

1461 Amsterdam Ave. LLC v Carrasquillo
2015 NY Slip Op 30831(U)
May 20, 2015
Civil Court of the City of New York, New York County
Docket Number: 59451/2015
Judge: Sabrina B. Kraus
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART R

1461 AMSTERDAM AVENUE LLC,

Petitioner-Landlord

HON. SABRINA B. KRAUS

-against-

DECISION & ORDER
Index No.: L&T 59451/2015

LISSIE CARRASQUILLO
1461 AMSTERDAM AVENUE Apt. # 5C
New York, NY 10027

Respondent- Tenant

X

BACKGROUND

This summary nonpayment proceeding was commenced by **1461 AMSTERDAM AVENUE LLC** (Petitioner) against **LISSIE CARRASQUILLO** (Respondent) the rent-stabilized tenant of record seeking to recover possession of 1461 AMSTERDAM AVENUE Apt. # 5C, New York, NY 10027 (Subject Premises) based on the allegation that Respondent has failed to pay rent due for the Subject Premises.

PROCEDURAL HISTORY

Petitioner issued a rent demand dated February 17, 2015, seeking \$2875.00 in arrears rent for November 2014 through February 2015, at a monthly rent of \$1375.00. The petition is dated March 17, 2015.

Respondent appeared and filed an answer on April 7, 2015, asserting the defense including breach of warranty of habitability, and the proceeding was initially returnable on April 15, 2015.

On May 20, 2015, the proceeding was assigned to Part R for trial, the trial commenced and concluded, and the court reserved decision.

FINDINGS OF FACT

Petitioner is the owner of the subject building pursuant to a deed dated January 14, 2011 (Ex 1). There is a an valid MDR for the Subject Premises for a term through September 1, 2015 (Ex 2).

Respondent is the rent-stabilized tenant of record for the Subject Premises, pursuant to a lease for a one year term from July 1, 2014 through June 30, 2015 at a monthly rent of \$1375. The lease has a rider which specifies that \$1375 is a preferential rent and that the legal regulated rent is \$1973.77. The last registered rent for the Subject Premises as of 2014 was \$1332.28 (Ex B). The rent sued for of \$1375 per month is a legal rent and is not challenged by Respondent.

Petitioner's motion to amend the petition to seek all rent due through May 2015 was granted at trial without opposition. Petitioner seeks \$ 6375.00 in arrears based on a balance of \$375 per month for September - November 2014 and January 2015, and rent for December 2014 and February through May 2015 at \$375.00.

In connection with execution of the lease, the parties also executed a "Free Rent Notice" (Ex 4-A). The document provides in pertinent part:

Landlord hereby gives possession and Tenant hereby accepts possession of the apartment as of July 1, 2014 in as is condition. Tenant acknowledges and accepts that all systems and services in the building are running properly. Landlord has notified the Tenant and tenant acknowledges that the free month is offered as an incentive to rent the above said apartment. Tenant acknowledges that the free month will be credited to the tenant(s) account on the 6th month of the lease. Tenant also agrees that the free months rent will only be credited if the Tenant's account is current.

Based on the foregoing Petitioner seeks rent for December 2014 because Respondent was in arrears as of December.

RPL §235-b provides for the warranty of habitability. RPL §235-b(2) provides that “Any agreement by a lessee or a tenant of a dwelling waiving or modifying his rights as set forth in this section shall be void as contrary to public policy.” This provision has been interpreted to invalidate holdover proceedings based on nonpayment of rent where a breach of warranty of habitability is asserted (*Windy Acres Farm Inc. v. Penepent* 40 Misc3d 63) and to invalidate lease provisions requiring written notice of repairs (*Vanderhoff v Casler* 91 AD2d 49).

