Johnson v Merj Home Mgt., LLC
2017 NY Slip Op 30181(U)
January 25, 2017
City Court of Peekskill, Westchester County
Docket Number: SC-539-16
Judge: Reginald J. Johnson
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PEEKSKILL CITY COURT
COUNTY OF WESTCHESTER: STATE OF NEW YORK

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LAWRENCE JOHNSON,

DECISION & ORDER

Plaintiff,

--against--

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MERJ HOME MANAGEMENT, LLC,

Small Claims Part

Defendant.

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HON. REGINALD J. JOHNSON

This is a Small Claims action commenced pursuant to Uniform City Court Act (UCCA), Article 18, for the return of a security deposit and a counterclaim for damages. The Plaintiff appeared pro se and produced no witnesses on his behalf. The Defendant appeared by Fred C. Quagliato, Esq. and John Danko, property manager. After the parties were unable to resolve their dispute pre-trial, this matter proceeded to a bench trial.

The court decided this case based on the testimony of the parties and the following marked evidentiary exhibits:

1. Plaintiff's "A 1-17" Photographs of premises
2. Plaintiff's "B" Section 8 letter dated 1/3/17
3. Plaintiff's "C" Damages letter from Defendant
4. Defendant's "1" Lease
5. Defendant's "2" Complaint letters about Plaintiff

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6. Defendant's "3" Photos 1-38
7. Defendant's "4" Paid receipts and estimates
8. Defendant's "5" Money Orders and receipts for deposit
9. Defendant's "6" Section 8 letter dated 8/15/16
10. Defendant's Answer and Counterclaim

For the reasons that follow, this matter is decided in accordance herewith.

Facts

The parties entered into a written lease agreement ("Lease") dated June 26, 2015 for a one-year term commencing on July 1, 2015 to June 30, 2016 for the premises located at 1206 main Street, 2nd Floor, Peekskill, New York ("the premises"). The monthly rent was $1300.00 and the security deposit was $2000.00 (See Defendant's Exh. "1"). The Defendant also entered into a Housing Assistance Payments Contract (HAP Contract) with the Public Housing Agency via the Peekskill Section 8 Office which placed the premises under the regulations of the Section 8 Program (Id.). After the expiration of the Lease term, the Defendant elected not to renew the Lease and thereafter the parties entered into a month-to-month tenancy until the Plaintiff moved out on either September 6 or 7, 2016 and awaited the return of his security deposit (See Defendant's Exh. "6").

After the Plaintiff exited the premises, the Defendant conducted an

inspection of the premises to determine if the Plaintiff left the premises in good condition (Defendant Exh. "1" ¶5). Based on the inspection, the Defendant claimed that the premises were damaged or in need of the following repairs:

1.	Wood floors had to be redone due to scratches	$525.00
2.	Painting of all rooms in apartment	$1500.00
3.	Cleaning of the apartment	$300.00
4.	Cleaning of stairway carpet	$250.00
5.	Replacement of two storm door windows	$225.00
	total	$2,800.00

(See Plaintiff Exh. "C").

In its letter (Id) to the Plaintiff, the Defendant stated, based on the damages to the premises, that the Plaintiff would not be entitled to a refund of any portion of his security deposit. The Defendant provided the Court with thirty-eight (38) photos showing various areas of damage to the premises (Defendant's Exh. "3").

The Defendant claimed that the Plaintiff abandoned the premises and allowed squatters to reside there. The Defendant further claimed that these squatters may have damaged the stairway carpet and that the Plaintiff is liable for said damage (Defendant's Exh. "1" ¶10). The Plaintiff countered that he did not abandon the premises nor did he allow squatters to reside therein. Further, Plaintiff claims that the Defendant's

photos inaccurately depict the condition of the premises after his departure therefrom. Plaintiff supplied the Court with seventeen (17) photos he claimed fairly and accurately depicted the condition of the premises after his departure (Plaintiff's "A" 1-17).

On cross examination, the Plaintiff stated that he exited the premises either September 6 or 7, 2016, and not on June 6 or 7, 2016 as he previously testified to on direct examination. In addition, the Plaintiff conceded that the security deposit that he gave the Defendant was $2000.00, not $2600.00 as previously testified to on direct examination (See Defendant's Exh. "5"). On further cross examination, the Plaintiff stated that before he moved into the premises there were no broken windows therein, that there were no scratches on the floor, that the apartment was clean, and that the outside hallway carpet was clean.

