

Roc Century Assoc., LLC v Narayanan

2015 NY Slip Op 30675(U)

April 29, 2015

Civil Court of the City of New York, New York County

Docket Number: 78931/2014

Judge: Sabrina B. Kraus

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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

ROC CENTURY ASSOCIATES, LLC

Petitioner

HON. SABRINA B. KRAUS

-against-

DECISION & ORDER
Index No.: L&T 78931/2014

CHITTAMPALLI SESHACCHAR NARAYANAN
510 W 110TH STREET, APT. 11F
NEW YORK, NY 10025

Respondent

X

BACKGROUND

This summary holdover proceeding was commenced by **ROC CENTURY ASSOCIATES, LLC** (Petitioner) against **CHITTAMPALLI SESHACCHAR NARAYANAN** (Respondent) seeking to recover possession of **510 W 110TH STREET, APT. 11F, NEW YORK, NY 10025** (Subject Premises) based on the allegation that Respondent, the rent stabilized tenant of record, had created a nuisance in the Subject Premises through clutter and the use of a washing machine.

On February 24, 2015, the proceeding was assigned to Part R for trial. On March 4, 2015, this court issued a decision finding that Respondent had created a nuisance in the Subject Premises. The court found that Petitioner failed to prove its allegations regarding the washing machine, but that Respondent maintained the Subject Premises in a deplorable condition, as a result of hoarding.

The court noted Petitioner failed to prove many of the other allegations in the pleadings, including any insect or rodent infestation as a result of the hoarding, any offensive odors, that any other residents or occupants were adversely impacted by the hoarding condition, and that the condition of the Subject Premises prevented Petitioner from effectuating necessary repairs. The court further noted Petitioner was on notice of the condition for years and did nothing to pursue the claim prior to the commencement of this proceeding.

Based on the totality of these circumstances and the fact that Respondent was a long term rent regulated tenant, the court awarded Petitioner a final judgment of possession, but stayed issuance of the warrant to afford Respondent an opportunity to cure by eliminating the clutter condition in the Subject Premises, and provided that Petitioner could move for issuance of the warrant in the event Respondent failed to cure.

THE MOTION

Respondent has cured the nuisance in accordance with the court's order

On April 23, 2015, Petitioner moved for an order allowing for issuance and execution of the warrant based on Respondent's failure to cure, and seeking a judgment for past due use and occupancy and attorneys' fees. Respondent did not submit formal written opposition, but did submit photographs, which the court considered as his opposition, in addition to his claim at oral argument that he had in fact cured.

The court adjourned the motion and scheduled an inspection of the Subject Premises by the Court for April 28, 2015 at 3 pm to determine whether Respondent had cured.

The inspection took place as scheduled. After said inspection the court finds that Respondent has cured and eliminated the nuisance clutter. The court agrees that the Subject

Premises is dirty and needs to be cleaned and that the closets are filled with items and stuffed to capacity.

However, the condition established at trial where 90% of the Subject Premises was covered with items and where one could not walk through the Subject Premises without tripping has certainly been cured. While there still remain many items in the Subject Premises, on the date of the inspection, there were seven people who were able to easily walk about. There were no bags or piles of trash. The bathroom and floors were clear. There was nothing blocking the doors or windows and all means of egress appeared readily accessible. The court did observe one or two flies in the hallway inside the Subject Premises, but there was no odor and no other evidence of bugs or vermin.

At the time of the inspection, Petitioner asked the court to note wiring conditions which it alleged were dangerous, but that was not part of the allegations at trial, nor part of the cure directed by the court.

Based on the foregoing, the court finds that Respondent has cured the nuisance and that the issuance of the warrant shall be permanently stayed.

Use & Occupancy

Petitioner seeks a judgment for \$7509.70 in use and occupancy for a period from July 2014 through April 2015 at a monthly rate of \$764.82 pursuant to the parties' lease agreement.

RPAPL § 741(5) provides for entry of a judgment for rent arrears or use and occupancy if a demand for same is included in the notice of petition.

Respondent has asserted no defenses regarding Petitioner's use and occupancy claim.

A prior nonpayment proceeding addressed all arrears through October 2013. However, Petitioner submits a breakdown in support of its claim with a history of arrears from October 2007 forward. The breakdown does not show a zero balance as of October 2013 or any date thereafter. The breakdown shows \$596.31 in arrears being carried forward from October 2013. In July 2014, the date from which use and occupancy is sought pursuant to the notice of petition, there is a balance carried over of \$626.32. Therefore, the court awards use and occupancy from August 2014 forward, and only through the date of the trial which took place in February 2015. Any claims for use and occupancy or rent arrears before or after said period are severed.

The Court finds that Petitioner is entitled to entry of a money judgment for use and occupancy from August 2014 through the date of the trial February 2015 in an amount totaling \$5353.74.

Attorneys' Fees

Petitioner's motion for attorneys' fees is denied without prejudice to renewal upon the initial lease governing Respondent's tenancy. The motion attaches no lease agreement upon which the right to attorneys' fees is based. Additionally, while some leases were entered into evidence at trial, the initial lease governing Respondent's tenancy was not submitted, as noted in the court's March 4, 2015 decision.

This constitutes the decision and order of the Court.

Dated: New York, New York
April 29, 2015

Sabrina B. Kraus, JHC

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