

Freeland v Chemtob

2023 NY Slip Op 31908(U)

May 31, 2023

Supreme Court, New York County

Docket Number: Index No. 160094/2021

Judge: Verna L. Saunders

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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. VERNA L. SAUNDERS, JSC **PART 36**
Justice
 -----X
INDEX NO. 160094/2021
 JAMES FREELAND,
 Plaintiff,
MOTION SEQ. NO. 001
 - v -
**DECISION + ORDER ON
 MOTION**
 NANCY CHEMTOB,
 Defendant.

The following e-filed documents, listed by NYSCEF document number (Motion 001) 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

were read on this motion to/for DISMISS.

Plaintiff James Freeland (“landlord” or “plaintiff”) brings this action against defendant Nancy Chemtob (“tenant” or “defendant”) for allegedly breaching a residential lease. Plaintiff moves for an order, pursuant to CPLR 3211(a)(1), (2), (6), (7), and (b), dismissing defendant’s counterclaims and affirmative defenses. After a review of the relevant statutes and case law, the motion is granted in part and denied in part.

Plaintiff is the owner of an apartment 5AS located at 150 Charles Street, New York, New York 10014 (NYSCEF Doc. No. 18 at 2). Plaintiff began renting the apartment to defendant through a series of successive written leases and associated lease riders (*id.*). Plaintiff and defendant entered into a lease, as well as, a lease rider dated April 13, 2020, terminating on March 31, 2021 (*id.* at 2-3). The April 13, 2020 lease term was extended from April 1, 2021 until June 1, 2021, at the rate of \$23,000.00 monthly (*id.* at 3). Pursuant to an extension lease dated January 31, 2021, the parties agreed to formally extend the lease from April 1, 2021, through July 31, 2021, at a discounted rent amount of \$60,000.00 (\$15,000.00 per month) (*id.* at 3-4).

Defendant sought to extend the lease on April 19, 2021, however, plaintiff refused her request, confirming that the lease expired on July 31, 2021 (NYSECF Doc. No. 18 at 4).

In May 2021, plaintiff informed defendant that a contractor required access to the premises to take certain necessary measurements in anticipation of work to be completed immediately after defendant’s July 31, 2021 departure and before his family moved into the apartment (*id.* at 4). Defendant agreed to grant access to the premises on May 13, 2021, asking another individual to open the apartment in her absence (*id.*). When defendant mistakenly referenced a July 15, 2021 end of lease date in her e-mail reply, plaintiff reiterated to defendant that the lease ended on July 31, 2021, and that this date was inflexible because of his family’s needs (*id.* at 4-5). On May 14, 2021, defendant responded that she understood, wishing him a good weekend (*id.* at 5). On July 19, 2021, defendant informed plaintiff she had scheduled a July 28, 2021 move-out date with the building (*id.*).

On July 23, 2021, defendant notified plaintiff that she could not vacate the premises on July 31, 2021 as she had not yet secured another apartment (NYSCEF Doc. No. 18 at 5). On July 27,

2021, counsel for plaintiff sent correspondence to defendant's attorney rejecting defendant's request to stay in the premises as a holdover tenant, demanding that defendant vacate the premises and reserved all rights and remedies available under the lease (*id.*). On July 30, 2021, counsel for plaintiff once again contacted defendant, through her counsel, providing a Notice of Intent to Enter the Premises, and notifying defendant that he was invoking his right to enter to conduct necessary repairs, and that he intended to file an order to show cause seeking to evict defendant from the premises on August 2, 2021 (*id.*).

After defendant failed to vacate the premises as required, on August 3, 2021, plaintiff commenced a holdover proceeding in New York City Housing Court, by order to show cause, seeking to evict defendant; however, due to a backlog in the court, an index number was never issued, and the order to show cause was never served on defendant (*id.* at 5). On August 13, 2021, defendant's attorney was notified that plaintiff would seek the holdover rate of \$1,483.87 per day or \$46,000.00 per month for every day defendant stayed in the premises beyond July 31, 2021 (*id.* at 6). Defendant's counsel was also informed that defendant would be responsible for any unauthorized alterations, painting, and damages to the premises, plus any outstanding electrical charges (*id.*).

On August 17, 2021, defendant's counsel notified plaintiff's counsel that defendant had vacated and surrendered the apartment; however, plaintiff did not consider her departure completed until August 18, 2021, when she returned the keys to the building's management (NYSCEF Doc. No. 18 at 6). On August 19, 2021, counsel for defendant was notified that defendant was being charged for holdover rent from August 1, 2021 through August 18, 2021, and that the \$24,000.00 security deposit would not be applied to her outstanding rental payments, and the full amount had to be paid or the outstanding sum would be subject to a \$100.00 per day penalty until the payment was made plus any applicable interest (*id.*). The August 19, 2021 letter also noted that, following an inspection of the premises, significant damages and alterations were discovered in the premises that would be costly to repair and/or restore (*id.* at 6-7).

