

108 W. 116 Residences LLC v Crutchfield
2013 NY Slip Op 31306(U)
June 21, 2013
Civ Ct, NY County
Docket Number: 88708/2012
Judge: Sabrina B. Kraus
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CIVIL COURT OF THE CITY OF NEW YORK
 COUNTY OF NEW YORK: HOUSING PART C

 108 WEST 116TH RESIDENCES LLC, X

Petitioner-Landlord

-against-

DECISION & ORDER

Index No.: L&T 88708/2012

HON. SABRINA B. KRAUS

MICHAEL CRUTCHFIELD
 108 WEST 116TH STREET - APT 2A
 NEW YORK, NEW YORK 10027

Respondent-Tenant

 X

BACKGROUND

The underlying summary nonpayment proceeding was commenced by **108 WEST 116TH RESIDENCES LLC** (Petitioner) against **MICHAEL CRUTCHFIELD** (Respondent), based on the allegation that he is a rent stabilized tenant of record, and had failed to pay rent due pursuant to a written lease agreement.

PROCEDURAL HISTORY

Petitioner issued a three day rent demand dated November 12, 2012, seeking \$2880.00 for October and November 2012, at a monthly rent of \$1440 per month. The petition is dated November 21, 2012, and Respondent filed an answer on December 6, 2012. Respondent's answer asserted that Petitioner was not a proper party, and further asserted a general denial.

The proceeding was originally returnable on December 14, 2012. On that date, the parties entered into a stipulation of settlement, which provided that Respondent owed \$11,610.00

through December 2012, and consented to entry of a judgment in said amount. The stipulation provided for forthwith issuance of a warrant of eviction and stayed execution through February 15, 2013 for payment of the arrears.

The warrant of eviction issued on February 7, 2013.

On February 27, 2013, Respondent moved for an extension of time to pay the arrears. Respondent's motion was granted pursuant to a court order, which provided that there remained \$6240.00, due through February 2013, and stayed execution of the warrant for payment of same. This figure included rent that Petitioner alleged had come due after the initial stipulation, and represented a credit for a substantial payment, which had been made by Public Assistance towards the arrears.

Respondent's time to pay his arrears was extended two additional times by court order on April 4, 2013 and May 21, 2013. Each time Petitioner included the current rent that had allegedly come due through the date the order was issued.

On May 21, 2013, the court held that the parties agreed there remained \$3560.00 due through May 2013. Respondent asserted he had mailed \$2120, and that Petitioner had not cashed the check. Execution of the warrant was stayed through May 31, 2013, for the payment of the remaining arrears.

On June 12, 2013, Respondent again moved for relief by order to show cause. The court signed the order to show cause and the return date was June 21, 2013. Petitioner's counsel moved pursuant to CPLR § 5704 for ex parte relief before the Appellate Term asking that the stay be vacated. That motion was denied on June 18, 2013 (2013 NY Slip Op 77076(U)). In Respondent's order to show cause, he asserted that he had mailed the payments required by the prior court order, and that he was in compliance with same. The motion was originally

returnable on June 21, 2013, but the parties made a joint application to accelerate the return date to June 19, 2013, which was granted by the court.

On June 19, 2013 the court heard argument and reserved decision.

On said date it was again brought to the court's attention that there was also pending a summary holdover proceeding between the parties. The court reserved decision on the motion, and pulled the file from the holdover proceeding for review. The court takes judicial notice of the contents of said file, as well as the file of a prior nonpayment proceeding which Petitioner relied upon to increase the amount of arrears initially stipulated to in this proceeding.

PRIOR NONPAYMENT PROCEEDING

Immediately prior to the commencement of this proceeding, Petitioner's predecessor in interest, 108 Realty LLC, had sued Respondent for the same period of time covered by the initial judgment in the current proceeding.

The prior nonpayment proceeding was commenced under Index Number 72266/2012.

That proceeding was commenced by service of a five day rent demand on June 4, 2012 seeking \$6,550 in arrears for a period covering February 2012 through June 2012, at a monthly rent of \$1400.00. The petition issued on June 4, 2012 seeking \$6450 in arrears through July 2012.

On July 20, 2012, Respondent filed an answer asserting a general denial and the proceeding was initially returnable on July 27, 2012. The parties entered into a stipulation of settlement which provided for a judgment in the amount of \$5370.00 for all rent due through July 2012. The stipulation provide for issuance of the warrant with execution stayed through September 14, 2012 for payment of same.

On September 4, 2012, Respondent moved for an order to show cause. Respondent asserted he had paid the current rent as it came due, but needed more time to pay the arrears. Respondent asserted there was a pending application for assistance with HRA. The court did not sign the order to show cause and marked it withdrawn.

