

New York Holding Co. Assoc. v Matos
2015 NY Slip Op 31305(U)
March 11, 2015
Supreme Court, New York County
Docket Number: L&T 61553/14
Judge: Sabrina B. Kraus
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART R

NEW YORK HOLDING COMPANY ASSOC., X

HON. SABRINA B. KRAUS

Petitioners-Landlord

DECISION & ORDER
Index No.: L&T 61553/14

-against-

DIANA MATOS
66 Vermilyea Avenue, Apt. 26
New York, New York 10034

Respondent-Tenant

ISABEL GUZMAN

Respondent-Occupant

X

BACKGROUND

This summary nonpayment proceeding was commenced by **NEW YORK HOLDING COMPANY ASSOC.** (Petitioner) and seeks to recover possession of APARTMENT 26 at 66 VERMILYEA AVENUE, New York, New York 10034 (Subject Premises) based on the allegation that **DIANA MATOS** (Tenant), the rent-stabilized tenant of record, has failed to pay rent past due for the Subject Premises. **ISABEL GUZMAN** (Respondent), is tenant’s daughter, lives in the Subject Premises and the only respondent who appeared at trial.

PROCEDURAL HISTORY

Petitioner issued a Three Day Rent Demand dated March 28, 2014 , seeking \$7,203.94 in arrears for a period from June 2013 through March 2014, at a monthly rent of \$763.71. The Petition is dated April 8, 2014, and the proceeding was initially returnable April 30, 2014.

Respondent filed an answer on April 22, 2014, asserting a rent overcharge, breach of warranty of habitability and disputing the amount of arrears sued for. On April 30, 2014, Respondent did not appear and a default judgment was entered against her by the court (Kaplan, J) in the amount of \$7,967.65 as all rent due through April 2014.

On May 12, 2014, Respondent's motion to vacate her default was granted, and the proceeding was adjourned to June 19, 2014 for trial, pursuant to a stipulation, which also provided for Petitioner to repair outstanding violations with an initial access date on May 28, 2014, and a commitment by Petitioner to finish repairs within 30 days.

On June 19, 2014, Petitioner moved for Civil Contempt against Respondent alleging that she failed to provide access on May 28, 2014. Petitioner's motion was denied by the court (Kaplan, J) on June 19, 2014, due to improper service. The proceeding was adjourned to July 31, 2014 for trial, for Petitioner's client to be present and for Respondent to seek counsel. An additional access date was set for June 26, 2014.

On July 31, 2014, Petitioner again moved for Civil Contempt against respondents, alleging that while Respondent had allowed access on June 26, and work had commenced, Petitioner needed additional dates to complete the work, and Respondent had refused access on additional dates. On August 28, 2014, the motion was denied, and the proceeding dismissed without prejudice, based on Petitioner's failure to appear.

On November 25, 2014, Petitioner's motion to vacate its default was granted and the proceeding was adjourned to January 8, 2015, for all purposes. The order further noted that Petitioner requested access to continue repairs, but Respondent did not wish to "... arrange for

access at this time for reasons Respondent states on the record.”

On January 8, 2015, Respondent appeared by counsel, and the parties stipulated to adjourn the proceeding to February 10, 2015, and agreed to three access dates for repairs.

On February 10, 2015, the Court (Stoller, J), over Respondent’s objection, adjourned the proceeding and set a trial date for February 17, 2015 . On February 17, 2015, Respondent discharged her attorney in court in the Resolution Part, and the proceeding was assigned to Part R for trial. The trial was completed the same day and the Court reserved decision.

Tenant has never appeared in this matter.

PRIOR RELATED PROCEEDINGS

The Court takes judicial notice of three prior proceedings between the parties: Index#68842/12 (nonpayment proceeding) and Index#1155/13 (Harassment Proceeding) and Index#1154/13 (HP Proceeding) and the contents of said files.

