

New York City Hous. Auth. v Barrett

2024 NY Slip Op 30081(U)

January 4, 2024

Civil Court of the City of New York, Queens County

Docket Number: Index No. LT-010134-20/QU

Judge: Enedina Pilar Sanchez

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Civil Court of the City of New York
County of Queens

Index # **LT-010134-20/QU**



New York City Housing Authority managed by
Queensbridge
North Houses

Decision / Order

Petitioner(s)

-against-

RONALD BARRETT; JUANITA SNYDER

Respondent (s)

HON. ENEDINA PILAR SANCHEZ

This non-payment proceeding was commenced, and a Stipulation of Settlement reached before the COVID-19 pandemic was declared. The subject premises are located within the Queensbridge Houses and part of the New York City Housing Authority (NYCHA).

Procedural History

On February 24, 2020, respondent Ronald Barrett appeared as a *Pro-se* litigant. He signed a stipulation of settlement with the petitioner. Respondent agreed to pay \$4,929.00 to the petitioner on or before March 25, 2020. Petitioner was granted a final judgment of possession and a money judgment for the sum of \$4,929.00.

In mid-March 2020, we entered a historic pandemic and due to the health crisis created by the pandemic, evictions were paused. In June 2022, petitioner filed a motion to restore the case and to allow for the execution of the warrant as per AO 345/21 and DRP-217. These were directives in place for warrants issued prior to the COVID-19 pandemic.

Upon the implementation of the Right to Counsel, respondent was able to retain Queens Legal Services. On March 20, 2023, respondent's counsel filed a cross-motion seeking to vacate the stipulation of February 24, 2020 and for such other relief.

After arguments the motion and cross-motion were granted to the extent the case was restored to the calendar and respondent was granted a hearing to address the conditions alleged to be in breach of the warranty of habitability. (Motions Seq. No.1 and No.2)

Testimony and Evidence Presented

On August 16, 2023 respondent Mr. Barrett was sworn in and testified that he has been a resident of the NYCHA complex for about 30 years. When he moved into the subject premises there were conditions that were not disclosed to him; however, these conditions "came" with the premises. The apartment had roaches and other defects which seemed to him to be the norm for NYCHA apartments. He accepted the apartment, nevertheless.

In the stipulation of February 24, 2020, respondent identified the conditions which were going to be addressed by petitioner. The conditions described in the stipulation are as follows: extermination for roaches in the entire apartment; plaster and paint the entire apartment; and clear the bathroom and kitchen sink "stoppage." The initial access dates were February 28, 2020

and March 5, 2020. Respondent testified that since February 24, 2020 the conditions have worsen. The testimony, videos and photographs admitted into evidence show a seriously unhealthy and overwhelming infestation of roaches, spiders, and mice in the subject premises.

The photographs show areas of the wall and ceiling completely dark brown to black which are cause by roach droppings. The videos show an army of roaches moving up and down a closet door during mid-day. The videos show roaches crawling and moving about on the walls, on the picture frames on the walls and on the clock on the wall. The testimony, videos and photographs show the roaches are in every part, in every room in the apartment. They are inside the refrigerator, the stove, and the medicine cabinet. At night the roaches cover the walls. The roaches and their droppings are also inside the circuit breaker box.

The conditions described and shown to exist have negatively affected respondent and the use of the apartment. Food cannot be stored in the refrigerator. Food cannot be cooked on the stove. Medicine cannot be stored in the medicine cabinet. The closets cannot be readily accessed due to the infestation of roaches inside the closet. Throughout every cranny, crack, fixture, and furniture in the apartment there are roaches, spiders, and mice. Respondent testified that the serious infestation started in 2021 and has gotten worse and worse.

The photographs show the walls are discolored due to the droppings left by the roaches. The spider and their webs saturate the corners of the ceiling and walls. In addition to the swarm of roaches and spiders, mice easily enter the apartment through gaps in the floor and openings/holes behind the sink. The sinks in the bathroom and the kitchen have blockages and leaks which drip and attract mice and roaches.

