maintenance in the subject premises; that he knows the subject premises; that Petitioner is the tenant of the subject premises; that he has known her for three years; that things were going good but then Petitioner would not want him to come to the subject premises sometimes; that he has done repairs in the subject premises; that he did her bathroom; that he painted; that that they started doing the floor; that Petitioner would not let him back in to complete the work on the floor; that they took care of a leak; that they redid the bathroom; that he gave her a new tub, toilet, sink, and tiles; that they did not renovate the bathrooms in every apartment in the Building; that they did that because the tub was in a bad condition; that they removed some tiles; that Petitioner would not let them finish the work; that they were only going to replace tiles over the tub, not the whole bathroom; that they ended up doing the whole bathroom because the tiles were broken; that they did painting and

plastering in the kitchen; that in 2021 they replaced broken floor tiles in the kitchen; that he did not get access to the subject premises to complete the work; that Petitioner said she would not let them in without a new stove; that Petitioner refused him access a few times in the past on dates that he does not remember; that he remembers one time that they went there and she refused access; that sometimes she was not there; that appointments were cancelled; that he does the same level of repairs for every tenant; that he has never refused to do work for Petitioner just because it is Petitioner; that he goes to the subject premises every time that they ask him to; that he has no knowledge of Respondent targeting Petitioner; and that they installed tiles and painted the kitchen and the bathroom.

The Handyman testified on cross-examination that he does not feel unsafe when he does repairs in the subject premises; that Petitioner did not disrespect him except for one time; that the intercom and the wall cracking are reasonable to ask about; that Petitioner's request for specific paint colors was not reasonable; that he painted the kitchen yellow; that the Landlord bought yellow paint for the kitchen; that he observed cracks in the walls and he saw green, red, and yellow colors; that it did not look like Petitioner caused the cracks in the wall; that a co-worker repaired an intercom; that he always followed through with Petitioner on her plans; that Petitioner said that she did not want them coming to the subject premises because of COVID; that he fixed a leak in the subject premises earlier in the year; that Respondents' secretary, Ms. Madeline, gave him the instruction to do that; that he is not aware of a leak in the subject premises currently; and that if a tenant called Ms. Madeline, he would come.

The Landlord testified on Petitioner's rebuttal case that when tenants call to complain, they speak to his assistant; that his assistant does not have to notify him to get repairs; and that

his assistant can directly notify the Handyman herself.

Petitioner testified on her rebuttal case that in 2015 Respondents received $20,000 because he said that he would give her new appliances and upgrade the subject premises; that Respondents collected the money but did not do the repairs; that when they came to repair she did not know that they were coming; that at times she became frustrated and said get out of the subject premises; and that she would wait for the Court to give Respondents access dates.

Petitioner introduced into evidence texts of photos between her and Respondents' secretary from December of 2020 showing photographs of conditions in need of repair, and the following texts to her attorney: one dated January 8, 2021 saying that workers came to the subject premises and will return; one dated January 20, 2021 saying that she wants written notification written schedule of work; and a contemporaneous text dated February 10, 2021 complaining about workers not showing up on access dates.

Petitioner testified on cross-examination that there was a nonpayment proceeding; that she had an attorney in that case; that an increase in rent was conditioned on repairs and improvements; that the agreement was not in writing, but was made orally between the Landlord and her; that she did not let her attorneys know about it; that the only evidence of that was that the Landlord gave her a black refrigerator; and that her attorneys knew that the rent was being increased.

Discussion

In her harassment petition and at trial, Petitioner asserted that she had an agreement or understanding with the Landlord that he could raise her rent if he made improvements in the subject premises, which is possible for an existing tenant in a Rent-Stabilized apartment if the

agreement to do so is in writing. 9 N.Y.C.R.R. §2522.4(a)(1). The Landlord did not dispute that Petitioner's rent increased, but characterized the rent increase in his testimony as the expiration of a preferential rent.