Index#1154/13 (a HP Proceeding)

Respondent commenced this proceeding on June 5, 2013, asserting she had no bathroom sink, toilette or bathtub, defective floors, windows and plastered surfaces, missing tiles, and mice infestation. A court ordered inspection took place on June 13, 2013 resulting in twelve Class “B” violations being placed on the Subject Premises for defective plastered surfaces and painting, broken window sashes and counterbalance, broken flushing apparatus on the toilet, to replace the sink in the bathroom, missing smoke detector and carbon monoxide detector, four square feet of mold on the ceiling in one room, defective vinyl floor tiles, defective wood subflooring, and defective ceramic flooring.

Petitioner appeared by counsel in said proceeding, and on July 12, 2013, the parties entered into a Consent Order providing that Petitioner would correct all violations issued on June 13, within 30 days, with access dates being set for July 30 through August 2, 2013. On August 5, 2013, Respondent moved to restore the proceeding alleging that the work had not been completed and that Petitioner had sent one worker on the access dates who worked for two hours on each date.

On August 13, the parties entered into a stipulation adjourning the motion to September 6, 2013, and setting additional access dated for repairs for early September. In that stipulation, Respondent acknowledged that four violations from the June 13 inspection had been corrected including the violation for the flushing apparatus on the toilet, installation of carbon monoxide and smoke detectors, and painting in the kitchen. The stipulation further provided that Petitioner would correct the remaining violations and address new conditions, including the leaking faucet on the bathroom sink, a hole by the toilet, and missing wall tiles around the bathtub.

Resource Assistants were sent by the court to the Subject Premises in 2013 on July 30, August 1, September 3, and December 10.

On July 30, 2013, Petitioner failed to have workers go to the Subject Premises. The Super had not made any arrangements to have repairs start. The Super spoke no English but his daughter promised to immediately call a window repair man to fix the broken window panes, and then look into other repairs. On August 1, again there were no workers in the Subject Premises as of 2:30 pm. A worker came after the Resource Assistant arrived, but did no work for the next hour. The Resource Assistant left at 3:40 pm. On September 3 and 4 work was on

going when the Resource assistant arrived, but not much progress had been made in terms of repairs. On December 10 and 12, workers were present when the Resource assistant arrived. Respondent acknowledges that the following repairs had been made: a new stove was installed in December and gas was being supplied to the stove; the ceilings and walls were plastered and painted in November 2013; the vinyl floors in the kitchen were repaired in November 2013; and new wood floors were being installed.

On September 6, 2013, the parties entered into a second Consent Order, which incorporated violations issued by HPD on July 3, 2013, and August 9, 2013, provided for access on September 12 and 13, and provided that Petitioner would additionally remediate any mold on the living room floor "... Pursuant to applicable industry standards." Pursuant to the July and August inspections three Class "A" violations and 14 Class "B" violations were placed on the Subject Premises. The violations covered conditions including; leaking flush pipe connection at the bathroom toilet, refitting doors to an interior rooms, repairing a water leak from the ceiling, defective light fixtures as well as additional violations for the conditions covered in the June inspection.

On October 1, 2013, Respondent moved for an order to hold Petitioner in contempt asserting that Petitioner had failed to appear on the agreed access dates. This court held a hearing on said motion on March 17, 2014 issued a decision finding that Petitioner had failed to correct the violations and that Petitioner was in Civil Contempt and issuing a fine against Petitioner. Petitioner presented no witnesses at said hearing.

Further motion practice took place after the hearing. At a court conference on November 18, 2014, Respondent stated she would not provide Petitioner with further access dates until the pending motions were determined.

FACTS

Petitioner and Tenant entered into a written lease for the Subject Premises dated February 15, 1983, for a term through and including February 28, 1986, at a monthly rent of \$228.00 (Ex 2). The lease lists, Respondent and Carmelo Rosa as tenant's daughters and additional occupants. The last two renewal leases were dated: October 25, 2011, for a two year period from March 1, 2012, through February 28, 2014, at a monthly rent of \$750.09 (Ex D); and November 21, 2013, at a monthly rent of \$780.09, for a one year period through February 28, 2015 (Ex C).

