

<b>Mautner-Glick Corp. v Manko</b>
2015 NY Slip Op 30032(U)
January 20, 2015
Civil Court of the City of New York, New York County
Docket Number: 82055/2014
Judge: Sabrina B. Kraus
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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK: HOUSING PART L  
\_\_\_\_\_  
MAUTNER-GLICK CORP, X

Petitioner-Landlord

307 EAST 77, LLC

Petitioner-Owner

-against-

**DECISION & ORDER**  
**Index No.: L&T 82055/2014**

**HON. SABRINA B. KRAUS**

LIUBA MANKO,  
307 East 77<sup>th</sup> Street - Apt. 2F  
New York, NY 10075

Respondent-Tenant

\_\_\_\_\_  
X

**BACKGROUND**

This summary nonpayment proceeding was commenced by **MAUTNER-GLICK CORP**, the landlord, and **307 EAST 77, LLC**, (Petitioners), the owner of the subject building, and seeks to recover possession of 307 East 77<sup>th</sup> Street - Apt. 2F, New York, NY 10075 (Subject Premises) based on the allegation **that LIUBA MANKO** (Respondent) the rent-stabilized tenant of record, has failed to pay rent due for the Subject Premises.

**PROCEDURAL HISTORY**

Petitioner issued a rent demand dated October 7, 2014, seeking \$5,146.68 in arrears, at a monthly rent of \$1,715.56 per month. The petition is dated October 22, 2014. Respondent appeared, *pro se*, on October 31, 2014, and filed an answer asserting a breach of warranty of habitability and a general denial.

The proceeding was initially returnable November 12, 2014.

On January 16, 2015, the proceeding was assigned to Part L for trial. The trial commenced and concluded on that day, and the court reserved decision.

### **FINDINGS OF FACT**

Petitioners are the landlord of the Subject Premises, and the owner of the building in which the Subject Premises is located, pursuant to a deed dated July 31, 1997 (Ex 1) and an original lease dated January 10, 1997 (Ex 3).

Respondent is the rent stabilized tenant of record of the Subject Premises, pursuant to a written lease, mostly recently renewed lease for a two year term through February 28, 2016, at a monthly rent of \$1715.56 (Ex 4). There is a valid multiple dwelling registration for the Subject Premises (Ex 2). The rent sued for herein is the legal registered rent (Ex 5).

As of October 2014, Petitioner's rent records show \$5146.68 in arrears.

Respondent made no payments since that date.

Respondent sent Petitioner a letter requesting repairs in August 2014 (Ex F). The letter requested repairs to the stove, replacement of the toilet due to recurring clogs and a leak from the tank, unclogging the bathroom sink, an intercom that did not work, a defective shower faucet, and requesting installation of a new Carbon Monoxide detector.

The primary condition which Respondent asserts as a basis for an abatement is the toilet not flushing properly. Respondent testified the toilet has not flushed properly since the inception of her tenancy. However, the first proof of notification to Petitioner was Respondent's August 2014 letter. An emergency repair was made to electrically clear the backed up toilet at night on August 27, 2014 (Ex 10). Petitioner made repairs to the toilet in

September 2014, including installing a new tank and toilet bowl, and other parts on or about September 12, 2014 (Ex 8). However, Respondent's toilet required unclogging on at least two occasions in October 2014 (Exs D & E). Respondent established ongoing problems with the operation of the toilet from August through October 2014. Respondent testified that to date the toilet has insufficient pressure to properly flush due to the aged plumbing in the subject building.

Petitioner completed the other requested repairs to the bathroom on August 6, 2014 (Ex 7). This included unclogging bathroom drains, rebuilding the shower body and installing new shower parts, repairing the leak on the toilet tank.

The intercom was repaired on August 27, 2014 (Ex 12A).

Petitioner has a plumber investigate Respondent's claim regarding the gas stove on August 4, 2014, no leaks were found by the plumber, but the plumber recommended a stove mechanic be brought in to assess the functioning of the stove. The stove was not included in the list of ongoing repairs submitted by Respondent to Petitioners in November 2014.

Respondent requested additional repairs in November 2014 (Ex C), but refused to allow Petitioner access after that date to effectuate the repairs.

### **DISCUSSION**

Petitioner is entitled to a judgment for rent due through October 2014. While the evidence submitted by Petitioner showed arrears beyond that date, Petitioner made no motion to amend the petition to date at trial [*NYCHA v Sinclair* 21 Misc3d 133(A) (*reversible error for court to sua sponte amend petition to date absent specific motion for said relief*)].

On October 10, 2014, Respondent sued Petitioners for an abatement in Small Claims Court under SCNY 2839/2014. That suit is for \$5000 and seeks to assert a claim against Petitioners going back six years. Respondent testified that she consulted with counsel who advised her to pursue the claim in Small Claims Court. Therefore this court will not consider Respondent's counterclaim for an abatement, and to the extent Respondent's answer can be deemed to have asserted same, the counter claim for an abatement for October 2006 through July 2014 is severed for determination in the pending small claims action.

New York Real Property Law §235-b provides for an implied warranty of habitability. Landlords of residential premises are required to keep the premises "fit for human habitation" and free of conditions that are dangerous, to the life, health or safety of the tenants (*Park West Management Corp. v. Mitchell*, 47 N.Y.2d 316 at 327).

If the landlord breaches the warranty of habitability, the proper measure for damages is "... the difference between the fair market value of the premises if they had been as warranted, as measured by the rent reserved under the lease, and the value of the premises during the period of the breach (*Park West Management Corp.* 47 N.Y.2d 316, 329)."

The Court must weigh the severity of the violation and duration of the conditions giving rise to the breach, as well as the effectiveness of steps taken by the landlord to abate those conditions (*N. Town Roosevelt Assoc. v. Mullen*, NYLJ, Oct. 27, 1980. P.6, col. 45; *Concord Village Management v. Rubin*, 101 Misc.2d 625).

To the extent Respondent submitted evidence and asserts abatement as a defense to the months sued for herein, the court finds that Respondent established an entitlement to an

abatement for the toilet for the months of August through October 2014. The Court awards Respondent a 15% abatement, in the amount of \$772.00 for this period for this condition.

Any other repairs requested appear to have been promptly made from August through October 2014, and the Court finds no further abatement warranted for this period.

### **CONCLUSION**

Based on the foregoing, Petitioner is entitled to a final judgment of money and possession in the amount of \$4374.68 for rent due through October 2014. Issuance of the warrant is stayed five days for payment.

This constitutes the decision and order of this court <sup>1</sup>

Dated: New York, New York  
January 20, 2015

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Hon. Sabrina B. Kraus

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<sup>1</sup> Parties may pick up their exhibits from Window 9 in the clerk's office on the second floor within 30 days of the date of this decision. After said date, the documents may be destroyed in accordance with administrative directives.