Where a landlord and a tenant agree that the tenant's rent will be less than the legal regulated rent that the tenant has to pay, that is called a "preferential rent." 9 N.Y.C.R.R. §2521.2(a). Before June 24, 2019, the Rent Stabilization Law permitted a landlord to take a preferential rent away from a tenant on a lease renewal. N.Y.C. Admin. Code §26-511(c)(14),[2] 764 Madison Ave. LLC v. Risse, 17 Misc.3d 330, 333 (Civ. Ct. N.Y. Co. 2007). While the Landlord claims to have done that here, the leases in the record tell a different story. Petitioner's two-year lease commencing on June 1, 2015 shows that her monthly rent is $1,180.50 with no mention that it is a preferential rent. As the lease did not characterize the rent of $1,180.50 as a preferential rent, $1,180.50 was the legal regulated rent, not a preferential rent. Matter of 10th St. Assocs., LLC v. N.Y. State Div. of Hous. & Cmty. Renewal, 110 A.D.3d 605, 605 (1st Dept. 2013)(if there was no mention of a preferential rent in a prior lease, a landlord could not increase a preferential rent to a purportedly "legal regulated rent" upon a renewal of the lease). Nevertheless, the renewal lease that followed, a two-year lease commencing on October 1, 2017, purports that the rent of $1,180.50 was a "preferential rent," with the "legal regulated rent" being $1,508.94, upon which Respondents then proceeded to increase rents more than they would have been allowed to had they correctly used $1,180.50 as the baseline for rent increases.

In short, the objective evidence in the record disproves the Landlord's testimony that

[2] The amendment of the statute of June 24, 2019 deprived landlords of this ability to remove a preferential rent.

Petitioner's rent increased because of an expiration of a preferential rent, which compels the conclusion that either the Landlord misled Petitioner as to whether her rent was a preferential rent or that Petitioner's testimony that the Landlord in effect induced her to consent to a rent increase that was more than legally permitted was accurate.

N.Y.C. Admin. Code §27-2004(a)(48) defines "harassment" as, *inter alia*, any act by an owner that causes or is intended to cause any tenant to surrender rights and further provides that such an act gives rise to a rebuttable presumption that a landlord intended to cause a tenant to surrender rights by providing false or misleading information relating to the occupancy of the premises, N.Y.C. Admin. Code §27-2004(a)(48)(a-1), or other "acts … [that] substantially interfere with or disturb the comfort, repose, peace or quiet of any [tenant] and that cause or are intended to cause such [tenant] to .surrender or waive any rights in relation to such occupancy." N.Y.C. Admin. Code §27-2004(a)(48)(g). As shown above, the Landlord's mischaracterization of the prior legal regulated rent as a preferential rent was false and misleading information that caused Petitioner to surrender rights, to the extent that she signed a lease with a rent increase greater than legally allowed. While a harassment proceeding is not a rent overcharge cause of action, such conduct amounts to harassment. Hilltop 161 LLC v. Philbert, 62 Misc.3d 1212(A) (Civ. Ct. N.Y. Co. 2019)(a landlord engaged in harassment, i.e., an ongoing course of conduct meant to interfere with or disturb the comfort, repose, peace or quiet of a tenant and intending to deprive the tenant of her rights as a rent-stabilized tenant of the subject premises when the landlord, *inter alia*, attempted to have the tenant sign an agreement for an individual apartment improvement rent increase for repairs that the landlord was obligated to perform). Cf. Otero v. Ahmed, 2016 N.Y.L.J. LEXIS 5015, *11 (Civ. Ct. Queens Co.)(a landlord was found to have

harassed a tenant when the landlord failed to furnish the tenant with a fully executed renewal lease as ordered by DHCR and failed to credit the tenant petitioner for her overcharge).

Conduct that also gives rise to a finding of harassment includes a repeated failure to correct "B" and "C" violations. N.Y.C. Admin. Code §27-2004(a)(48)(b-2). In addition to the persistence of "B" and "C" violations noted above, the repeated findings by HPD of "B" and "C" violations for the same conditions over and over again demonstrate Respondents' repeated failure to correct, as follows: HPD placed "B" violations for defective ceramic floor tiles in the kitchen on September 16, 2015, April 18, 2019, October 13, 2020, and January 19, 2021; for a carbon monoxide detector on August 21, 2018, May 20, 2019, September 14, 2019, and October 13, 2020; and for a defective counter balance at lower sash window 1st from south at west wall in the 5th room from east on April 18, 2019, September 14, 2019, and January 19, 2021; and HPD placed "C" violations for roaches on April 18, 2019 and October 13, 2020 and mice on April 18, 2019, October 13, 2020, November 9, 2020, January 19, 2021, and February 20, 2021.

