

Irish v 89 Murray St. Assoc. LLC

2011 NY Slip Op 33937(U)

December 31, 2011

Sup Ct, NY County

Docket Number: 110451/11

Judge: Jr., Alexander W. Hunter

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SCANNED ON 1/5/2012

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: **ALEXANDER W. HUNTER, JR.**

PART 33

Justice

Index Number : 110451/2011
IRISH, AYESHA
vs.
89 MURRAY STREET ASSOCIATES LLC
SEQUENCE NUMBER : 001
DISMISS

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). 1-15

Answering Affidavits — Exhibits _____ | No(s). 16-29

Replying Affidavits _____ | No(s). 30

Upon the foregoing papers, it is ordered that this motion is

See memorandum decision and judgment annexed hereto.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

FILED

JAN 05 2012

NEW YORK
COUNTY CLERKS OFFICE

Dated: 12/31/11

[Signature] J.S.C.

ALEXANDER W. HUNTER, JR.

1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 33**

-----X

Ayesha Irish,

Index No.: 110451/11

Plaintiff,

Decision and Judgment

-against-

89 Murray Street Associates LLC,

FILED

Defendant.

JAN 05 2012

-----X

HON. ALEXANDER W. HUNTER, JR.

NEW YORK
COUNTY CLERK'S OFFICE

The motion by defendant for an order pursuant to C.P.L.R. § 3211(a)(1) and (7) dismissing pro se plaintiff's complaint is granted with prejudice. Defendant's motion for sanctions pursuant to C.P.L.R. § 8303-a is denied.

Plaintiff was the former tenant at 89 Murray Street, Apt. 5G, New York, New York. 89 Murray Street is a residential building with a total of 163 apartments. Thirty three of those apartments are designated as low income housing in accordance with an agreement with the New York City Housing Development Corporation ("DHCR"). The subject apartment is reserved for low income tenants. In order to participate in this program, applicants must meet certain financial criteria. Tenants must make no more than 40%-50% of the area's median gross income. The criteria also includes the number of individuals residing in an apartment. Buildings that do not enforce the terms of the low rent program will be subject to fines, penalties, and expulsion from the program. In the event a tenant fraudulently provides financial information, it is defendant's duty to commence eviction proceedings.

Defendant asserts that plaintiff entered into a two year lease for Apt. 5G on April 4, 2008 to April 30, 2010. Her lease was subsequently extended to March 31, 2013. Defendant contends that they discovered that plaintiff misrepresented her financial information and commenced eviction proceedings against her. Plaintiff was served with a notice of termination of tenancy, dated April 19, 2011, which outlined the bases of the termination. Specifically, plaintiff had failed to disclose her husband's residency at the apartment, failed to provide income tax returns for the years 2004 to 2006, and failed to disclose her co-ownership in real property located in Florida. Prior to the eviction hearing, plaintiff voluntarily moved out of the apartment on May 31, 2011. As a result, defendant withdrew its application for a warrant of eviction.

Plaintiff commenced the instant action on September 14, 2011. Plaintiff contends that defendant violated the Tenant Protection Act and illegally evicted her from her apartment. Defendant argues that the complaint is replete with conclusory allegations of harassment and discrimination on defendant's part. Defendant further argues that plaintiff fails to assert any real damages or any bases to warrant the awarding of punitive damages for pain and suffering and

mental anguish. There is also documentary evidence which proves that there were ample reasons for eviction. Defendant also seeks the imposition of sanctions against plaintiff pursuant to C.P.L.R. §8303-a. Defendant argues that this action was brought in bad faith and/or to harass defendant. Plaintiff had the chance to contest the eviction in housing court, but instead chose to vacate the apartment.

In support of its motion, defendant submits a copy of the Regulatory Agreement with DHCR, the lease and rider for the subject apartment, and an affidavit from Aaron Hunt, the District Manager of Related Management Company. Mr. Hunt is in charge of the day to day operations of various multi-family housing communities including the building located at 89 Murray Street, New York, New York. His affidavit goes into further detail about the circumstances surrounding plaintiff leaving her apartment. All prospective tenants are required to provide initial and subsequent certification with full disclosure. Mr. Hunt states that plaintiff was evicted because she was not truthful during the application process and failed to disclose information regarding her finances and the size of her household.

