

305 Realty NY LLC v Lopez

2007 NY Slip Op 33566(U)

October 30, 2007

Civil Court, Kings County

Docket Number: 0103222/2006

Judge: Sabrina B. Kraus

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.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART A

305 REALTY NY LLC,

X

Petitioner-Landlord

-against-

DECISION & ORDER
Index No.: L&T 103222/2006

HON. SABRINA B. KRAUS

JAVIER LOPEZ
SUZANNE HIBBERT
305 LINDEN BOULEVARD - APT. 18D
BROOKLYN, NEW YORK 11226

Respondents

X

BACKGROUND

This summary nonpayment proceeding was commenced by **305 REALTY NY LLC**, (“Petitioner”) seeking to recover possession of apartment 18D at 305 Linden Boulevard, Brooklyn, New York, 11226 (“Subject Premises”) based on allegations that **JAVIER LOPEZ** and **SUZANNE HIBBERT**, the tenants of record, (“Respondents”) owed approximately four months of rent arrears for the period from August 2006 through November 2006.

PROCEDURAL HISTORY

. Petitioner alleges, *inter alia*, that the subject premises are subject to rent stabilization, and that a predicate notice and petition were served by conspicuous place service and substituted service between October 31, 2006 and November 17, 2006.

On or about April 2007, an application for the entry of a default judgement was made by Petitioner, based on the failure of Respondents to answer the Petition. The initial application was rejected, but on or about June 26, 2007 the defects were corrected and the Court issued a judgment against Respondents. The warrant of eviction issued on July 2, 2007.

On July 20, 2007 Respondent Suzanne Hibbert came to court on an application for an order to show cause vacating the default. That motion was initially returnable in Part A on August 3, 2007.

On the return date, it was explained that there had been a fire in the subject apartment, resulting in a DHCR order reducing the rent to one dollar per month pending restoration of the premises.

The proceeding and motion were adjourned on consent from August 3, 2007 to September 14, 2007.

The motion and proceeding were adjourned a second time from September 14, 2007 to October 3, 2007 . The file marking indicates that the purpose of the second adjournment was for the Petitioner to provide information regarding the status of the repairs and restoration of the Subject Premises.

However, on the return date of October 3, 2007, counsel for Petitioner had no specific information on the status of the repairs or restoration of the subject premises, nor was counsel able to advise as to when the Subject Premises would be ready for re-occupancy by Respondents.

Ms. Hibbert alleged that she was living in a shelter pending the restoration

of the subject apartment. Although Petitioner could not address the status of repairs, Petitioner argued that it should be entitled to proceed with this case, as it was commenced prior to the fire that burned down the subject premises. After argument, the motion was marked submitted.

THE MOTION

In her moving papers, Respondent alleged that she had not received any notification of this proceeding prior to the receipt of a Marshall's Notice of Eviction on or about July 19, 2007. Respondent further alleged: that she was improperly served with the papers; that the amount being sued upon was incorrect; that she had already paid a portion of the amount sued for; and finally that there were repairs required in the subject apartment that had not been made by the landlord. Respondent also stated that the rent for the apartment had been reduced to one dollar per month pending the landlord's restoration of the apartment.

Neither party has submitted a copy of the DHCR order for this Court's review. Petitioner's counsel filed two affirmations in opposition to the underlying motion. The first affirmation in opposition was submitted on August 2, 2007, and refers neither to the fire, nor to the DHCR order. In said affirmation, Petitioner's counsel argued that Respondents did not present an excusable default or a meritorious defense, and that as such the motion must be denied. Additionally counsel alleged that through August, 2007 there was \$6,274.32 due in arrears.

On September 14, 2007, Petitioner filed a second affirmation in

opposition to the motion, which alleged that arrears through September were \$4,351.78, and that Petitioner had properly credited Respondents due to a fire in the subject premises and adjusted arrears based on the DHCR order. Neither set of opposition papers are supported by an affidavit from anyone with first hand knowledge of the underlying facts, and each set of papers has a rent history annexed as an exhibit.

The most recent rent history submitted indicates that subsequent to the commencement of this proceeding, and prior to the issuance of the warrant herein, Respondents tendered and Petitioner accepted payments totaling \$4650.00. These payments, all apparently made by money orders, were indicated to be as follows:

a) MO#795	\$1000.00	2/13/07
b) MO#912	\$ 800.00	2/13/07
c) MO#456	\$ 850.00	4/24/07
d) MO#731	\$1000.00	6/05/07
e) MO#730	\$1000.00	6/05/07

Therefore, prior to the issuance of the warrant, the Petition had already been satisfied.

Additionally, while neither set of papers indicates the date of the fire, the HPD website indicates that on or about June 24, 2007, violations were placed by HPD on the subject premises for fire damage, and that on or about June 29, 2007 HPD issued vacate orders for the subject premises and other neighboring apartments indicating that the apartments could not be reoccupied until after proof of compliance with work necessary to address the violations had been provided.

Based on the foregoing, the Court finds that the petition has been satisfied and that as such, the Respondents motion to vacate the judgment and warrant herein is granted and the proceeding is dismissed with prejudice as all rent alleged to be due through November 2006 has been paid. The dismissal is without prejudice to any post petition claims for rent that accrued after November 2006, but prior to the DHCR order reducing the rent. It is equally without prejudice to Suzanne's Hibbert's right to enforce the landlord's obligation to continue to work on restoring the premises for occupancy, and Ms. Hibbert if so advised may commence an HP proceeding to ensure the Petitioner's compliance in this regard.

This constitutes the decision and order of this Court.

Dated: October 30, 2007
Brooklyn, New York

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

TO: Slochowsky & Slochowsky, LLP
Attorneys for Petitioner
By: Michele Slochowsky Hering, Esq.
26 Court Street, Suite 304
Brooklyn, New York 11242
(718) 625-0987

Suzanne Hibbert
Respondent-Movant *Pro Se*
1212 Presidents Street
Brooklyn, New York 11225