Respondents' witnesses testified that Petitioner did not give them access which, if true, could rebut the presumption that Respondents' repeated failure to correct violations amounted to harassment. Garcia v. Adams, 71 Misc.3d 1205(A)(Civ. Ct. Kings Co. 2021). However, the Landlord testified that he did repairs on access dates and that there was a rent increase because of new appliances. The Handyman testified that he has done repairs in the subject premises, to wit, that he redid Petitioner's bathroom, giving her a new tub, toilet, sink, and tiles; that he painted; that he took care of a leak; and that he painted and plastered the kitchen and replaced broken floor tiles there. All of this testimony adduced *on Respondents' case* that compels the conclusion that Petitioner gave access to Respondents.

The record does contain evidence that there were instances where Petitioner denied access to Respondents. However, individual instances of a denial of access may not amount to a colorable defense for a landlord if a tenant has otherwise provided a landlord adequate access to correct violations. Cf. Food First HDFC Inc. v. Turner, 2021 N.Y. Slip Op. 31128(U)(Civ. Ct. Kings Co.)(despite a trial record that showed an instance where a tenant did not let a worker into her apartment, the Court found that insufficient to prove a defense of a landlord given that she had provided access on other occasions). Denial of access is in the nature of an affirmative defense, Id., Food First HDFC Inc. v. Turner, 69 Misc.3d 1202(A)(Civ. Ct. Kings Co, 2020), and as their affirmative defense, Respondents bear the burden of proving the denial of access. Manion v. Pan Am. World Airways, Inc., 55 N.Y.2d 398, 405 (1982), Brignoli v. Balch, Hardy & Scheinman, Inc., 178 A.D.2d 290 (1st Dept. 1991). The record documented above of numerous repairs Respondents effectuated in the subject premises shows that Respondents have not proven by a preponderance of the evidence that Petitioner's denial of access rose to a level that constitutes a defense to Petitioner's causes of action.

Petitioner argues that the holdover proceeding amounted to harassment. However, even assuming *arguendo* that the holdover proceeding was frivolous – a proposition without sufficient support in the record – a single frivolous summary proceeding is insufficient to constitute harassment, as the statute requires that "repeated" baseless or frivolous court proceedings constitute harassment. Khazanov v. 2800 Coyle St. Owners Corp., 2015 N.Y. Slip Op. 31437(U), ¶¶ 8-9 (S. Ct. Kings Co.)(Toussaint, J.), Martinez v. Pinnacle Grp., 34 Misc.3d 131(A)(App. Term 1st Dept. 2011).

Petitioner also argues that the conduct of the construction workers amounts to

harassment. However, Petitioner has not established that that the construction workers have any connection to Respondents.

Be that as it may, for the reasons stated above, Petitioner has proven that Respondents engaged in harassment because of the manipulation of her rent from a legal regulated rent to a preferential rent, particularly to the extent that the Landlord premised the rent increase on a promise to make improvements in the subject premises, and because of Respondents' repeated failure to correct "B" and "C" violations. Tenants who prove harassment may obtain a placement of a housing maintenance code violation, an injunction restraining a landlord from engaging in such conduct, civil penalties payable to the New York City Commissioner of Finance not less than $2,000 nor more than $10,000, N.Y.C. Admin. Code §27-2115(m)(2), punitive damages, attorneys' fees, and compensatory damages. N.Y.C. Admin. Code §27-2115(o).

Respondents' conduct has not risen to the level demonstrated in other contexts where the Court has awarded punitive damages. Allen v. 219 24th St. LLC, 67 Misc.3d 1212(A)(Civ. Ct. N.Y. Co. 2020), Caban v. Silver, 2019 N.Y.L.J. LEXIS 458, *17 (Civ. Ct. Kings Co.). The Court therefore does not award punitive damages.

