

Dahl v Prince Holdings 2012, LLC

2023 NY Slip Op 31584(U)

May 11, 2023

Supreme Court, New York County

Docket Number: Index No. 157743/2014

Judge: James d'Auguste

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: Hon. James d'Auguste

PART 55

Justice

-----X

SHAWN DAHL and JAMES PETERSON,

Plaintiffs,

- v -

PRINCE HOLDINGS 2012, LLC, STEVEN CROMAN,
HARRIET CROMAN a/k/a HARRIET KAHAN CROMAN,
HARRIET KAHAN, ANTHONY FALCONITE, OREN
GOLDSTEIN, and JANETH DONOVAN,

Defendants.

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INDEX NO. 157743/2014

MOTION DATE N/A

MOTION SEQ. NO. 015

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 015) 365, 366, 367, 368, 369, 370, 371, 372, 373, 377, 378, 379, 380, 381, 382, 393, 397, 398, 399

were read on this motion to/for USE & OCCUPANCY.

Defendants move, pursuant to Real Property Law (RPL) § 220, and Real Property Actions and Proceedings Law (RPAPL) § 601 and § 745, seeking an order directing plaintiffs to pay retroactive and ongoing use and occupancy (“U&O”) pendente lite. The motion is granted to the following extent.

BACKGROUND

Plaintiffs Shawn Dahl and James Peterson commenced the instant action seeking to recover damages arising out of lease agreements they maintain with defendants. This case has a long history, and the relevant facts are as follows. Plaintiffs are rent stabilized tenants in a building located at 309 East 8th Street, New York, NY, owned and operated by the defendants. In or around August 2014, plaintiffs commenced the instant action alleging that since the defendants acquired the building, they have engaged in a pattern of harassment, abuse, and neglect, in an attempt to drive plaintiffs from their apartments. In or around February 2015,

defendant Prince Holdings 2012, LLC (“Prince Holdings”) (as the landlord), commenced non-payment actions in Housing Court against each plaintiff individually (as tenants) (Index Nos. LT55216-2015 and LT55217-2015 the “summary proceedings”). In this Court’s Decision and Order, dated May 12, 2015 (NYSCEF Doc. No. 101), and reiterated in the November 7, 2019, Decision and Order (NYSCEF Doc. No. 355), plaintiffs’ cross-motion for consolidation was granted, consolidating the summary proceedings with the instant action, and upon consolidation, deemed those summary proceedings be treated as defendant Prince Holdings’ counterclaims, as against the plaintiffs in the instant action. Since the commencement of this action, the parties have amended their pleadings and engaged in voluminous motion practice. Defendants now move for an award of U&O.

STANDARD OF REVIEW

RPL § 220 provides that a “landlord may recover a reasonable compensation for the use and occupation of real property, by any person, under an agreement.” The Court retains broad discretion in deciding whether to compel payment of use and occupancy pendente lite (*see Alphonse Hotel Corp. v 76 Corp.*, 273 AD2d 124 [1st Dept 2000]). “The award of use and occupancy pendente lite ‘accommodates the competing interests of the parties in affording necessary and fair protection to both’ and preserves the status quo until a final judgment is rendered” (*MMB Assoc. v Dayan*, 169 AD2d 422, 422 [1st Dept 1991] [internal citations omitted]). A tenant in possession should not be permitted to reap the benefits of occupancy, and at the same time, avoid the payment of rent (*see Eli Haddad Corp. v Cal Redmond Studio*, 102 AD2d 730 [1st Dept 1984]). The Court may award U&O without a hearing on an interim basis and may look to the amount of rent paid under a prior lease between the parties. (*see New York Physicians LLP v Ironwood Realty Corp.*, 103 AD3d 410 [1st Dept 2013]). Defects that do not

render the premises unsafe and uninhabitable do not justify tenants to live rent-free until a final disposition has been reached, therefore, U&O may be awarded where violations of the Housing Maintenance Code (“HMC”) exist (*see Park W. Mgt. Corp. v Mitchell*, 47 NY2d 316 [1979]; *see also Carroll v Nostra Realty Corp.*, 2005 NY Misc LEXIS 3307 [Sup Ct, NY County Apr. 6, 2005, No. 109293/2002]).

RPAPL § 745(2)(a) provides the framework for assessing a request for U&O in a summary proceeding. Prior to the passage of the Housing Stability and Tenant Protection Act of 2019 (“HSTPA”), the statutory framework of RPAPL § 745(2)(a) was less restrictive regarding how and when a landlord could be awarded U&O, in that it provided a more stringent schedule of adjournments, and a shorter lapse in time from the first appearance for a landlord’s request for U&O to become ripe. It also allowed for an award of retroactive U&O. Following the passage of the HSTPA, RPAPL § 745(2)(a) was amended, and significantly changed the framework within and under what circumstances a request for U&O can be made and granted. The statute, as amended, now provides an extended adjournment schedule, more flexibility in dealing with rent deposits, permits the Court to consider the equities of the case, and provides that an award of U&O “shall [only] accrue subsequent to the date of [a] Court’s order” (*see* RPAPL § 745 [2]).

