

EQR-41 W. 86th, LLC v Adler
2019 NY Slip Op 31127(U)
April 29, 2019
Civil Court of the City of New York, New York County
Docket Number: L&T 75648/18
Judge: Sabrina B. Kraus
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: PART 118

EQR-41 WEST 86TH, LLC, X

Petitioner- Landlord

HON. SABRINA B. KRAUS

-against-

DECISION & ORDER
Index No.: L&T 75648/18

OXANA ADLER
41 West 86th Street - Apt. 12E
New York, New York 10024

Respondent-Tenant

LAUREN ADLER

Respondent-Undertenant

X

BACKGROUND

This summary nonpayment proceeding was commenced by Petitioner against Oxana Adler (Respondent)¹, the tenant of record of 41 West 86th Street - Apt. 12E, New York, New York 10024 (Subject Premises) based on the allegation that Respondent failed to pay rent due. The primary issue at trial was Respondents’ claim for a rent abatement.

PROCEDURAL HISTORY

Petitioner issued a rent demand, dated October 10, 2018, seeking \$7,325.49 in arrears for a period from September 2018 to October 2018. The petition was filed on October 19, 2018, and the notice of petition along with proof of service were filed on October 29, 2018.

¹ Lauren Adler was named as a Respondent-Undertenant, however, the proceeding is dismissed against Lauren Adler as she is a minor.

Respondent appeared by counsel and filed a written answer asserting five affirmative defenses including failure to state a cause of action, breach of warranty of habitability and lack of jurisdiction.

The proceeding was initially returnable November 19, 2018.

On March 27, 2019, Petitioner moved to dismiss Respondent's fourth affirmative defense of lack of personal jurisdiction. On March 28, 2019, the court (Marton, J) issued an order granting the motion in part "... by declining to require a traverse and by striking so much of the defense as might seek same. The court decline(d) to grant the motion to the extent that it might be read as seeking to relieve petitioner of the obligation to prove an element of its prima facie case."

On April 29, 2019, the proceeding was assigned to Part 118 for trial. The trial commenced and concluded on that date and the court reserved decision.

FINDINGS OF FACT

Petitioner is the owner of the subject building pursuant to a deed dated June 12th 2007 (Ex 1). Respondent is the tenant of record of the Subject Premises. Two leases between the partes were submitted in evidence. The most recent is a lease for a term between October 25, 2018 and October 24, 2019 for a monthly rent of \$6024.00 (Ex 4). A lease for the prior year at a monthly rent of \$5737.00 was also submitted (Ex 3).

There is a valid multiple dwelling registration on file with DHPD (Ex 2). The Subject Premises are exempt from rent regulation.²

² Petitioner only offered conclusory testimony on this point, however the unregulated status of the premises was not contested by Respondent in her answer or at trial

Petitioner's motion to amend the petition to date was granted at the conclusion of the trial without opposition.

The court finds that there is \$33,495.10 in unpaid base rent due through April 2019. This number is calculated by adding the base rent due from January 2018 through April 2019 (\$93,578.81) less payments credited (see Ex 5) for the same period (\$60,083.71).

The court finds that Petitioner failed to offer sufficient competent evidence to support its claims for late fees, sewer charges, water charges, boiler charges and other additional claims. Those charges, with the exception of the claim for attorneys fees³, are dismissed without prejudice to Petitioner's right to seek them in a plenary action.

Respondent testified that she has lived in the Subject Premises for approximately three and a half years. Respondent testified that she seeks a rent abatement due to the following conditions:

- Scaffolding erected for compliance with local Law 11 for a few weeks at the commencement of her tenancy in 2015; and
- Exposed wiring over the entrance door to the Subject Premises; and
- A toilet which clogged on several occasions; and
- Peeling paint on the wall and ceiling adjacent to a window ; and
- Instances where water was shut off for some portion of a day for boiler work; and
- The smell of gas caused by a neighbor who accidentally left her knob on one or more occasions and the smell of garbage from a trash room.

³ Petitioner agreed that the issue of attorneys fees would be held in abeyance pending this court's decision after trial.

Respondent's testimony on these issues was very general, for the most part no specific dates were offered, and no specific duration established. No photographs of any alleged conditions were admitted into evidence. For the most part it is undisputed that Petitioner promptly responded to and addressed any concerns raised by Respondent.

