

Sonimi Props. I LLC v Matin
2022 NY Slip Op 31483(U)
May 5, 2022
Supreme Court, New York County
Docket Number: Index No. 655784/2021
Judge: Sabrina Kraus
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. SABRINA KRAUS PART 57TR

Justice

-----X

SONIMI PROPERTIES I LLC

Plaintiff,

- v -

HASNAT MATIN,

Defendant.

-----X

INDEX NO. 655784/2021

MOTION DATE 04/29/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48

were read on this motion to/for SUMMARY JUDGMENT.

BACKGROUND

Plaintiff commenced this action seeking a judgment for rent, damages and attorneys' fees arising out of the parties' lease agreement for Apartment 7B at 38 Warren Street, New York, New York 10007 (Subject Premises). Defendant counterclaimed for failure to return his security deposit and attorneys' fees.

PENDING MOTIONS

On March 29, 2022, plaintiff moved for summary judgment and dismissal of defendant's defenses and counterclaims.

On April 29, 2022, defendant cross-moved for summary judgment on its counterclaims.¹

¹ Although plaintiff argues the court should not consider the cross-motion as it is untimely, the court finds the delay in filing de minimis and will consider the motions on the merits.

On April 29, 2022, the motions were fully briefed and submitted to this court for determination. For the reasons set forth below, plaintiff's motion is granted, and defendant's cross-motion is denied.

ALLEGED FACTS

On or about June 1, 2019, defendant and plaintiff entered into a written two-year lease agreement (Lease) for the Subject Premises. The monthly rent of \$9,300.00 was payable by the defendant to the plaintiff under the terms of the Lease on the first day of each month commencing on July 1, 2019. Defendant submitted a security deposit of \$9300.00 when he signed the lease.

Beginning July 1, 2020 and continuing through the end of the Lease on June 30, 2021 defendant breached the Lease and failed to pay rent except, defendant made one payment of \$7,200.00 on or about November 2020 and another payment of \$7,300.00 on or about December 2020.

Total rent still due and owing to the plaintiff, before accrual of any late fees or interest but after application of the defendant's security deposit toward arrears is \$87,800.00

After accrual of late fees, the Defendant owes the Plaintiff \$88,400.00.

Defendant failed to have the Subject Premises professionally cleaned upon his vacatur as required by the Lease.

As a result of the Defendant's breach, the Plaintiff was required to have the Apartment professionally cleaned at a cost of \$653.28.

Defendant damaged the flooring of the Subject Premises which required the plaintiff to spend \$7,600 for sanding, sealing, and applying three coats of non-yellowing polyurethane to the floors in the living room, two bedrooms, hallway, and closets.

Plaintiff alleges defendant caused an estimated \$2,750 of damage to walls, doors, and kitchen cabinets beyond normal wear and tear.

Paragraph 5 of the Lease Rider provides in pertinent part: "...any and all legal fees incurred as a result of nonpayment or holdover proceedings or due to the failure of Lessee to comply with all of the covenants of this Lease will be paid for by the Lessee..." .

Plaintiff's counsel fees to date have totaled approximately \$15,000.00.

DISCUSSION

In order to prevail on a motion for summary judgment, the moving party must establish its cause of action or defense sufficiently to warrant the court as a matter of law in directing judgment in its favor. *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851 (1985); *Zuckerman v. City of New York*, 49 N.Y.2d 557 (1980). Absent such a *prima facie* showing, the motion must be denied, regardless of the sufficiency of the opposing papers (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]). However, "[o]nce the movant makes the required showing, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of a material issue of fact that precludes summary judgment and requires a trial" (*Dallas-Stephenson v Waisman*, 39 AD3d 303, 306 [1st Dept 2007], citing *Alvarez*, 68 NY2d at 324). "[A]ll of the evidence must be viewed in the light most favorable to the opponent of the motion" (*People v Grasso*, 50 AD3d 535,544 [1st Dept 2008]). "On a motion for summary judgment, the court's function is issue finding, not issue determination, and any questions of credibility are best resolved by the trier of fact" (*Martin v Citibank, N.A.*, 64 AD3d 477,478 [1st Dept 2009]; see also *Sheehan v Gong*, 2 AD3d 166,168 [1st Dept 2003] ["The court's role, in passing on a motion for summary judgment, is solely to

determine if any triable issues exist, not to determine the merits of any such issues”], *citing Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]).

Defendant did not respond to each of the enumerated paragraphs of material fact contained in Plaintiff’s Statement of Material Facts as he was required to do under 22 NYCRR 202.8-g. As such, Defendant has admitted each of the material facts as stated by Plaintiff. 22 NYCRR 202.8-g (c).

