

Broadway Greystone LLC v Rodriguez
2015 NY Slip Op 30332(U)
March 13, 2015
Civil Court of the City of New York, New York County
Docket Number: 68580/2014
Judge: Sabrina B. Kraus
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART R

BROADWAY GREYSTONE LLC,

Petitioner-Landlord

HON. SABRINA B. KRAUS

-against-

DECISION & ORDER
Index No.: L&T 68580/2014

CORAL RODRIGUEZ
212 West 91st Street, Apt. 927/8
New York, NY 10024

Respondents-Tenant

“JOHN DOE” and “JANE DOE”

Respondents-Undertenants

X

BACKGROUND

This summary holdover proceeding was commenced by **BROADWAY GREYSTONE LLC** (Petitioner) against **CORAL RODRIGUEZ** (Respondent), the rent-stabilized tenant of record, seeking to recover possession of 212 West 91st Street, Apt. 927/8, New York, NY 10024 (Subject Premises) based on the allegation that Respondent has created a nuisance in the Subject Premises by allowing excessive clutter and refusing access for bedbug extermination.

PROCEDURAL HISTORY

Petitioner issued a Notice to Cure dated May 16, 2014. The Notice asserted: Respondent is permitting an excess accumulation of personalty and debris in the Subject Premises creating an unsanitary condition and possible fire hazard; that the Subject Premises is so cluttered it is difficult to move around; that there are foul odors emanating from the Subject Premises; that the

unsanitary condition has led to an infestation of bedbugs, vermin and roaches; and that Respondent has consistently refused access for bedbug inspection.

The Notice gave Respondent until June 2, 2014, to cure by removing the clutter condition, preparing the Subject Premises for bedbug extermination, and allowing access for inspection and extermination of bedbugs.

Petitioner issued a Notice of Termination dated June 3, 2014, based on the fact that Respondent had failed to cure the alleged defaults.

The petition is dated June 18, 2014, and the proceeding was initially returnable June 30, 2014. On said date, Respondent made an application for an adjournment to obtain counsel. Respondent submitted a letter dated June 26, 2014, about a meeting with a legal services company. The court ordered Respondent to provide access on July 7, 2014, from noon to 2pm for the exterminator for bedbugs.

On July 18, 2014, Petitioner moved for an order accelerating the return date for immediate trial because Respondent failed to provide access as ordered on July 7, and for related relief. The motion was referred to Judge Kaplan to conduct a hearing. Judge Kaplan issued an order dated July 25, 2014, after the hearing, finding that Respondent had not opened the door because she did not hear the knock, and that her failure to provide access on July 7, 2014, was not intentional. The order referred the matter back to Part C for further proceedings.

On the same date, the court (Hahn, J) so-ordered a stipulation which provided: that Respondent would provide access to the Subject Premises on August 1, 2014, from 2 to 4 pm for a bedbug inspection; that Respondent would prepare for the inspection by clearing the floors and

moving items blocking a full and thorough inspection; and that the concierge would call up to the announce Petitioner's agents.

On August 7, 2014, Petitioner moved for an order striking Respondent's answer and imposing sanctions on Respondent based on their allegation that Respondent had failed to provide access on August 1, 2014. On December 1, 2014 the court (Hahn, J) issued an order denying the motion, noting that Respondent had never filed an answer, and denying the motion for sanctions without prejudice. The court set a trial date for January 22, 2015, and deemed Respondent's answer to be a general denial.

On February 27, 2015, the proceeding was assigned to Part R for trial. The trial commenced on said date and concluded on March 13, 2015. The court reserved decision.

PRIOR RELATED PROCEEDING

As requested by the parties, the court takes judicial notice of a prior nonpayment proceeding under Index Number 89929/2013 pertaining to the Subject Premises, as well as the contents of said file. In that proceeding, both parties were represented by counsel.

The petition sought \$5,216.28 in rent arrears at a monthly rent of \$1558.14 . Respondent appeared *pro se* on December 16, 2013, and filed an answer disputing the amount she had been sued for. The proceeding was initially returnable on December 23, 2013.

On January 27, 2014, petitioner moved to substitute in the new owner, Petitioner herein.

On March 13, 2014, counsel appeared for Respondent, and the motion and proceeding were settled pursuant to a stipulation. The Stipulation provided for payment of \$7890.70 in rent as payment in full by March 31, 2014; and for repairs to the Subject Premises; and for

Respondent to provide access on March 19, 2014, for a bedbug inspection, between noon and 4 pm.

On March 27, 2014, Petitioner moved for an order for a judgment of possession and warrant as against Respondent based on Respondent's failure to provide access. On April 3, 2014, the court (Schreiber, J) granted the motion to the extent of directing Respondent to provide access on April 4, 2014 from noon to 4 pm. The balance of the motion was adjourned to April 17, 2014.