During cross-examination petitioner tried to establish that respondent did not want to give access to exterminator. Petitioner's cross-examination questioned whether respondent gave notice about the conditions in the apartment. Also, respondent was questioned about the cleaning of the apartment. Respondent stated that after so many calls to petitioner and no one coming over to exterminate, clear the blockage in the kitchen and bathroom sinks, and do the needed plaster and paint, he stopped calling. He said, "they [NYCHA] never come."

Respondent submitted work-order tickets showing that the work to be done was still outstanding. The tickets were from May 2022, March 2023, April 2023. The work to be done was marked "approved," but it was not done. Respondent stated that petitioner looked at the sink blockages in June or July 2023 and did nothing more. These conditions were brought to petitioner's attention in the stipulation of February 24, 2020. Respondent did not remember if the exterminator came to the apartment 7 times. He recalled that "maybe like 4 times," and he understood that the extermination was only for roaches. On further cross-examination petitioner's counsel reviewed 7 specific dates of extermination. Respondent remembered 5 of those extermination dates and gave access on each of the 5 dates. Petitioner's agent looked at the stove after August 2023 and not before. Respondent was questioned whether he left the door to the refrigerator open and if that was the reason for the roaches inside the refrigerator. Respondent denied leaving the refrigerator door open.

Petitioner called its witness, Mr. Tomasz Mozol, who is employed by maintenance. He was sworn in and testified he was at the apartment on February 28, 2020 to clear the kitchen sink stoppage. This was the only time he was inside the apartment.

On the last day of the hearing petitioner's counsel argued for a continuation. Petitioner's counsel argued that the court should hear how many times the exterminator visited the apartment. The request was denied as counsels were clearly informed that December 21, 2023 would be the last day to conclude. Counsels had been previously informed in writing to be prepared to close.

Moreover, on cross-examination, respondent had testified as to the times the exterminator did go to his apartment. Whether the exterminator went to the apartment and was not given access, respondent stated that he gave access each time he had been given notice. There was no dispute that on one or two occasions the exterminator may have gone to the apartment and respondent was not home. The Interim Orders of August 16, 2023 and August 31, 2023 directed extermination and the continued extermination pending the hearing.

Discussion and Conclusion

After all the testimony and evidence presented during the hearing that commenced on August 16, 2023 and concluded on December 21, 2023, the Court finds that the subject premises are fully uninhabitable, and the conditions breach the warranty of habitability.

The evidence presented established that the subject premises are not fit for human habitation. Respondent's counsel requested an emergency transfer to abate the extreme infestation of roaches, spiders, and mice in the apartment.

Petitioner objected to any relocation of the respondent and referenced a ruling in a case filed in the Southern District of New York, United States District Court entitled *Davis v. NYCHA*¹

An examination of the referenced case indicates the matter concerned racial discrimination and the allocation of units to families historically subjected to racial and ethnic group discrimination.

The matter before the court, however, comes within the purview of the *United States v. New York City Housing Authority*, 18-civ- 5213.² In this regard, the conditions described by respondent are in clear violation of the Consent Decree and the objectives of the Special Monitor assigned to oversee and report on the conditions adversely affecting NYCHA residents. The Consent Decree addresses the abatement of mold, asbestos, lead based paint, the infestation of roaches, mice, and other pets.

The obligation to abate the conditions and the source of the conditions described and documented by respondent may indeed require the temporary relocation of respondent and his

¹ The Court has examined the case and its history.