Discussion

It has been held that the Small Claims Part of a City Court is commanded to "do substantial justice between the parties according to the rules of substantive law." Williams v Roper, 269 A.D.2d 125, 126, 703 N.Y.S.2d 77, 79 (1st Dept. 2000); UCCA §1804; see also, Milsner v. McGahon, 20 Misc.3d 127(A), 2008 WL 2522307 (App. Term. 9th & 10th Judicial Districts); Basler v. M&S Masonry & Construction, Inc., 21 Misc.3d 137(A), 2008 WL 4916105 (App. Term, 9th & 10th Judicial

Districts). This is especially so since the practice, procedures and forms utilized in the Small Claims Part were meant to "constitute a simple, informal and inexpensive procedure for the prompt determination of such claims in accordance with the rules and principles of substantive law." UCCA §1802-A. Further, the Court "shall not be bound by statutory provisions or rules of practice, procedure, pleading or evidence..." UCCA §1804-A.

In the case at bar, the dispositive issue in this case is whether the Defendant vacated the premises in good condition. If so, he would be entitled to a return of his security deposit (Defendant's Exh. "1" ¶5). "If the subject premises are returned in an acceptable condition, then the Landlord ordinarily will be required to return the security deposit." *The Bench Guide to Landlord & Tenant Disputes in New York (Second Edition)* by Hon. Stephen L. Ukeiley at p. 109. However, where the tenant fails to return the premises in good condition, the Landlord generally may keep the security deposit, provided the Landlord submits estimates or paid receipts for damages that are not attributable to normal wear and tear. See, Community Products, LLC v. Northvale Property Associates, LLC, 61 A.D.3d 806, 878 N.Y.S.2d 125 (2d Dept. 2009); Holmes v. Worthen, 19 Misc.3d 33, 856 N.Y.S.2d 438 (App Term 2008). See also, 74A N.Y. Jur.2d Landlord and Tenant §704.

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It has been held that the decision of the fact-finding court at a bench trial should not be disturbed unless it is obvious that the court's conclusions could not be reached under any fair interpretation of the evidence. See, Claridge Gardens v. Menotti, 160 A.D.2d 544, 545 (1st Dept. 1990). This standard applies with greater force to judgments rendered in the Small Claims Part of the Court. See, Williams v Roper, 269 A.D.2d 125, *supra*. Furthermore, the determination of the trial court as to issues of credibility is given substantial deference, since it was the trial court that had the unique opportunity to observe and evaluate the testimony and demeanor of the witnesses. See, Vizzari v. State of New York, 184 A.D.2d 564 (2d Dept. 1992); Kincade v. Kincade, 178 A.D.2d 510, 511 (2d Dept. 1991).

In the case at bar, it is beyond cavil that the Plaintiff failed to return the premises to the Defendant in good condition. The question is whether the amount of repair costs claimed by the Defendant to return the premises *ad pristinum statum* ("to its former condition") is a fair and accurate (See Plaintiff's Exh. "C"). As an initial matter, the Court notes that the Defendant submitted a letter to the Plaintiff itemizing the alleged damages to the premises (Id). At the trial, the Defendant provided the Court with the following: a paid receipt from J&S Wood Floors in the sum of $525.00 for sanding and repairing of the wood floors; a paid receipt from Precision Painting and Remodeling, Inc. in the sum of

$1500.00 for painting the complete premises; a paid receipt from S&G Cleaning Service in the sum of $300.00 for cleaning the premises; and a paid receipt from Freight Liquidators in the sum of $842.85 for replacement of the hallway carpeting (Defendant's Exh. "4"). No paid receipt or estimate was submitted for the two broken storm door windows.

Based on the testimony of the parties, the review of the photographs and repair documentation submitted into evidence, the Court finds that the paid receipt for the repair of the scratched floors in the sum of $525.00 was reasonable. The paid receipt for the complete painting of the premises in the sum of $1500.00 was not reasonable; the Court finds that the condition of the premises did not warrant painting due to conditions beyond normal wear and tear. The paid receipt in the sum of $300.00 for cleaning the premises was reasonable; and the paid receipt for replacement of the hallway carpeting in the sum of $842.85 was not reasonable. The Court finds that there was no proof that the replacement of the hallway carpet (carpet in a common area of the house) was due to any act or omission on the part of the Plaintiff.

In sum, the Court grants a judgment in favor of the Plaintiff in the sum of $2000.00 which is offset by the Defendant's proof of damages in the sum of $825.00 for a total judgment in favor of the Plaintiff in the sum of $1175.00.

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This constitutes the decision and order of the Court.

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Hon. Reginald J. Johnson
Peekskill City Court Judge

DATED: Peekskill, New York
January 25, 2017