On April 17, 2014, Petitioner moved for entry of a money judgment based on Respondent's failure to pay the arrears, as well as for entry of a judgment and warrant based on Respondent's failure to provide access. The motion was adjourned by the court (Schreiber, J) pursuant to an order which directed Respondent to provide access for inspection on April 23, 2014 from noon to 4 pm. On April 28, 2014, the motion was settled by stipulation which only addressed payment of arrears and reserved Petitioner's right to seek access for bedbug extermination. Pursuant to said stipulation, Respondent had tendered a check for all arrears and the stipulation provided that upon the check for the arrears clearing the proceeding would be discontinued with prejudice.

On May 13, 2014, the parties submitted a stipulation discontinuing the proceeding.

FINDINGS OF FACT

Petitioner is the owner of the subject building pursuant to a deed dated December 20, 2013, (Ex 1). There is a valid MDR for the Subject Premises (Ex 2). Respondent is the rent stabilized tenant of record for the Subject Premises with a legal regulated rent of \$1558.14 (Ex 3).

It was essentially uncontested at trial that the Subject Premises is in an unacceptable condition. The Subject Premises is filled with “mountains” of garbage that in some areas nearly touch the ceiling. It is not possible to walk through the Subject Premises without climbing on piles or mountains of garbage. This was established by the credible testimony of Petitioners’ witnesses as well as photographs (Ex 7), and essentially acknowledged even by Respondent in her own testimony.

The condition is unsafe, a potential fire hazard and unsanitary. The clutter is so pervasive that it is not possible to even fully open the entrance door to the Subject Premises. No furniture can be seen through the clutter in either the living room or the bedroom, not even a bed. Windows are blocked. The clutter is in every part of the Subject Premises including the bathroom.

In February 2015, Respondent’s toilet overflowed for nearly twelve hours, causing a ceiling collapse in the apartment below her and leaks going several floors down. When the handy man called and knocked on her door, Respondent did not open the door. Given the emergency, the handyman let himself in. Respondent was in the Subject Premises but had not answered the door or the call from the concierge. To get to the bathroom, the handyman had to crawl on top of the mountains of garbage to get to the bathroom. Where he attempted to walk, he sank into the garbage. The photographs taken on this day reveal countless bags filled with recyclables, numerous empty juice boxes and containers strewn about and newspapers debris.

Respondent herself testified to a recent incident where she fell asleep with a candle on starting a fire in the Subject Premises, that had she not awoken and managed to extinguish could have been catastrophic. Respondent acknowledged that it would be unsafe for first responders

to enter the Subject Premises and attempt to put out a fire. The mountains of garage block other means of egress including the bedroom window.

Respondent also acknowledged that she repeatedly refused access to Petitioner for bedbug inspections, because she was embarrassed for others to see the condition in which she was living, and because no inspection or treatment of the Subject Premises could be accomplished given the extreme state of clutter.

A severe bed bug infestation impacted other units on the ninth floor and lack of access to the Subject Premises prevented Petitioner from full assessing and treating the Subject Premises as required to eradicate the infestation.

Respondent was given repeated opportunities to clear the clutter and has failed to do so. Petitioner attempted to have Adult Protective Services assist Respondent in cleaning out the Subject Premises. Respondent refused to cooperate with Adult Protective Services. Petitioner's agent offered to assist Respondent in removing the clutter from the Subject Premises, but Respondent never took him up on this offer.

DISCUSSION

§ 2524.3(b) of the Rent Stabilization Code allows for the eviction of a regulated tenant without approval from DHCR where the tenant is committing a nuisance in the housing accommodation, has damaged the premises, and has engaged in a "persistent and continuing course of conduct evidencing an unwarrantable, unreasonable or unlawful use of the property ..." which use has a substantial impact on the safety of other occupants of the building.

Allowing a clutter condition to exist unabated, such as that established in the case at bar, does constitute such a nuisance (*Gazivoda v Sherman* 18 Misc3d 138(A); *Kast Realty LLC v Houston* 2003 NY Slip Op 50892(U); *Stratton Co-op Inc. v Fener* 211 AD2d 559).

Additionally, despite making repeated agreements to clear the clutter and allow access for inspection, Respondent has failed to do so since late 2013.

.... trial courts must decline to exercise their discretion to allow a tenant a post-trial cure period in long term Collyer nuisance cases involving not mere clutter but also pervasive dirt and debris and in which the tenant has had opportunities to cure but has failed to do so.

[*Cabrini terrace Joint Venture v O'Brien* 18 Misc3d 1145(A)].

Based on the foregoing, Petitioner is awarded a final judgment of possession. The warrant shall issue forthwith, execution of the warrant shall be stayed for 30 days to afford Respondent an opportunity to vacate with dignity.

The proceeding is dismissed as to “John Doe” and “Jane Doe” as there was no evidence at trial of any such occupants.

This constitutes the decision and order of the Court.¹

Dated: New York, New York
March 13, 2015

Sabrina B. Kraus, JHC

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¹ Parties may pick up Trial Exhibits within thirty days of the date of this decision from Part R. After thirty days, the exhibits may be shredded in accordance with administrative directives.