The warrant of eviction issued on September 6, 2012.

On September 25, 2012, Respondent again sought an order to show cause seeking additional time to pay the arrears. The order to show cause was returnable on October 4, 2012. On that date, the parties entered into a second stipulation of settlement which provided that the parties agreed that rent due through October 2012 totaled \$7,290 and stayed execution through November 15, 2012 for payment of same.

On October 9, 2012 the building was sold by 108 Realty LLC to Petitioner.

On November 15, 2012, Respondent moved for an order to show cause. Respondent showed that HRA had issued an approval dated November 10, 2012 for \$5,850 in arrears covering all arrears through September 2012. The approval stated that Respondent had to show proof that \$1400 was paid for October 2012, before the arrears were paid. Respondent also asserted that the building management had changed since October 2012.

On the return date of the order to show cause, the court issued a decision granting the motion on default. The order provided that the attorney for the owner appeared, advised the court the building had been sold and that he would not be representing the new owner, The judgment and warrant were vacated and the proceeding was dismissed.

PENDING HOLDOVER PROCEEDING

On or about March 2013, Petitioner commenced a summary holdover proceeding against Respondent. The facts alleged by Petitioner in said proceeding, dramatically differ from and contradict the facts alleged by Petitioner in the nonpayment proceeding.

In the holdover proceeding, Petitioner asserts that the Subject Premises is exempt from Rent Stabilization based on there having been a legal rent over \$2500 prior to the commencement of Respondent's tenancy.

In the holdover proceeding Petitioner alleges that Respondent's unregulated lease agreement expired on November 30, 2012, and was not renewed. The petition further asserts that Respondent has failed to renew his lease and that Petitioner does not wish to offer Respondent a renewal lease.

Respondent filed an answer on March 26, 2013, asserting that he was a rent stabilized tenant and that no proper renewal had been offered to him. Respondent further asserted that Petitioner created a month to month tenancy by accepting his rent after the expiration of his last lease.

The holdover file contained several documents including a certified printout from DHCR showing that Respondent had been registered as a rent stabilized tenant in 2011 and 2012, with a legal rent of \$2202, and a preferential rent of \$1440 per month. There were no registrations prior to 2004, and no legal rent listed at above \$2500.

Respondent failed to appear for his court date on June 19, 2013. Petitioner, through its counsel, presented sworn testimony at an inquest and asked the judge in that proceeding for a final judgment of possession, which was awarded by the court.

The court has reviewed the testimony presented at the inquest and takes judicial notice of same. Notably, after being repeatedly questioned by the Judge on the record Petitioner's witness

testified that as of the date of the inquest, Respondent had not paid, and Petitioner had not accepted any money for any period after October 2012. Counsel for Petitioner also made the same representation to the court on the record.

Respondent has moved by order to show cause to vacate his default, and said motion is returnable on June 28, 2013.

Petitioner's counsel verified the petition in both proceedings.

DISCUSSION

Petitioner annexes a rent history to its opposition papers. That rent history shows an opening balance through October 2012 of \$8,730.00.

Since that date the rent history acknowledges that Petitioner collected \$5850.00 from DSS for arrears. Petitioner also accepted an additional \$9500 in payments from Respondent. Thus the total amount of rent collected by Petitioner since October 2012 is \$15,350.00, or nearly twice the amount that was alleged outstanding as of October 2012.

Petitioner can not claim that Respondent is a rent stabilized tenant and should be evicted for failing to pay rent due after November 2012, pursuant to a written extant lease agreement, in one court room and then go next door, and claim for the same period that Respondent is an unregulated tenant who's lease agreement had expired and was holding over. These allegations are inherently inconsistent. If Petitioner's claim in the holdover proceeding is correct, then Respondent owed no rent for any month after November 2012, although it is undisputed that he has paid thousands of dollars since and Petitioner has accepted same.

Moreover, Petitioner's agent presented false testimony to Judge Halperin at the inquest when she testified that no rent had been accepted for any period after October 2012. According to Petitioner's own breakdown, this is not even close to accurate testimony.

Petitioner's breakdown shows that there is \$4900 in arrears due through June 2013. Respondent's moving papers show documentary evidence that two additional certified checks totaling \$3560 were sent to Petitioner by certified mail on May 31, 2013, but Petitioner has not yet credited Respondent for same.

Based on the foregoing the court finds that Respondent has paid all rent due through May 2013. Respondent's motion is granted.

The judgment is vacated and the proceeding is dismissed.

The court will forward a copy of this decision to Judge Halperin for consideration in the pending holdover proceeding.

This constitutes the decision and order of this court.

Dated: June 21, 2013
New York, New York

Hon. Sabrina Kraus
JHC