ANALYSIS

Defendants argue that they are entitled to outstanding U&O in the amount of \$31,639.14 (representing 78 months since July 2013), and ongoing U&O pendente lite in the amount of \$405.63 (the rate of the last lease renewal) per month, with respect to plaintiff Dahl (NYSCEF Doc. No. 371), and \$83,933.20 (representing 17 months from June 2013 through November 2014 at \$1,040.00 per month, plus 62 months from December 2014 to present at \$1,068.60 per month), and ongoing U&O pendente lite in the amount of \$1,068.60 (the rate of the last lease

renewal) per month, with respect to plaintiff Peterson (NYSCEF Doc. No. 372). Defendants argue that they have satisfied the statutory framework pursuant to RPAPL § 745 due to the adjournments and lapse of time regarding the summary proceedings. Defendants also argue that the equities should be balanced while litigation continues between the parties, and therefore, the plaintiffs should not be entitled to continue to benefit from their possession of the apartments without paying for its use.

Plaintiffs oppose the motion in its entirety, arguing that defendants rely on RPAPL § 745 prior to its amendment by the passage of the HSTPA in error, which now precludes landlords from collecting retroactive U&O, and only allows for an award of ongoing U&O pendente lite from the date of a Court's order. Plaintiffs assert they have alleged violations of the warranty of habitability in the Housing Court answers and the complaint in the instant action (NYSCEF Doc. Nos. 71, 73, 378), and pursuant to RPAPL § 745(2)(a)(iv), a defense based upon the existence of violations of the HMC precludes an award of ongoing U&O pendente lite. In support, plaintiffs attach a violation report from The New York City Department of Housing Preservation and Development ("HPD") reflecting a single Class B violation¹ for the common area of the building (NYSCEF Doc. No. 379).

In reply, defendants acquiesce that they relied upon the previous version of RPAPL § 745 in existence prior to the passage of the HSTPA and modify their prayer for relief to seek only ongoing U&O pendente lite. Defendants argue that plaintiffs' Housing Court answers do not properly interpose or raise a defense based upon violations of the HMC pursuant to RPAPL § 745(2)(a)(iv) that would preclude an award of ongoing U&O pendente lite, because a claim for

¹ HPD defines a Class B violation as hazardous, such as public area doors not self-closing, inadequate lighting in public areas, or vermin. An owner has 30 days to correct a "B" violation and two weeks to certify the correction to remove the violation.

the breach of the warranty of habitability is not synonymous with the existence of hazardous or immediately hazardous violations of the HMC. Defendants further argue that plaintiffs fail to offer appropriate support for their position that alleged conditions constitute hazardous or immediately hazardous violations with the meaning of RPAPL § 745(2)(a)(iv).

The Court notes that the summary proceedings at issue here were commenced in 2015, well before the passage of the HSTPA and amendment of RPAPL § 745. Therefore, the application of the statute as amended would not be appropriate here. (*see 1588-1600 AMS LLC v Gil*, 75 Misc 3d 1 [App Term, 1st Dept 2022][RPAPL § 745 as amended by the HSTPA does not apply to a proceeding commenced in 2017, prior to the effective date of the statute]). The statutory framework of RPAPL § 745 (pre and post HSTPA) requires some evidence be put forth regarding the nature of any adjournments and lapse of time, counting from the first appearance (as it concerns the procedural history of a summary proceeding in Housing Court) for the Court to consider a request for U&O. The record on this motion is devoid of such evidence. Accordingly, the Court cannot award U&O pursuant to RPAPL § 745.

However, the summary proceedings were consolidated with the instant Supreme Court action some time ago, at the request of plaintiffs. As those summary proceedings were removed from Civil Court and deemed to be treated as defendant Prince Holdings' counterclaims in the instant action, the Court recognizes that a request for an award of ongoing U&O pendente lite, under these circumstances, would not be relegated to the statutory framework of RPAPL § 745(2)(a) and may be determined upon the discretion of this Court (*see Alphonse Hotel Corp. v 76 Corp.*, 273 AD2d 124 [1st Dept 2000]).

Plaintiffs do not contest that they continue in possession of their apartments, nor do they contest the amount of monthly ongoing U&O sought by defendants here. Accordingly,

defendants' request for ongoing U&O pendente lite from plaintiffs is granted in the amount of \$405.63 for plaintiff Dahl, and in the amount of \$1,068.60 for plaintiff Peterson, with use and occupancy payable to defendant Prince Holdings² by the 10th day of each month, to commence as of June 2023 and continuing until the conclusion of this action.

At this juncture, the Court does not opine on sums alleged to be owed by plaintiffs retroactively, or whether there are defects constituting a breach of the warranty of habitability, as these remain issues for trial. Should plaintiffs prevail on their claims in the instant action, defendants would be required to refund or offset any overcharge (*see New York Physicians LLP v Ironwood Realty Corp.*, 103 AD3d 410).

Accordingly, for the foregoing reasons, it is hereby

ORDERED that the motion by the defendants for ongoing use and occupancy, pendente lite is granted, and plaintiffs shall make monthly payments by the tenth day of each month to the defendant Prince Holdings 2012, LLC, in the amount of \$405.63 by plaintiff Shawn Dahl, and in the amount of \$1,068.60 by plaintiff James Peterson, commencing June 2023 and continuing until the conclusion of this action, and defendants' motion is otherwise denied.

This constitutes the Decision and Order of the Court.

<u>5/11/2023</u> DATE	<u>James d'Auguste, J.S.C.</u>			
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
CHECK IF APPROPRIATE:	<input type="checkbox"/>		<input type="checkbox"/>	REFERENCE

² The Court notes that only the landlord, defendant Prince Holdings 2012, LLC, is entitled to payment of ongoing U&O pendente lite even though the Notice of Motion (NYSCEF Doc. No. 365) states "the named Defendants" move for the relief sought.