Petitioner was pro se throughout this proceeding. Accordingly, the Court does not award attorneys' fees. Main St. Building Partnership v. Hernandez, 17 Misc.3d 206, 207 (Dist. Ct. Nassau Co. 2007), Trustees of Columbia University in New York City v. Vargas, N.Y.L.J. Jan. 9, 2002 at 19:2 (Civ. Ct. N.Y. Co.).

The Court interprets "compensatory damages" to be akin to a rent abatement. T & G Realty Co. v. Hawthorn, 64 Misc.3d 1214(A)(Civ. Ct. N.Y. Co. 2019). The measure of damages

for breach of the warranty of habitability is the difference between the rent reserved under the lease and the value of the premises during the period of the breach. Park West Management Corp. v. Mitchell, 47 N.Y.2d 316, 329, *cert. denied*, 444 U.S. 992 (1979), Elkman v. Southgate Owners Corp., 233 A.D.2d 104, 105 (1st Dept. 1996). The leases in evidence therefore provide the baseline upon which to calculate a rent abatement. Even though the parties did not execute a renewal lease after the expiration of Petitioner's most recent lease, as a rent-stabilized tenant, Petitioner's tenancy continues at the same monthly rent as that in the prior lease. NYSANDY12 CBP7 LLC v. Negron, 64 Misc.3d 1238(A)(Civ. Ct. Bronx Co. 2019), *citing* 9 N.Y.C.R.R. 2523.5(d), FAV 45 LLC v. McBain, 42 Misc.3d 1231(A)(Civ. Ct. N.Y. Co. 2014). Accordingly, Petitioner's rent was $1,180.50 from June of 2015 through September of 2017 and $1,475.00 from October of 2017 through the present. The Court uses the extant Violations in evidence as the basis for its award of a rent abatement, in particular as the persistence of the Violations in the record at HPD compels the conclusion that Respondents have not certified the violation corrected, N.Y.C. Admin. Code §27-2115(f)(7), and as Respondents had not otherwise proven that they corrected the Violations, except as noted below in specific circumstances.

If there is one condition that the evidence shows that Petitioner denied access, it is the floors. Accordingly, the Court will not award a rent abatement for the floors.

The Violations show a defective carbon monoxide detector as of August of 2018, and a defective smoke detector as of October of 2020 which together diminish the habitability of the subject premises by one percent. Petitioner's aggregate rent liability from September of 2018, the month after the violation was placed, through August of 2021, the month that the Court received the Violations into evidence, was $53,100.00. One percent of $53,100.00 is $531.00.

The Violations show a defective inoperative electrical light switch as of April 18, 2019, which diminishes the habitability of the subject premises by one percent. Petitioner's aggregate rent liability from May of 2019, the month after the violation was placed, through August of 2021, the month that the Court received the Violations into evidence, was $41,300.00. One percent of $41,300.00 is $413.00.

The Violations show a broken or defective counter balance at three lower sash windows, as of April 18, 2019, which together diminish the habitability of the subject premises by six percent. Petitioner's aggregate rent liability from May of 2019, the month after the violation was placed, through August of 2021, the month that the Court received the Violations into evidence, was $41,300.00. Six percent of $41,300.00 is $2,478.00.

The Violations show a broken or defective mailbox as of April 18, 2019, which diminishes the habitability of the subject premises by five percent. Petitioner's aggregate rent liability from May of 2019, the month after the violation was placed, through August of 2021, the month that the Court received the Violations into evidence, was $41,300.00. Five percent of $41,300.00 is $8,260.00.

The Violations show a defective mortise lock and a defective self-closing door as of October 13, 2020, which diminishes the habitability of the subject premises by three percent. Petitioner's aggregate rent liability from November of 2020, the month after the violation was placed, through August of 2021, the month that the Court received the Violations into evidence, was $14,750.00. Three percent of $14,750.00 is $442.50.