There is a valid MDR for the Subject Premises through and including September 1, 2015 (Ex. 2). Petitioner submitted a DHCR registration for the building which indicates as of July 17, 2014, that the legal registered rent was \$780.09, and that Respondent was paying \$793.71 (Ex 3)¹. The registration lists Tenant with a lease for the period of March 1, 2014 through February 28, 2015.

The prior nonpayment proceeding between the parties (index #68842/12) addressed all rent due through September 30, 2012.

Respondent submitted two rent reduction orders in evidence. The first order (Ex A) has an issue date of September 4, 2013, and found that Petitioner had failed to maintain specified

¹ The 'actual rent' figure includes a monthly charge of \$13.62 for a washing machine.

services based on an inspection of the Subject Premises on August 8, 2013, by DHCR where the inspector noted there were holes in the bathroom wall, the kitchen floor was missing tiles, and that there were broken and missing tiles in the hallway of the Subject Premises. The order reduced the legal regulated rent to the level in effect prior to the most recent guideline, with the effective date of the order being July 1, 2013. The order further provided that Petitioner was to refund Tenant all amounts collected in excess of the reduced rent since July 1, 2013.

A second rent reduction order was issued October 10, 2014 (Ex B). This order was based on a DHCR inspection on October 6, 2014, and found: that the windows were defective in that they did not lock properly and most did not open and close properly, that there was leaks and water stains in one bedroom; there was no working electrical outlet in said bedroom; that the ceiling and walls had been repaired in an “unworkmanlike manner” and that the ceiling was buckling; that the hallway closet was missing a door; and that there was evidence of mice infestation.

The Order further provided that the buckling ceiling was a hazardous condition, but not part of the original complaint and thus Petitioner had thirty days to correct or Tenant could file a new decrease in services complaint. The inspector also noted the following conditions not part of the original complaint, a hole in the bathroom window sill above the tub, that the kitchen ceiling was wet and blistering, and that the light fixture in the bedroom did not work properly.

The effect of the second order is to continue the frozen rent until both orders are lifted.² The orders further provide that if Respondent receives an abatement for the same conditions during the same months that the rent reduction order is in effect, Respondent may have the benefit of either the abatement or the order, which ever is greater, but not both.

Petitioner denied knowledge of the rent reduction orders prior to trial.

The September 2013 DHCR reduction order, freezes Respondent's rent at \$699.38 effective July 1, 2013, as that is the prior legal rent for the lease period of March 1, 2012 through February 28, 2014. The subsequent October 2014 reduction order continues to freeze Respondent's rent at \$699.38, as no restoration order has been issued. Therefore, the maximum collectible rent from July 1, 2013 forward was frozen at \$699.38.

Based on the foregoing, \$14,737.69 was due from June 2013 through February 2015. Crediting Respondent for \$1500.18 paid in June and July 2013, the court finds a total of \$13,237.51 in arrears through February 2015.³

Respondent has lived in the Subject Premises for over thirty years. Respondent testified that Tenant left to care for her ill mother in Florida, and remained in Florida at the time of trial. Respondent testified that Tenant would not return to the Subject Premises until repairs had been completed.

² The order provides that for a rent-stabilized apartment where a rent reduction order is already in effect, no further rent reduction is authorized by the second order, unless the effective date of the second order predates the effective date of the reduction already in effect (Ex B, p.4).

³ Petitioner's records show a balance prior to June 2013 of \$330.55, as this was not sought in the pleadings, said claim is severed for a plenary action.

The Subject Premises suffered from leaks from June 2013 through October 2014. Respondent initiated two HP proceedings in June 2013 (Index Nos. 1154/13 & 1155/13) seeking repairs and putting Petitioner on notice of housing maintenance code violations. HPD conducted ten inspections⁴ between June 2013 and October 2014. Every inspection to the premises yielded numerous violations (Ex. F). A violation for a water leak was issued from all but two inspections from July 2013 forward.