Even if plaintiff were not entitled to summary judgment based on defendant’s failure respecting 22 NYCRR 202.8-g alone, defendant fails to come forward with “...evidentiary proof in admissible form sufficient to establish the existence of material issues of fact...” to defeat plaintiff’s motion for summary judgment on its claims for breach of contract and property damage. [*Hartford Accident & Indemnity Co. v. Wesolowski*, 33 N.Y.2d 169, 172 (1973)]. Plaintiff established *prima facie* entitlement on its breach of contract claim by coming forward with evidence in admissible form of (1) proof of a contract, (2) performance of the contract by one party, (3) breach by the other party, and (4) damages. [*14 E. 4th St. Unit 509 LLC v. Toporek*, 203 A.D.3d 17, 26 (2022)].

Defendant acknowledges that he failed to pay the rent due and does not dispute plaintiff’s allegations of damage to the Subject Premises. Nor does defendant dispute the amount of legal fees sought by plaintiff.

Defendant relies upon NY Gen Oblig. § 7-108 to claim plaintiff inappropriately retained his security deposit. Defendant alleges plaintiff never scheduled an inspection or walk through to inspect the Subject Premises and never sent an itemized list or breakdown reflecting how the security deposit was applied. However, as discussed in more detail below, said provisions apply

only to lease agreements entered into on or after July 14, 2019 and the Lease was entered into on June 7, 2019.

Defendant argues that summary judgment is premature because no discovery has taken place, however defendant has failed to meet his burden in this regard.

... (W)hile a party is entitled to a reasonable opportunity to conduct discovery in advance of a summary judgment determination (*see Salameh v. Yarkovski*, 156 A.D.3d 659, 660, 64 N.Y.S.3d 569; *Bernstein v. New York City Tr. Auth.*, 153 A.D.3d 897, 897–898, 61 N.Y.S.3d 113), “[a] party contending that a summary judgment motion is premature must demonstrate that discovery might lead to relevant evidence or that the facts essential to justify opposition to the motion were exclusively within the knowledge and control of the movant” (*Antonyshyn v. Tishman Constr. Corp.*, 153 A.D.3d 1308, 1310, 61 N.Y.S.3d 141, quoting *MVB Collision, Inc. v. Progressive Ins. Co.*, 129 A.D.3d 1040, 1041, 13 N.Y.S.3d 139). Here, the plaintiff did not satisfy her burden of demonstrating that the Lehman defendants' cross motion for summary judgment was premature, since “[t]he mere hope or speculation that evidence sufficient to defeat the motion might be uncovered during discovery is an insufficient basis for denying the motion” (*CitiMortgage, Inc. v. Guillermo*, 143 A.D.3d 852, 854, 39 N.Y.S.3d 86; *see Cohen v. Lebgutt Realty, LLC*, 158 A.D.3d 740, 741, 71 N.Y.S.3d 639; *Chou v. Ocean Ambulette Serv., Inc.*, 131 A.D.3d 1091, 1093, 16 N.Y.S.3d 593; *Suero–Sosa v. Cardona*, 112 A.D.3d 706, 708, 977 N.Y.S.2d 61).

Skura v. Wojtowski, 165 A.D.3d 1196, 1200 (2018).

Defendant’s Defenses and Counterclaims

Defendant’s first counterclaim states that, “[p]ursuant to the Housing Stability and Tenant Protection Act of 2019, Defendant is entitled to the return of their security deposit in full, plus an additional One-Hundred percent punitive damage(s) and attorneys [sic] fees, since the Plaintiffs [sic] failed to follow the required protocol of the Housing Stability and Tenant Protection Act of 2019.” However, the section of the Housing Stability and Tenant Protection Act of 2019 (hereinafter the “Act”) respecting security deposits is inapplicable to the Lease.

In pertinent part, Section 29 of the Act states:

... [S]ection twenty-five of this act shall take effect on the thirtieth day after this act shall have become law and shall apply to any lease or rental agreement or renewal of a lease or rental agreement entered into on or after such date...” [See 2019 N.Y. SB 6458; NY CLS Gen Oblig. § 7-108].

Section 25 of the Act governs security deposits. [Id.]. Governor Cuomo signed the Act into law on June 14, 2019. [NY CLS Gen Oblig. § 7-108]. Thus, the provisions of the Act governing security deposits were effective as of July 14, 2019 and applied to leases entered into on or after such date. [Id.]. Here, the Lease was signed by the parties on June 7, 2019 with the Lease term beginning on July 1, 2019. Thus, defendant has no cause of action under the Act because the Lease was not subject to the Act's stipulations concerning security deposits, and plaintiff otherwise established the right to apply the security deposit to amounts due under the lease.

