

Daniels v Rose 215 LLC
2018 NY Slip Op 32871(U)
November 8, 2018
Civil Court of the City of New York, Bronx County
Docket Number: SCB 1519-18
Judge: Sabrina B. Kraus
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CIVIL COURT OF THE CITY OF NEW YORK
 COUNTY OF BRONX: SMALL CLAIMS PART

 VERONICA DANIELS, X

Claimant,

HON. SABRINA B. KRAUS

-against-

ROSE 215 LLC

Defendant,

DECISION & ORDER
Index No.: SCB 1519-18

 X

BACKGROUND

Claimant sues Defendant for \$5000.00 resulting from property damage and theft, in connection with an eviction through a prior housing court proceeding. This action which was initially returnable in July 2018. Defendant failed to appear, and after inquest, Claimant was awarded a judgment for \$5000 plus costs and interests. In Late July 2018, Defendant appeared by counsel and moved to vacate the default judgment. The motion was granted by the court (Perez, J) on August 15, 2018, pursuant to a decision and order that directed the parties to appear for trial on November 7, 2018, at 2 pm.

On November 7, 2018, Claimant and Defendant's counsel appeared. Defendant's application for an additional adjournment of the trial was denied. The trial took place on that date and at the conclusion of the trial, the court reserved decision. Claimant was the only witness to testify at trial.¹

 1 Claimant had two other witnesses in court waiting to testify, however after asking for an offer of proof the court determined their testimony would be cumulative.

FINDINGS OF FACT

Claimant is the rent-stabilized tenant of record for Apartment 4 at 766 East 215th Street, Bronx, New York 10467 (Subject Premises). Claimant moved into the Subject Premises in 2011, pursuant to a written lease agreement.

Claimant commenced a rent overcharge complaint against her landlord, Defendant's predecessor in interest, under docket number BM 610071 R, which resulted in an order issued October 24, 2014, finding that Claimant had been overcharged and was entitled to treble damages. The order found there was a total of \$18,517.00 due to Claimant which she was entitled to take as a rent credit. It appears that her monthly rent is \$764.33 per month.²

In November 2017, Defendant commenced a summary nonpayment proceeding against Claimant in Bronx County Housing Court under Index Number 64798-17. Claimant appeared in that proceeding and filed an answer. An initial court date was set for December 5, 2017. The proceeding was then adjourned to January 17, 2018, when Claimant failed to appear and the court (Brier, J) entered a judgment against her.

Claimant moved to vacate the judgment and on February 9, 2018, Claimant and Defendant entered into a stipulation, adjourning the motion and the proceeding to March 19, 2018 for Claimant to subpoena HRA records (Ex B). On March 19, 2018, the parties entered into a stipulation granting the order to show cause, vacating the prior judgment and warrant and agreeing to a new judgment being entered against Claimant in the amount of \$5348.00 (Ex A).

² The court takes judicial notice of the Article 78 Proceeding brought in Bronx County Supreme Court Under Index Number 260553/2015 and the documents filed therein. Plaintiff also testified about the overcharge proceeding at the trial herein.

In both stipulations, Defendant agreed to make repairs including a repair to Claimant's mailbox which was not working.

Claimant was evicted on May 15, 2018. Claimant stated she received no prior notice of the eviction because her mailbox was still not working and no mail was being delivered to the Subject Premises. The Marshall provided Claimant with an inventory list of items in the Subject Premises (Ex 1) and directed Claimant to go to Housing Court to file a post eviction order to show cause. Claimant went to Housing Court the same day and filed a post eviction order to show cause (Ex 2). The court signed the order to show cause including a stay on removal and re-letting and ordered Defendant to provide Claimant temporary access for her belongings. Service of the order, including the stay was made on Defendant's counsel by facsimile from the court house.

Claimant learned from a neighbor, that Defendant had hired a moving company and on May 16, 2018 was proceeding to have all of Claimant's belongings removed through a moving company in violation of the stay. Claimant immediately went to the Subject Premises with a copy of the stay and told the moving company to stop. The moving company continued over Claimant's objection at the direction of management. Claimant called the police, who arrived shortly and confirmed that the order provided for a stay. The moving company immediately stopped what they were doing and left. Some of Claimant's belongings had been packed and some of her furniture had been removed from the Subject Premises. Petitioner's agents moved back into the Subject Premises some furniture that had been removed.

The next day, the parties appeared in Housing Court and the Claimant's order to show cause was granted by the court, to the extent of staying execution through May 31, 2018, for

payment of \$7908.50, which included \$6876 in arrears and \$1032 in legal and Marshall fees (Ex 2). On May 30, 2018, a second post eviction order to show cause was settled by stipulation, which restored Claimant to possession forthwith and vacated the judgment and warrant.

Claimant tried to restore the proceeding again in July 2018 to address her claim that the repairs had still not been done, and that her property had been damaged and stolen during the eviction, but the court declined to sign the order to show cause and directed Claimant to commence an HP action for the repairs and a plenary action for the damaged and stolen property (Ex 2).

Upon being restored to possession, Claimant discovered that some of her furniture had been damaged from the move. Claimant's couch, cocktail table, and bedframe were damaged. The material on the couch had been scraped and damaged, the bedframe was broken and the table had a large chip and some scratches. In addition to her testimony describing the damage, the damage was established by before and after photographs submitted in evidence (Ex s 3-5).

Claimant submitted receipts showing the purchase dates and costs of these items (Ex 6 & 7). The bedframe was purchased in December 2015. The receipt (Ex 6) shows only the total purchase price for the package of goods purchased on that date as \$767. The couch and table were purchased in September 2016, and were sold as a package with a loveseat and end-table for \$1185.

In addition to the damaged property, some of Claimant's personal property had been wrongfully removed from the Subject Premises by the Super and or other employees or agents of Defendant. Specifically Claimant's television set and six pair of new sneakers belonging to her daughter were taken. The Super returned the television set to Claimant, but did not return the

sneakers. Claimant submitted a receipt for 4 pair of sneakers showing they were purchased in February 2018 for \$827.45 (Ex 8). No evidence was submitted as to the value of the other two pair of sneakers taken.

DISCUSSION

§ 1804 of the New York City Civil Court Act provides in pertinent part “(t)he court shall conduct hearings upon small claims in such manner as to do substantial justice between the parties according to the rules of substantive law ...”.

The court finds that Claimant has established liability against Defendant for the missing property and damaged property. The court found Claimant to be a credible witness. Defendant after moving to vacate its initial default, had no witness in court to counter the testimony and evidence offered by Claimant, nor was any compelling explanation offered for the failure of a witness on the part of Defendant to appear at trial.

Defendant removed the property from the Subject Premises in violation of the stay and is responsible for the damage which occurred as a result.

The court finds Claimant is entitled to \$600 in damages for the couch and cocktail table, and \$200 in damages for the bedframe. The court finds that Claimant is entitled to \$827.45 for the stolen sneakers.

Based on the foregoing, Claimant is awarded damages totaling \$1627.45 in damages plus costs and interest from May 15, 2018.

This constitutes the decision and order of the court.

Dated: Bronx, New York
November 8, 2018

Sabrina B. Kraus, JCC

TO: VERONICA DANIELS
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