Conditions that existed in the Subject Premises from June 2013 forward that were related to the leaks included:

Damage to the floors throughout the Subject Premises, damage to the ceilings and walls throughout the Subject Premises including cracks, holes, mold; and

Mold and “cascading water leak” as verified by HPD on June 13, 2013 and December 20, 2013 (Ex. O & Q).

Conditions that existed during this period unrelated to the ongoing leaks included:

A broken lock on the entrance door to the Subject Premises, Respondent purchase her own lock to replace the broken one in late October 2013 (Ex. J); and

No gas or working stove for approximately eight months, Con Edison shut the gas line to the range in October 2013 (Ex. G) and gas service remained off through June 2014. An HPD violations report of open violations as of February 16, 2015 (Ex. F) shows two violations for lack of gas to the range in October and December 2013; and

⁴6/11/13, 6/13/13, 7/3/13, 8/9/13, 9/11/13, 10/18/13, 12/4/13, 12/20/13, 6/4/14, 10/8/14

A missing hallway closet door, non working bedroom outlet, a missing tub ; and
Insufficient heat in the Subject Premises; and
Mice infestation and broken windows and sashes; and

In June 2013 the Landlord removed the tub, toilet and sink from the bathroom. HPD issued violations in June 2013 for the wash basin, water closet bowl and flushing apparatus in that month. Even after that month, HPD continued to issue violations pertaining to the bathroom, including missing tiles on the walls and floor, and leaky pipes through June 2014.

Respondent submitted photographs showing the condition of the Subject Premises at various points from June 2013 through January 2014 (Ex. K1-10).

On October 6, 2014, Respondent notified Petitioner in writing of yet another water leak and related damage to the Subject Premises (Ex. L). HPD's last inspection to the premises in October 2014, confirmed a water leak in the ceiling of both the kitchen and bedroom, as well as newly issued violations for electrical outlets, mice infestation, defective windows/sashes, and a sagging ceiling (illegal alteration).

Petitioner's only witness Ben Mexhuani (Mexhuani) has only been employed for the past five months as a property manager and had no knowledge of any repair work done prior to his own employment. The court does not give great weight to his testimony.

Some work was done on January 15, 2015, and Respondent acknowledged hat she did not allow Mexhuani access after mid January 2015, because of the pending trial and frustration that Petitioner had failed to appear on many previously selected access dates. Most disturbing is

that at no point has Petitioner indicated it has either identified the source of the ongoing leaks or addressed them.

DISCUSSION

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).

The Court finds that no further abatement is warranted for the conditions upon which the DHCR orders are based. However, the Court awards Respondent a twenty-five percent abatement for the period of June 2013 through June 2014 for the conditions and violations in the Subject Premises, as detailed above, which do not form a part of the rent reduction orders. The abatement for this period totals \$2285.66.

The Court awards a thirty percent abatement for the period of July 1, 2014 through November 2014, as the evidence at trial shows that Petitioner failed to make repairs even after being put on written notice of same and that the severity of the conditions worsened, and additional conditions developed. The abatement for this period totals \$1049.07.

As Respondent refused requests for access on more than one occasion in November 2014 and January 2015, no abatement is awarded for November 2014 forward.

Deducting the total abatement of \$3334.73 from the total arrears of \$13237.51, the total amount due to Petitioner through February 2015 is \$9902.78.⁵

Based on the foregoing, the Court awards Petitioner a final judgment as against Tenant in the amount of \$9902.78 for all arrears due through February 2015, and a final judgment of possession is awarded as against Respondent. Issuance of the warrant is stayed five days for payment of same. No further orders regarding repairs are issued as they are the subject of other ongoing proceedings.

⁵ This sum excludes washing machine charges which are severed for a plenary action.

This constitutes the decision and order of this Court.⁶

Dated: New York, New York
March 11, 2015

Sabrina B. Kraus, JHC

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⁶ Parties may pick up their exhibits from Window 9 on the second floor in the clerks office within 30 days. After said time the documents may be destroyed in accordance with administrative directives.