In this proceeding, Respondent was in arrears in December 2014 because she was withholding rent based on her claim of breach of warranty of habitability. As further noted below, the court has awarded Respondent an abatement based on this claim. Moreover as of December 2014, Respondent had only withheld \$375 per month from September - November 2014, and paid the balance of the rent. Under these circumstances the court finds that the provision of the rider forfeiting the free month’s rent can not be invoked where Respondent has asserted a claim of warranty of habitability in good faith, because to do so would be an impermissible modification of Respondent’s rights under RPL§ 235. As such, the court finds that the concession stands, and no rent is due for December 2014.

Based on the foregoing the court finds the total unpaid arrears through May 2015 is \$5000.00.

Respondent moved in July 2014. When Respondent moved she did a walk through of the Subject Premises with the Super, Roman. Respondent pointed out items she wished to have repaired, and Roman asked for money in exchange for making the repairs, which Respondent

would not agree to pay. Respondent called Petitioner's office on several occasions to request the repairs and was advised Roman would make the repairs, but he never did.

In August 2014, Respondent filed a complaint with HPD (Ex E-4). Respondent alleged the sink was broken, defective doors and windows, that the pilot light on the range was not working, and a defective outlet. An inspector from HPD came to the Subject Premises on August 15, 2014, but Respondent did not provide access (Ex D-1). An inspection did take place on August 21, 2014, which resulted in a class "B" violation being issued for leaky sink faucet in the bathroom and a class "A" violation to refit the window in the bathroom. The remainder of the conditions were not found to be violations by the HPD inspector.¹

On September 8, 2014, Respondent filed a complaint with DHCR regarding a decrease in services (Ex A). The complaint alleged the oven was inoperable, a missing outlet cover behind the refrigerator, that one window was painted shut and would not open in the bathroom, defects in the bedroom window, and a missing light fixture in the dining room. On September 18, 2014, Petitioner went to the Subject Premises to address these repairs (Ex 6). However, the repairs were either not done or not done properly as violations were issued for many of the conditions in the subsequent HP Proceeding including the outlet, the windows, and the dining room light fixture.

On October 1, 2014, Respondent commenced an HP Proceeding under Index Number 1544/14. An inspection took place on October 10, 2014. The inspection resulted in two class "A" violations: one for painting the public hallways, and one for a defective light fixture ; and five class "B" violations: for roach and mice infestation, broken window sashes, broken

¹ See HPD website complaint status for complaint number 6992295 filed on 8/12/14.

bathroom sink, and a defective electrical outlet in the kitchen; and three class “C” violations for items left in the public hallway, defective entrance door, and defective window sashes in the bathroom window.

The proceeding was returnable on October 24, 2014, and the parties entered into a consent order. Respondent never moved to restore the proceeding, and acknowledged that Petitioner appeared on the agreed access dates to do the work, but alleged the work was not satisfactorily completed.

Between November 2014 and March 2015 Respondent filed complaints with HPD regarding no heat or hot water, problems with cold water, the toilet, and the stove.² No violations were issued for any of the conditions complained of.

The court finds that from August 2014 through November 2014 the following rent impairing conditions existed at the Subject Premises roach and mice infestation, defective windows, and defective entrance door.

Petitioner was on notice of the defective windows from August 2014 forward. Petitioner was on notice of the mice and roaches from October 2014 forward.

Based on the foregoing the court finds Respondent is entitled to a 10% abatement for August and September 2014 and a 15% abatement for October and November 2014. The total abatement awarded to Respondent is \$687.50.

² As indicated on HPD website complaints were filed on 11/18/14, 12/08/14, 1/10/15, 1/27/15, 2/7/15, 2/27/15, and 3/20/15.

Based on the forgoing Petitioner is awarded a final judgment of \$4312.50 as all rent due through May 2015. Issuance of the warrant is stayed five days for payment. This constitutes the decision and order of the court.³

Dated: New York, New York
May 20, 2015

Sabrina B. Kraus, JHC

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³ Parties may pick up their exhibits within 30 days from Window 9 at the Clerk's Office. After thirty days, the exhibits may be destroyed in accordance with administrative directives.