In opposition, plaintiff argues that defendant lied in its Landlord's Notice of Termination and in its moving papers submitted to this court. Plaintiff maintains that she left her apartment under duress after being harassed by defendant.

In reply, defendant asserts that plaintiff's opposition papers in no way clarify her claims of harassment. Instead, plaintiff continues to use generalized and conclusory language to describe defendant's conduct.

On a motion to dismiss under C.P.L.R. § 3211(a)(7), "a complaint should not be dismissed on a pleading motion so long as, when the plaintiff is given the benefit of every favorable inference, a cause of action exists." **Rovello v. Orofino Realty, Co.**, 40 N.Y.2d 633, 644 (1976). Affidavits submitted by plaintiff can be considered to remedy any defects in the complaint. **Id.** at 635. Pursuant to C.P.L.R. § 3211(a)(1), "a dismissal is only warranted if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law." **Leon v. Martinez**, 84 N.Y.2d 83, 87 (1994). Moreover, "statements in a pleading shall be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions, intended to be proved and the material elements of each cause of action. C.P.L.R. § 3103; see also, **Foley v. D'Agostino**, 21 A.D.2d 60 (1st Dept. 1964).

Plaintiff seeks to recover under the New York City Tenant Protection Act, Local Law No. 7 of 2008 ("Tenant Protection Act"). The Tenant Protection Act provides legal redress for tenants who are harassed by their landlords attempting to force them out of their rightful apartments. See, **Prometheus Realty Corp. vs. City of New York**, 80 A.D.3d 206 (1st Dept. 2010). Harassment is defined "as any act or omission by or on behalf that...causes or is intended to cause any person lawfully entitled to occupancy of a dwelling unit to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy." **New York City Charter § 27-2004(a)(48)**. The commencement of frivolous court proceeding is listed as one form of harassment. **New York City Charter § 27-2004(a)(48)(d)**.

Although plaintiff alleges that defendant mentally intimidated and bullied her by “constructing an illegal eviction”, she does not refer to any specific facts or dates of the alleged incidents. Plaintiff has failed to allege facts to show that she has a cognizable claim. While the commencement of a meritless eviction proceeding is a form of harassment under the Tenant Protection Act, the evidence shows that defendant was justified in commencing an eviction proceeding. Here, the Regulatory Agreement explicitly provides that defendant must determine whether an applicant qualifies as a Low Income Tenant by obtaining a certification of annual income and household size from each applicant. The rider to the lease states that any misrepresentation on an applicant’s part during the application process will be deemed a material breach of the lease. Copies of plaintiff’s tax returns for the years 2004 to 2006 establish that she earned more than was allowed in the Regulatory Agreement. Therefore, defendant had a duty to terminate plaintiff’s lease. It is also important to note that plaintiff had an opportunity to dispute the circumstances of her lease termination in landlord-tenant court, but chose not to do so.

Plaintiff also attempts to recover for the emotional distress she has sustained after relinquishing her apartment. The tort of intentional infliction of emotional distress encompasses conduct which is so extreme and outrageous that it goes beyond all levels of human decency. Howell v. New York Post Co., Inc., 81 N.Y.2d 115 (1983); Fischer v. Maloney, 43 N.Y.2d 553 (1978). Here, plaintiff has not alleged any facts to show that defendant’s conduct was extreme or outrageous.

Accordingly, it is hereby,

ADJUDGED, that the motion by defendant dismissing plaintiff’s complaint is granted. Defendant’s motion for sanctions pursuant to C.P.L.R. § 8303-a is denied.

Dated: December 31, 2011

FILED

ENTER:

JAN 05 2012

J.S.C.

NEW YORK
COUNTY CLERK'S OFFICE