The Violations show immediately hazardous infestations of both roaches and mice, both as of April 18, 2019. Similar conditions have warranted rent abatements ranging from 15%,

Hillside Place, LLC v. Lewis, 29 Misc.3d 139(A)(App. Term 2nd Dept. 2010), to 40%. 501 N.Y. LLC v. Anekwe, 14 Misc.3d 129(A)(App. Term 2nd Dept. 2006). Two factors that aggravate the breach of the warranty of habitability in this matter are the combination of rodents *and* roaches, and the unrebutted graphic descriptions about life with immediately hazardous vermin conditions from Petitioner and Petitioner's daughter. On the facts of this case, the vermin infestation has diminished the habitability of the subject premises by twenty-five percent. Petitioner's aggregate rent liability from May of 2019, the month after the violation was placed, through August of 2021, the month that the Court received the Violations into evidence, was $41,300.00. Twenty-five percent of $41,300.00 is $10,325.00.

The Violations show excessively hot water as of November 9, 2020. This condition has diminished the habitability of the subject premises by two percent, particularly as hot water can be turned down. Petitioner's aggregate rent liability from December of 2020, the month after the violation was placed, through August of 2021, the month that the Court received the Violations into evidence, was $13,275.00. Twenty-five percent of $13,275.00 is $265.50.

The Violations show a missing radiator steam pipe as of February 20, 2021. This condition has diminished the habitability of the subject premises by two percent. Petitioner's aggregate rent liability from March of 2021, the month after the violation was placed, through August of 2021, the month that the Court received the Violations into evidence, was $8,850.00. Two percent of $8,850.00 is $177.00.

The total amount of rent abatements the Court awards is $22,892.00. The record does not show whether or not Petitioner owes Respondents any rent arrears. This award is without prejudice to Respondents' cause of action for nonpayment of rent, if any such cause exists.

Although the Court found that Respondents' conduct regarding the preferential rent comprised a part of the finding of harassment, compensatory damages as such essentially looks like a rent overcharge award, which presents its own specialized set of remedies and defenses. Accordingly, the Court does not award any damages of this nature, although this order is without prejudice to the remedies and defenses of the parties as to rent overcharge in the appropriate forum. Furthermore, to the extent that the Court shall not award such damages, and what the Court is awarding in realty is a rent abatement, the Court awards the minimum damages in civil penalties of $2,000.00.

Accordingly, it is

ORDERED that the Court makes a finding that Respondents have engaged in harassment of Petitioner in violation of N.Y.C. Admin. Code §27-2005(d), and it is further

ORDERED that HPD place a "C" violation for harassment on the subject premises, and it is further

ORDERED that the Court enjoins Respondents from harassment of Petitioner, and it is further

ORDERED that the Court awards Petitioner a judgment in the amount of $22,892.00 as against Respondents, jointly and severally, without prejudice to any cause of action that Respondents have against Petitioner regarding nonpayment of rent, if any exists, and without prejudice to any causes of action and/or defenses of either party related to the legality of Petitioner's rent, which may be litigated before the appropriate tribunal, and it is further

ORDERED that the Court awards HPD civil penalties against Respondents in the amount of $2,000.00, to be enforced as against the Building, at Block 4853, Lot 12 of the borough of

Brooklyn, and it is further

ORDERED that the Court dismisses Petitioner's causes of action for punitive damages and attorneys' fees, and it is further

ORDERED that the Court directs Respondents to correct the open violations in the subject premises, with access dates to be arranged by the parties, and it is further

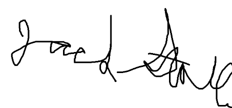
ORDERED that Petitioner provide access to Respondents for the purpose of correcting violations, and it is further

ORDERED that, provided access is given, Respondents must correct "C" violations on the first date of access, "B" violations on or before December 19, 2021, and "A" violations on or before February 17, 2022, and it is further

ORDERED that upon default of any provision of this order, any party may move this Court for appropriate relief, including but not limited to civil penalties and/or contempt.

This constitutes the decision and order of the Court.

Dated: Brooklyn, New York
November 19, 2021



HON. JACK STOLLER
J.H.C.

APPROVED
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