Petitioner's agents credibly testified that while the wires hanging over all apartment doors in the subject building were not esthetically pleasing, they created no danger and did not otherwise affect Respondent's use of the Subject Premises.

Petitioner's agents credibly testified that the cans in the garbage room were emptied twice a day.

The subject building is a prewar building.

It was undisputed that Respondent generally received advance notice of any instances where water was going to be turned off. The court credits the testimony of Petitioner's agent that water was off for two to four hours when maintenance required it.

DISCUSSION

A residential lease is deemed a sale of shelter and services by the landlord, who impliedly warrants that the premises are fit for human habitation, that the condition of the premises is in accord with the uses reasonably intended by the parties, and that the tenants are not subjected to any conditions endangering or detrimental to their life, health or safety (*Park W. Mgmt. Corp. v. Mitchell*, 47 N.Y.2d 316, 325(1979).

In *Park W. Mgt. Corp. v Mitchell* (47 NY2d 316, 327, *cert denied* 444 US 992), this Court described the statutory warranty as creating an implied promise by the landlord that the demised premises are fit for human occupancy. We specifically rejected the

contention that the warranty was intended to make the landlord “a guarantor of every amenity customarily rendered in the landlord-tenant relationship” and held that the implied warranty protects only against conditions that materially affect the health and safety of tenants or deficiencies that “in the eyes of a *reasonable person* ... deprive the tenant of those *essential functions* which a residence is expected to provide” (*id.*, at 327, 328 [emphasis supplied]).

[*Solow v. Wellner*, 86 N.Y.2d 582, 588 (1995)].

“... the statutory reference to ‘uses reasonably intended by the parties’, rather than referring to a broad spectrum of expectations arising out of the parties’ specific contractual arrangement, reflects the Legislature’s concern that tenants be provided with premises suitable for residential habitation, in other words, living quarters having ‘those essential functions which a residence is expected to provide’ (*Park W. Mgt. Corp. v Mitchell*, *supra*, at 328). This prong of the warranty therefore protects against conditions that, while they do not render an apartment unsafe or uninhabitable, constitute deficiencies that prevent the premises from serving their intended function of residential occupation (Id 588-89).”

The court finds that Respondent failed to establish the existence of any condition which was detrimental to her life health or safety. The court does not find that Respondent established the right to an abatement for any of the conditions she testified to. As noted above, most of the conditions were of short duration, Petitioner responded promptly and reasonably to any complaints, and some, such as the wires hanging over the door of the premises, did not affect Respondent’s use of the premises at all.

The lack of substantial impact on Respondent’s ability to use the Subject Premises was apparent in the lack of detail in her testimony. Moreover, it does not appear that Respondent’s failure to pay rent was related to any of the alleged conditions. For example the scaffolding

complained of was only for the first few weeks of Respondent's tenancy in 2015, yet she did not withhold rent until the summer of 2018. Instead, the payment history suggests that Respondent may have had financial difficulties in this period, as she bounced her rent checks in July and August 2018, and made partial payments in increments in the spring months (Ex 5).

On January 8, 2019, the parties entered into a stipulation wherein Respondent agreed to pay one month's rent by January 14, 2019, in exchange for an adjournment. Respondent submitted a check for \$4500 by January 23, 2019, and then paid an additional \$1500 by February 4, 2019. This also supports a conclusion that failure to promptly pay rent was not related to any alleged conditions in the Subject Premises, but due to financial circumstances.

Based on the foregoing, the court finds that Respondent failed to establish by a preponderance of the credible evidence any rent impairing conditions in the Subject Premises.

CONCLUSION

Based on the foregoing, Petitioner is entitled to a final judgment of money and possession in the amount of \$33,495.10. Issuance of the warrant of eviction is stayed five days for payment.

This constitutes the decision and order of this Court.⁴

Dated: New York, New York
April 29, 2019

Hon. Sabrina B. Kraus, JCC

⁴. The exhibits submitted at trial will be held in the clerk's office on the second floor of 111 Centre Street, New York, NY 10013, at window 9, for thirty days. If the exhibits are not picked up, they will be disposed of by court personnel in accordance with Administrative Directives.

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