



Gotham Realty Holdings, L.L.C., Petitioner-Landlord-Respondent, against Anne Weisenthal, Respondent-Tenant-Appellant.

570478/09.

SUPREME COURT OF NEW YORK, APPELLATE TERM, FIRST DEPARTMENT

25 Misc. 3d 128A; 901 N.Y.S.2d 906; 2009 N.Y. Misc. LEXIS 2809; 2009 NY Slip Op 52072U

October 14, 2009, Decided

NOTICE: THIS OPINION IS UNCORRECTED AND WILL NOT BE PUBLISHED IN THE PRINTED OFFICIAL REPORTS.

PUBLISHED IN TABLE FORMAT IN THE NEW YORK SUPPLEMENT.

CORE TERMS: tenant, counterclaim, harassment, modified, landlord's

HEADNOTES

[*128A] **[**906]** Landlord and Tenant--Harassment of Tenant.

JUDGES: **[***1]** PRESENT: McKeon, P.J., Heitler, Shulman, JJ.

OPINION

Tenant appeals from an order of the Civil Court of the City of New York, New York County (Eardell J. Rashford, J.), dated February 19, 2009, which, inter alia, denied her motion for summary judgment on her

counterclaims in a holdover summary proceeding, and, sua sponte, dismissed tenant's first and second counterclaims.

Per Curiam.

Order (Eardell J. Rashford, J.), dated February 19, 2009, modified by reinstating tenant's second counterclaim and, as modified, affirmed, with \$ 10 costs.

In view of landlord's failure to refute by competent evidence the factual allegations underpinning tenant's colorable harassment counterclaim (*Administrative Code of City of New York § 27-2004[a][48]*), the court erred in dismissing that claim. Having sufficiently raised in her motion papers the issue of sanctions pursuant to *22 NYCRR 130-1.1*, tenant may renew her request for such sanctions in Civil Court.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Decision Date: October 14, 2009