

| |
|--|
| Rogans Realty Corp. v Roman |
| 2012 NY Slip Op 30287(U) |
| February 8, 2012 |
| Supreme Court, New York County |
| Docket Number: L&T 75373/2011 |
| 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 NEW YORK: HOUSING PART R

ROGANS REALTY CORP

X

Petitioner-Landlord

-against-

DECISION & ORDER

Index No.: L&T 75373/2011

HON. SABRINA B. KRAUS

IGNACIO LEAL ROMAN
607 West 180th Street, Apt 54
New York, NY 10033

Respondent-Tenant

“JOHN and JANE DOE”

Respondents-Undertenants

X

BACKGROUND

This summary nonpayment proceeding was commenced by **ROGANS REALTY CORP** (Petitioner) against **IGNACIO LEAL ROMAN** (Respondent) seeking possession of **607 West 180th Street, Apt 54, New York, NY 10033** (Subject Premises) based on the allegation that Respondent, the rent-stabilized tenant of record had failed to pay rent due.

PROCEDURAL HISTORY

The petition is dated July 21, 2011 and seeks \$5742.29 in rent arrears for a period of May through July 2011, at a monthly rent of \$1757.43. Respondent appeared *pro se* and filed an answer on July 27, 2011. The answer asserts that there are conditions in the Subject Premises which need to be repaired and/or services which the Petitioner has not provided. The

proceeding was originally returnable on August 3, 2011 in Part D. The proceeding was adjourned from August 3, 2011, to September 19, 2011, for Respondent to obtain counsel. The proceeding was adjourned a second time, for Respondent's counsel to appear to October 12, 2011. On October 12, 2011, Housing Conservation Coordinators, Inc. Appeared on behalf of counsel and filed an amended answer. The proceeding was adjourned to November 15, 2011 for settlement or trial.

On November 15, 2011, the parties entered into a stipulation resolving some of the issues in the litigation. The stipulation acknowledged that pursuant to a DHCR rent reduction order issued on September 26, 2011, Respondent's legal rent had been reduced to \$1681.75 per month, effective May 1, 2011, and the rent had not been restored as of November 15, 2011. Petitioner consented to a 30% abatement for the months of May 2011 through August 2011, and Respondent agreed to pay \$4708.90 for the period of May 2011 through August 2011 by November 22, 2011.

On January 12, 2012, the proceeding was transferred from Part D to Part X . On February 8, 2012, the proceeding was assigned to Part R for trial. The trial commenced and concluded on February 8, 2012, and at the conclusion of the trial the Court heard closing arguments and reserved decision.

RELATED LITIGATION

The parties agreed that the Court should take judicial notice of an HP Proceeding commenced by many of the tenants in the subject building, including Respondent. That proceeding is *Rojas v Rodriguez* Index No 6066/2011. The parties were represented by the same counsel in both proceedings. That proceeding was commenced by Order to Show Cause

on April 15, 2011, and was resolved pursuant to an order to correct on the return date. The order to correct covered outstanding violations of record and conditions listed in Schedule B annexed to the order. Regarding the Subject Premises, the conditions listed were mislabeled as being under Apartment 55 and under the last name Morales, the last name of Respondent's wife, who also lives in the Subject Premises. The conditions referenced in Schedule B for the Subject Premises included mold throughout the Subject Premises.

On June 24, 2011, the tenants in the HP proceeding moved for an order holding the landlord in contempt for failure to comply with the order to correct. The motion was granted by the Court to the extent of setting the matter down for a hearing on July 8, 2011. On July 8, 2011, the parties entered a stipulation resolving the motion.

The stipulation provided that the landlord must complete all repairs required by the April 15, 2011 order to correct on or before August 19, 2011. Each tenant was awarded a 30% abatement for the period of May 2011 through August 2011. It was further agreed that if the landlord failed to complete the repairs on or before August 19, 2011, the monthly rent abatement would be increased by an additional and escalating 10% for every month beyond the required date of completion.

TRIAL

At the commencement of the trial, the parties agreed to limit the issues to be determined by the Court. The parties agreed that there was a total of \$6727.00 unpaid for the period from September 2011 through December 2011, at the reduced rent of \$1681.75 per month. Respondent's counsel agreed that as of the end of December the work was complete and no abatement was sought for January and February 2012. The parties further agreed that rent for

January and February 2012 was being held in escrow by Respondent's counsel and would be paid in due course. The parties agreed that the sole issue for the Court to determine was whether Petitioner had complied with its obligations pursuant to the July 8, 2011 stipulation in the HP proceeding to correct conditions by August 19, 2011, whether Respondent had prevented compliance by failure to provide access or in any other manner, and what if any abatement Respondent was entitled to.

The parties stipulated certain documents into evidence at the commencement of the trial.

Exhibit B is a DHCR Order issued September 26, 2011 reducing rent for the Subject Premises, and finding Petitioner had failed to address conditions throughout the Subject Premises, related to the repair of windows, mold, and painting and plastering.