Defendant also asserts a counterclaim for attorneys' fees. While there is no provision in the lease for same, defendant would have the right to make such a claim pursuant to RPL §234 if he were the prevailing party. Given that he is not the prevailing party the second counterclaim is also dismissed.

Defendant's affirmative defenses fail to satisfy the particularization requirements of CPLR § 3013. The affirmative defenses as pled are conclusory and fail to include any supporting facts and are therefore subject to dismissal. *Robbins v. Growney*, 229 A.D.2d 356, 358 (1st Dep't). In the case at bar, the Defendant interposes eight affirmative defenses without any supporting facts whatsoever. The answer is only verified by counsel and defendant offers no factual support for the defenses in the motion papers submitted herein.

Based on the foregoing the affirmative defenses are dismissed.

DAMAGES

The total amount of rent due under the lease after the security deposit is applied is \$87,800.00. With the addition of late fees, the amount is \$88,400.00. Plaintiff has established it paid \$653.28 to clean the Subject Premises and that defendant is responsible for said cost under

the lease. Plaintiff also established the right to reimbursement for \$7600.00 to repair the floor, which defendant does not deny was damaged.

Plaintiff's request for an "estimated" \$2750.00 largely for painting and plastering is disallowed by the court. Having reviewed the photographs submitted in support of the motion, the court finds the alleged damage is more in the nature of normal wear and tear and thus not the responsibility of defendant.

Plaintiff seeks \$19,062.00 in attorneys' fees and \$785.47 in disbursements. The court finds the hourly rates appropriate for the reasons set forth in the moving papers. The court makes a determination on the fees without a hearing as the amount is not challenged by defendant. [See *eg Kumble v. Windsor Plaza Company*, 128 A.D.2d 425, 426, *app. dsd.* 70 N.Y.2d 693; *Old Paris, Inc. v. G.E.B.M. Int'l, Inc.*, 170 A.D.2d 392, 393 (1991)(*Old Paris, Inc. v. G.E.B.M. Int'l, Inc.*, 170 A.D.2d 392, 393 (1991)].

Having reviewed the time submissions, the court deducts the following amounts as excessive, primarily because they relate to plaintiff's attorneys communicating among themselves or to the retainer agreement:

- .33 billed on 7/19/21 (\$198.00)
- .08 billed on 7/23/21 (\$48.00)
- .33 billed on 8/26/21 (\$198.00)
- .25 billed on 8/30/21 (\$150.00)
- .30 billed on 9/9/21 (\$120.00)
- .25 billed on 9/9/21 (\$150.00)
- .20 billed on 9/29/21 (\$80.00)
- .17 billed on 10/14/21 (\$102.00)

.25 billed on 11/1/21 (\$150.00)

Total amount disallowed is \$1196.00. Based on the foregoing the court finds plaintiff is entitled to \$18,651.47 for reasonable attorneys' fees and disbursements incurred in this action.

Based on the foregoing, plaintiff is entitled to a judgment for damages in the amount of \$115,304.75.

Plaintiff also seeks prejudgment interest.

CPLR § 5001 provides in pertinent part:

(a) Actions in which recoverable. Interest shall be recovered upon a sum awarded because of a breach of performance of a contract...

(b) Date from which computed. Interest shall be computed from the earliest ascertainable date the cause of action existed, except that interest upon damages incurred thereafter shall be computed from the date incurred. Where such damages were incurred at various times, interest shall be computed upon each item from the date it was incurred or upon all of the damages from a single reasonable intermediate date.

Based on the facts in this case the court finds that plaintiff is entitled to statutory interest from January 1, 2021 forward at the statutory rate.

CONCLUSION

WHEREFORE it is hereby:

ORDERED that plaintiff's motion for summary judgment is granted and defendant's cross-motion for summary judgment is denied; and it is further

ORDERED that the branch of plaintiff's motion that seeks summary judgment dismissing the counterclaims and affirmative defenses is granted in its entirety and the counterclaims and defenses are dismissed and third such claims are dismissed;

ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiff and against defendant in the amount of \$ 115,304.75 , together with interest at the rate of 9% per annum from the date of January 1, 2021 until the date of the decision and order on this motion,

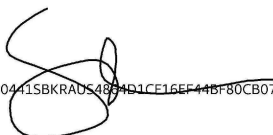
and thereafter at the statutory rate, as calculated by the Clerk, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that, within 20 days from entry of this order, plaintiff shall serve a copy of this order with notice of entry on the Clerk of the General Clerk’s Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that any relief not expressly addressed has nonetheless been considered and is hereby denied; and it is further

ORDERED that this constitutes the decision and order of this court.

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<u>5/5/2022</u> DATE					<u>SABRINA KRAUS, J.S.C.</u>
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/>	GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE