

**St. Anns Apts, LLC, Petitioner v. Veronica Guerrero, Respondent, L & T
62747/14
L & T 62747/14**

**Civil Court, Bronx County, Housing Part C
NYLJ Publication Date: Jul 22, 2015**

Cite as: St. Anns Apts, LLC v. Guerrero, L & T 62747/14, NYLJ 1202732550269,
at *1 (Civ., BX, Decided June 29, 2015)

CASENAME

St. Anns Apts, LLC, Petitioner v. Veronica Guerrero, Respondent
L & T 62747/14

Judge Marian Doherty

[Read Summary of Decision](#)

Decided: June 29, 2015

ATTORNEYS

Attorney for Petitioner: Amsterdam & Lewinter.

Attorney for Respondent: Legal Services NYC-Bronx by Thomas Chew, Esq.

Decision and Order

*1

The petitioner commenced the instant non-payment proceeding in October 2014 seeking a balance of rent for September in the amount of \$823.46. The respondent interposed an answer alleging that there were conditions in the apartment in need of repair. The clerk assigned a trial date for November 12, 2014.

On November 12, 2014, the respondent failed to appear. As a result a judgment was entered on default. Issuance of the warrant of eviction was stayed until November 17, 2014. On November 17, 2015 the respondent obtained an order to show cause returnable on December 5, 2014. In her supporting affidavit she indicated that she had forgotten the court date, that the apartment door was broken, that she was involved in a domestic violence situation with an order of protection against the father of her children.

On December 5, 2014, her motion was granted with the default judgment vacated. The respondent signed a stipulation with the petitioner's attorney. In the stipulation, the petitioner waived service of the order to show cause. The parties also acknowledged that the respondent paid \$400.00 in court and they agreed to the entry of a judgment in favor of the petitioner for \$2,448.46, representing the rent due

through December 31, 2014. However, execution of the **warrant** of eviction was stayed through January 5, 2015, to allow the respondent time for *2 payment. The stipulation contained a list of four conditions in need of repair. Access dates were scheduled for December 22, 2014, to inspect the repairs needed, and December 29 and December 30 for the work to be done.

On March 3, 2015, the respondent obtained her second order to show cause. It was given a return date of March 18, 2015. In her supporting affidavit she indicated she had two money orders. She also listed needed repairs, and she stated that she needed time to pay. On the return date, the parties entered into a second stipulation that stayed execution of the **warrant** of eviction through April 17, 2015, for the respondent to pay \$2,773.46 representing rent through March 31, 2015. The stipulation also listed repairs and access dates.

The respondent has now retained counsel. Presently pending before this court is her motion asking this court to vacate the judgement and **warrant** together with the stipulations of settlement, and grant leave to serve and file an amended answer, or, in the alternative, grant a stay of execution of the **warrant** of eviction, giving her time to satisfy the judgment.

In support of the relief requested the respondent points out that part of the possessory judgment obtained in this proceeding contained monies owed as a security deposit. The petitioner acknowledges this error. The respondent also states that she suffers from depression and other mental health disorders, although she did not annex any medical diagnosis regarding her mental health disorders.

However, this court notes that in her previous applications she indicated that she was a victim of domestic violence and was very nervous. The respondent also claims that she was unaware of her defense regarding the breach of the warranty of habitability. The petitioner argues that she waived such a claim in exchange for obtaining additional time to obtain the arrears. However neither stipulation specified any express waiver by the respondent, *3 who was self-represented when the stipulation was executed. The petitioner also argues that the respondent, who has litigated in housing court on a number of prior proceedings, was well aware of her rights. This court is not persuaded by that argument.

Based upon the foregoing, the court finds that the judgment was improper to the extent that it contained monies owed as additional security and that the respondent has set forth a colorable claim for breach of the warranty of habitability. The respondent's motion to vacate the judgment, **warrant**, and stipulations herein is

granted. The proposed amended answer is deemed served and filed and this matter is restored to the trial calendar on July 13, 2015, at 9:30 a.m., in Part C, Room 390. This constitutes the decision and order of the court.

Dated: June 29, 2015
Bronx, New York