

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

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ST OWNER LP,

X

Petitioner-Landlord

-against-

**DECISION & ORDER**

**Index No.: L&T 56003/2013**

**HON. SABRINA B. KRAUS**

PATRICIA Y. MCQUEENEY

622 East 20<sup>th</sup> Street, Apt 7A

New York, New York, 10009

Respondent-Tenant

\_\_\_\_\_  
X

**BACKGROUND**

This summary nonpayment proceeding was commenced **ST OWNER LP** (Petitioner) and seeks to recover possession of 622 East 20<sup>th</sup> Street, Apt 7A, New York, New York, 10009 (Subject Premises), based on the allegations that **PATRICIA Y. MCQUEENEY** (Respondent) the rent stabilized tenant of record, has failed to pay rent due for the Subject Premises.

**PROCEDURAL HISTORY**

Petitioner issued a three day demand to Respondent and **Devin McQueeney** (Occupant) dated January 15, 2013, seeking \$42,618.37 in arrears for a period covering November 2008 forward at a monthly rent ranging from \$1376.43 per month to \$1472.36 per month, plus applicable MCI increases. A petition was issued on or about February 15, 2013. Neither respondent appeared or answered, and on May 30, 2013, Petitioner applied for a judgment and warrant on default. The warrant of eviction issued on June 19, 2013.

Occupant moved *ex parte* for signature of an order to show cause to vacate the default judgment on July 30, 2013. Occupant asserted that she was Respondent's daughter, and that she had never resided in the Subject Premises. Occupant asserted that from 2001 through 2010, she lived in California, and that she currently resides in Astoria, New York. Occupant asserted that she first learned of the proceeding by speaking with the Marshal's office. The court (D'Auguste, J) declined to sign the order to show cause, pursuant to an order which provided there was no asserted basis to vacate the default because there was no money judgment entered against Occupant, and Occupant acknowledged she did not reside in the Subject Premises.

On August 22, 2013, Respondent appeared by counsel and moved by order to show cause to vacate the default judgment. The motion was adjourned to September 18, 2013. The court, at the request of Respondent's counsel made a APS referral. However, another party must have previously referred the matter to APS, because on August 16, 2013, APS issued a determination finding that Respondent had sufficient physical and mental capacity to handle her own affairs, and that another family member is willing and able to care for Respondent's needs. The file indicates that this determination was arrived at after APS conducted a psychiatric evaluation.

On September 18, 2013, counsel appeared for Occupant, the parties entered into a stipulation agreeing to vacate the judgment against Occupant, and the proceeding was discontinued as to Occupant.

On November 21, 2013, the court (Lau, J) issued a decision granting Respondent's motion to vacate the default to the extent of setting it down for a hearing on the issue of excusable default and the propriety of service. The hearing was scheduled for December 9, 2013.

On December 13, 2013, the parties entered a stipulation amending the petition to date, waiving traverse and wherein Respondent consented to the jurisdiction of the court. The proceeding was adjourned to January 16, 2014 for trial, and Respondent was to serve an answer on December 18, 2013. Petitioner provided Respondent's counsel with a copy of the lease agreement commencing April 15, 1995, and Petitioner's counsel agreed to provide Respondent's counsel with a copy of a surrender agreement executed by Thomas McQueeney. Although the stipulation did not specifically provide for same, the parties agree that the effect of the stipulation was to vacate the judgement and warrant against Respondent.

### TRIAL

On January 16, 2014, the proceeding was transferred from Part F to Part X for assignment to a trial judge. The same date it was assigned to Part L for trial.<sup>1</sup> The trial commenced and concluded on the same day. Respondent did not testify or offer any documentary evidence. The parties agreed that although no formal answer was served and filed, Respondent was deemed to have asserted a defense of breach of warranty of habitability.

At trial Petitioner established: it is the deed owner of the Subject Building; the building is duly registered with HPD and there is a valid MDR; that an initial lease was entered into by Thomas F. McQueeney and that Respondent was added as a party to the lease in May 2005; that said lease was most recently renewed only by Respondent on December 1, 2009, for a two year period through and including November 30, 2011, at a monthly rent of \$1777.90;

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<sup>1</sup> The court generally disqualifies itself from hearing cases where Borah Goldstein represents a party, but the parties through counsel elected to waive the conflict and disqualification after disclosure.

and that the legal registered rent for the Subject Premises as of December 12, 2013, was \$1694.83.

Petitioner presented one witness at trial, Gregory Claude, who testified that Respondent had met with him repeatedly and promised to pay the rent arrears and bring her account up to date, but that she had failed to do so. Petitioner testified that Respondent had been offered a renewal lease but had failed to sign it and return it to Petitioner. However, Mr. Claude testified that after the last renewal expired the parties impliedly agreed to the payment and acceptance of on going rent at the last lease rate.

Petitioner's breakdown shows arrears totaling \$64,301.14 as of January 16, 2014. This sum includes \$11,161.82 in MCI charges and A/C charges, which were not substantiated at trial. Additionally, the sum includes rent through January 2014, but the petition was only amended to include sums due through December 2013. Without the additional MCI charges the monthly rent charged to Respondent and being sought herein is \$1472.36 per month.

Based on the foregoing, after trial Petitioner is awarded a judgement for \$51,666.96 for all rent due through December 2013. Issuance of the warrant is stayed five days for payment.<sup>2</sup>

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<sup>2</sup> Petitioner may pick up its exhibits from the second floor, window 9, within 30 days, after said time the exhibits may be destroyed in accordance with administrative directives.

This constitutes the decision and order of this court.

Dated: January 17, 2014  
New York, NY

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Hon. Sabrina B. Kraus,  
J.H.C.

TO: BORAH GOLDSTEIN ALTSCHULER  
NAHINS & GOIDEL, PC  
Attorneys for Petitioner  
By: Lester J. Figueroa, Esq.  
and Steven H. Cohen, Esq.  
377 Broadway  
New York NY 10013  
212.431.1300

DAVID C. YOLLECK, ESQ  
Attorney for Respondent  
214 Sullivan Street, Suite 3C  
New York, NY 10012  
347.476.5741