The order further detailed that an inspection was conducted at the Subject Premises on August 4, 2011. The inspection determined: that windows throughout the Subject Premises were difficult to open and close; that the hallway and ceiling walls were repaired in an unworkmanlike manner; that areas that were plastered were not sanded; the kitchen ceiling is blistered and water stained; that the living room walls are water stained and have peeling paint; that mold existed on the bathroom ceiling and walls and living room walls, and around the windows through out the Subject Premises. The order directed the owner to fix the conditions within 30 days of the issue date.

Exhibit 2 is a Docket Acknowledgment Notice issued October 19, 2011 showing that Petitioner had applied for a restoration of the rents.

Exhibit C is a DHCR Order directing restoration of services issued November 7, 2011. The order included repairs necessary for the Subject Premises. In addition, to the conditions

noted in Exhibit B, the order provided Petitioner was to fix broken and cracked floor tiles in the Kitchen.

Exhibit 3 is a Notice of Inspection issued by DHCR for the Subject Premises advising that DHCR would inspect the Subject Premises on December 29, 2011.

Additionally, the Court took judicial notice of open violations listed on the HPD website as of the date of the trial. The information showed that six violations issued in 2011 for the Subject Premises remained outstanding as of the date of the trial: Class C violation for removal of lead paint, two Class B violations for defective wood floors and broken or defective window sashes, and three Class A violations for painting in the hallway, bathroom and one other room. There were also three open Class C violations for lead paint from 2009.

Petitioner's only witness at trial was Ana Arita. Ms. Arita had little to no personal knowledge of the relevant facts. Ms. Arita had only been employed by Petitioner since mid September 2011. Ms. Arita was in the Subject Premises on one occasion in late September 2011 or early October 2011. Ms. Arita testified that some of the floor tiles had been replaced and that Petitioner had painted. Ms. Arita acknowledged that after this date Petitioner received further violations regarding mold in the bathroom of the Subject Premises in December. The Court finds that this was likely a result of the DHCR inspection referenced in Exhibit 3, as no additional HPD violations were issued in December for mold.

Ms. Arita testified that she had attempted to gain access to the Subject Premises on a date in December to take pictures. No evidence was offered to suggest that Respondent had been notified of the access date in advance, and no evidence was offered to suggest petitioner wished to make repairs on that occasion.

Respondent testified on his own behalf at trial. Respondent testified that he has lived in the Subject Premises since 2001, and that conditions regarding leaks and mold started to be a problem soon after he moved in. Respondent states that the only action Petitioner has ever taken in response to leaks and mold is to paint over the mold, that this remedy never lasts and the mold and the leaks continue to occur.

The Subject Premises is on the top floor of the building. Respondent testified that work done by Petitioner has been done in a shoddy and unprofessional manner. Both parties testified that the only individuals to do any work in the Subject Premises were two supers for the building Luis and Andreas. Respondent testified that the Super had last been in the Subject Premises on November 28, 2011 to address mold that had again reappeared in his daughter's bedroom., and that the Super had been to the Subject Premises on three prior occasion since August 2011.

Respondent testified that the mold has not been addressed and continues to reappear to date.

DISCUSSION

Petitioner failed almost entirely to show that any work was done to the Subject Premises to address the underlying conditions. Petitioner replaced some vinyl floor tiles. The work was done in a poor and unprofessional manner. Petitioner has repeatedly repainted over mold but offered no evidence at all to suggest that the source of the recurring leaks had been determined or repaired. No evidence was offered regarding the removal of lead paint, a violation that has been open since 2009.

There is no evidence to suggest that respondent prevented Petitioner from gaining access

or effectuating repairs in any manner at any time.

The Court finds that through December 2011 Petitioner failed to repair the mold condition in the Subject Premises. The Court notes that simply painting over the mold is insufficient, and that Petitioner must determine what the source of the recurring leaks and moisture are in the Subject Premises before simply painting over mold and considering the violation corrected.

Based on the foregoing, the Court finds that Petitioner failed to comply with the July 8, 2011 stipulation from the HP Proceeding. Therefore Respondent is entitled to, as stipulated, a 40% abatement for September 2011, a 50% abatement for October 2011, a 60% abatement for November 2011, and a 70% abatement for December 2011.

Based on the foregoing the Court finds there is \$1009.05 due for September 2011, \$840.87 due for October 2011, \$672.70 due for November 2011 and \$504.52 due for December 2011. Petitioner is awarded a final judgment in the amount of \$3027.14 for rent due through December 2011. Issuance of the warrant is stayed five days for payment.¹

¹ Counsel may pick up trial exhibits from the record room on the second floor within thirty days. After said date, any remaining documents may be shredded in accordance with administrative directives.

This constitutes the decision and order of this Court.

SABRINA B. KRAUS

Dated: New York, New York
February 8, 2012

TO: KAPLAN & CHUN, PC
By: Howard Chun, Esq
Attorneys for Petitioner
30 Avenue B
New York, New York 10009
(212) 777-0320

HOUSING CONSERVATION COORDINATORS

By: Aurore DeCarlo
777 Tenth Avenue
New York, New York 10019
(212) 674-1729