² The Consent Decree is still in force; it can only be terminated when NYCHA shows it's been in substantial compliance for 12 months, and NYCHA can only move to terminate after 5 years (this is section XIV paragraphs 86-87). Starting on January 31 2024 NYCHA could move to terminate upon it showing substantial compliance. Furthermore, the SDNY has advertised for a new monitor. (<https://www.justice.gov/usao-sdny/pr/us-attorney-announces-application-process-second-term-nycha-monitorship>).

spouse to eradicate the infestation of roaches, spiders, and mice. Extermination alone may not be sufficient. The roaches are harboring inside the walls, the spiders have cornered spots in the ceiling, and the mice have a highway under the floors and behind the kitchen sink. Spraying for roaches and placing sticky traps on the floor to catch mice may not be adequate to abate the serious infestation in the subject apartment.

The Interim Orders issued during the hearing for extermination now demonstrate the treatments employed were not adequate. At the time the hearing concluded on December 21, 2023, extermination appears to be insufficient to eradicate the infestation in the subject premises. The infestation has continued. Whether the exterminator was in the apartment 5 or 7 times would appear to be inconsequential in abating the source of this infestation of pest in the apartment.

Respondent's request to be relocated is reasonable under the attenuating circumstances and consistent with the objectives of the Consent Decree and NYCHA Healthy Home Mandate.

The conditions described by respondent constitute a breach of the warranty of habitability under state law and a rent abatement would be proper. See, *Park West Management Corp v. Mitchell*, 47 NY 2d 316 (1979).

Pursuant to Civil Court Act §110, the Housing Court is tasked with the *enforcement of state and local laws for the establishment and maintenance of housing standards, including, but not limited to, the multiple dwelling law and the housing maintenance code, building code and health code of the administrative code of the city of New York....*

An infestation of roaches, mice, spiders would constitute a "C" violation pursuant to the New York City Housing Maintenance Code. See NYC Administrative Code §27-2017. A condition classified as a "C" violation requires immediate attention because it is harmful to the health and safety of the resident. Here there is no dispute the conditions described affect the respondent and the use of the apartment in the morning, at noon, and at night. Respondent cannot use the kitchen facilities, rest in peace on his bed, or eat a meal at his table without having roaches parading through, around or in his food.

The infestation and infiltration of pest is so pervasive that it renders the apartment uninhabitable.

Petitioner has not shown that there is a substantial and real issue of fact or law concerning the violation charged. See, HMC §27-2117(a). The court may impose such conditions as justice may require. Under these facts, justice requires that respondent's apartment come into compliance with the Healthy Home Mandate implemented by petitioner's own policy and abate the source of the infestation. A temporary transfer of the respondent is a prudent step to get to the source of the problem. Petitioner is required to abate the condition that constitute a nuisance, a breach of the warranty of habitability and a violation of the Housing Maintenance Code.

Accordingly, it is,

ORDERED that petitioner completely abate the infestation of roaches, spiders and mice in the subject premises and abate the source of the infestation, including the temporary relocation of the respondent to another apartment or space to abate the source of the infestation; and it is,

ORDERED that the rent is completely abated and shall be posted to respondent's rent account beginning in March 2023, and to continue until the infestation is abated and conditions in the subject premises are corrected, and it is,

ORDERED that the infestation of roaches, spiders, and mice constitute "C" violations under the New York City Housing Maintenance Code and require petitioner to take affirmative steps to abate the conditions forthwith; and it is,

ORDERED that the execution of the warrant of eviction is stayed until petitioner has established that the conditions found in the subject premises to be in breach of the warranty of habitability and its source are abated and the subject premises are made habitable; and it is,

ORDERED that petitioner report the conditions described within the subject premises and in this Decision/Order to the Special Monitor pursuant to the Consent Decree filed under *United States v. New York City Housing Authority*, 18-civ- 5213, United States District Court, Southern District of New York, and file proof thereof to NYSCEF.

This Decision/Order will be filed to NYSCEF.

This constitutes the Decision/Order of the Court.

Dated: January 4, 2024
Queens, New York

SO ORDERED,

APPROVED
epsanchez , 1/4/2024, 9:41:08 pm

ENEDINA PILAR SANCHEZ
Judge, Housing Court

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