

Genovese v Finger Lakes Manor

2007 NY Slip Op 32576(U)

July 10, 2007

Supreme Court, Ontario County

Docket Number: 0000315/2007

Judge: John A. Schuppenhauer

Republished from New York State Unified Court
System's E-Courts Service.

Search E-Courts (<http://www.nycourts.gov/ecourts>) for
any additional information on this case.

This opinion is uncorrected and not selected for official
publication.

STATE OF NEW YORK
COUNTY OF ONTARIO
CLERK OF THE COURT
2007 JUL 10 10:40

**NEW YORK STATE
COUNTY OF ONTARIO
CITY OF CANANDAIGUA** **CANANDAIGUA CITY COURT**

DEBORAH GENOVESE

Claimant,

vs.

DECISION

FINGER LAKES MANOR

Defendant.

Presiding: Hon. John A. Schuppenhauer

Appearances: Claimant: Pro se

Defendant by: Christine Reedhead, Property Manager; Gina Keyes, Relationship Manager

Claimant, tenant, Deborah Genovese sues defendant landlord, Finger Lakes Manor, for \$5,000.00 in damages due to flooding that occurred in her apartment. Defendant landlord's defense is based upon a provision in the lease agreement that tenant is obligated to ensure her own property, and that the damage was caused by events beyond landlord's control.

Claimant signed a "short term" lease, which provided that tenant was responsible for insuring her own personal property. The lease also contained a warranty of habitability, i.e.; that the premises are "fit for human living and there is no condition dangerous to life, health, or safety."

In September, 2006, claimant returned home after being away for a brief period, to find her ground level apartment flooded. Claimant discovered that a sump pump in a utility room that drained the area to be inoperable. Employees of defendant revealed that a drain was plugged and that the sump pump was not working. Due to heavy rains, the apartment, as well as another one on the same level, had flooded.

Defendant's employees initially declined to move plaintiff, and instead attempted to drain and aertify the apartment. Claimant insisted on being moved, and in fact was moved into another apartment, but after a period of about 2 weeks.

Claimant also discovered that certain of her personal property had been damaged by flooding, including an artificial Christmas tree, a dvd player, a couch, some boxes, and an oak table and chairs. She gave testimony as to the original price of these used items, but no appraisal as to their value. She also claims \$605.00 in attorneys fees for the recovery of a security deposit.

Defendant's witnesses claim that the sump hole overflowed due to heavy rains, that there had been an earlier inspection done which revealed no malfunction of the sump pump, that the tenant should have carried hazard insurance, and that tenant's damage claim was inflated. Defendant admits, however, that the sump pump was not functioning, but maintains that due diligence did not uncover the problem prior to the flooding.

Real Property Law section 235-b imposes upon the landlord an obligation to keep the premises fit for human habitation. This includes a protection against both patent and latent

defects. A breach of warranty, for example, has been found where an apartment was flooded during a rainstorm due to latent roof defects. Mc Guinness v. Jakubiak, 431 N.Y.S 755. The lease agreement also provided an express warranty of habitability. The measure of damages in the event of a breach is the value lost by tenant during the time of the breach, usually computed by comparing the diminution in the value of the premises, by comparison to similar premises.

A breach of warranty action does not generally entitle tenant to recover consequential damages 40 Eastco v. Fischman, 546 N.Y.S. 2d 614, or personal property damages, where recovery can be had under a negligence theory, Couri v. Westchester Country Club, Inc., 589 N.Y.S. 2d 491. However, landlord's good faith attempts to correct a condition do not constitute a defense to a claim of breach of warranty of habitability, Leris Realty Corp. v. Robbins, 408 N.Y.S. 2d 166.

Clearly there was a breach of warranty of habitability in this case, and defendant should have abated claimant's rent during the period between when the loss occurred and the time she was moved into a new apartment. Landlord's efforts to clean up the apartment were prompt, but claimant should immediately have been moved into other suitable premises. I grant judgment for claimant for rent she paid during that time period, as damages for breach of warranty of habitability.

Although there are some cases that do seem to have awarded personal property damages for breach of warranty of habitability, it is not necessary to apply them, for I find that the defendant was negligent. Notwithstanding defendant's claim that there had been an inspection,

defendant's duty to claimant was to ensure that the drainage system was functioning (as it apparently was in all of the other building in the complex during the rainstorm). Landlord defendant therefore failed to exercise due care in the maintenance of the drainage system and is liable to claimant for the damages occasioned thereby.

There was conflicting testimony on the subject of property damages.

The claimant lost a number of items of personal property in the flood, but did not produce an appraisal indicating the value at the time of the flood. Mr. Garofolo, who testified for defendant, pointed out that the oak table and chairs were in poor condition when he said it after the flood. Claimant did not obtain an estimate for the repair of the scratch.

One of the items (\$40 shoes) was new. Virtually all of the other items were purchased in late 2005. Because those items had been used, the damages awarded should take into account depreciation. A reasonable depreciation period for electronics would be 5 years and for furniture 10 years. Based upon this, and claimant's testimony as to what she paid, my award is as follows:

<u>Item</u>	<u>Price Paid</u>	<u>Depreciation</u>	<u>Award</u>
Christmas tree	\$179.00	\$17.90(10%)	\$161.10
DVD player	\$249.99	\$ 49.99(20%)	\$200.00
Boxes	\$104.83	\$ 10.48(10%)	\$ 94.35
Couch(stained but usable)	\$640.88	\$320.44(50%)	<u>\$320.44</u>
Total Award			\$ 775.89

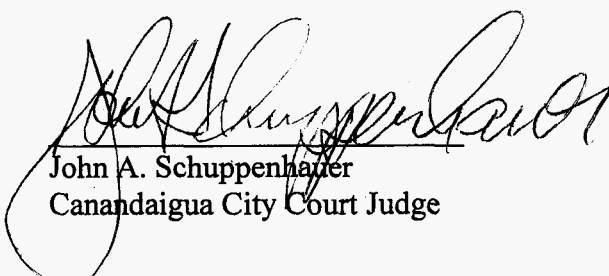
As for the oak table, it was scratched and not destroyed. It would be reasonable to award an amount of \$150 to claimant for the repair of the surface of the table. In addition since the couch could still be used, although it was stained, I find that it still was worth ½ of it's value, or \$320.44.

Therefore, I grant judgment for claimant against defendant as follows:

Abatement of rent - 2 weeks:	\$ 302.50
Property damages:	<u>\$ 775.89</u>
	\$1078.39

Additionally, since the damages flow from a contractual breach of warranty of habitability, I award claimant interest at the statutory rate (9%) from the date of the loss forward. I also award costs to claimant.

Claimant made no mention of her claim for attorney's fees expended to recover her security deposit in her small claims petition. I make no determination with respect to that issue, as it was not properly before the court.



John A. Schuppenhafer
Canandaigua City Court Judge

Dated: July 10, 2007
Canandaigua, New York