On August 20, 2021, plaintiff provided an independent estimate of the costs required to restore the premises and notified defendant that she had five (5) days to present her own estimate from a licensed and adequately insured contractor, agreeing to use the lower of the two estimates and to apply the \$24,000.00 security deposit to the cost of the repair (*id.* at 7). However, if defendant did not timely respond, plaintiff would move forward with the necessary repairs and restoration at defendant's sole cost and expense (*id.*). Defendant failed to respond, and on August 30, 2021, counsel for plaintiff notified defendant that he had commenced the necessary repairs and restorations, which were completed in October 2021 at a cost of \$71,880.00 (*id.*).

Plaintiff contends that defendant owes \$26,709.66 for holding over in the premises from August 1 through August 18, 2021; \$8,136.55 for electrical charges; and \$47,880 in repair costs (applying the \$24,000.00 security deposit to \$71,880.00 repair costs).

Defendant disputes plaintiff's allegations and counterclaims for harassment, return of her security deposit, and attorney's fees. Defendant avers that when she took occupancy in early 2016, she received permission to make certain alterations to the apartment such as painting and creating a fourth bedroom by installing a wall and closet with built-ins (NYSCEF Doc No. 25, *Chemtob aff.*, ¶ 3). Defendant asserts that at the time the lease extension was executed in 2021, plaintiff failed to refund her approximately \$9,000.00 and continued to hold the entire \$24,000.00 as a security deposit even though the monthly rent had been reduced to \$15,000.00 and the Housing Stability and Tenant

Protection Act of 2019 (HSTPA) prohibited a landlord from holding more than one month's rent (*id.*, ¶ 8). Defendant states that, although she intended to vacate the premises at the expiration of the lease on July 31, 2021, her efforts to complete her purchase of a new home in Manhattan was thwarted by the COVID-19 pandemic (*id.*, ¶ 9). She sought an extension from plaintiff, who rudely rejected her request (*id.*).

According to defendant, prior to the expiration of the lease extension, plaintiff made repeated and numerous requests to enter the apartment (*id.*, ¶¶ 11-15). Plaintiff and his associates, some of whom failed to observe the COVID-19 safety protocols, made multiple visits to the premises, some unannounced and without prior notice or permission, which inconvenienced defendant and her family members (*id.*). In addition to the multiple unwanted, intrusive visits, defendant received a barrage of threatening communications from plaintiff's attorneys with misleading information such as that her failure to vacate the premises could lead to her belongings being removed and discarded (*id.*, ¶ 16). Even after defendant retained her own counsel, plaintiff's attorney still attempted to communicate directly with defendant (*id.*, ¶ 17). The actions of plaintiff and his attorney caused defendant and her family so much emotional distress that defendant tried to vacate the premises as quickly as possible, however, she encountered problems in booking movers due to COVID-19 related restrictions (*id.*, ¶¶ 17-18, 22).

In any event, defendant asserts that, as she never received a ninety-day (90) notice of intent not to renew from plaintiff, her tenancy continued on a month-to-month basis and plaintiff had no grounds to seek eviction, and the holdover petition he attempted to file was both misleading and frivolous (*id.*, ¶¶ 9, 20-21). Defendant submits that she is entitled to the return of her security deposit because she made no other modifications than what were agreed to, and when she departed in August 2021, the premises was left vacant, broom clean and without damage except for ordinary wear and tear (*id.*, ¶¶ 3, 24).

A court may dismiss a counterclaim, if it "may not properly be interposed in the action" (CPLR 3211[a][6]). Pursuant to CPLR 3211[b], "[a] party may move for judgment dismissing one or more defenses, on the ground that a defense is not stated or has no merit" (CPLR 3211 [(b)]. Where, as here, dismissal of counterclaims and affirmative defenses are sought on the basis of documentary evidence, such relief is warranted, in the case of counterclaims, "only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law" (*Weil, Gotshal & Manges, LLP v Fashion Boutique of Short Hills, Inc.*, 10 AD3d 267, 271 [1st Dept 2004] [internal quotation marks omitted]; CPLR 3211[a][1]) or similarly, in the case of an affirmative defense, only where such evidence shows the defense to be "without merit as a matter of law" (*Granite State Ins. Co. v Transatlantic Reins. Co.*, 132 AD3d 479, 481 [1st Dept 2015]; CPLR 3211[b]).

Dismissal under CPLR 3211(a)(2) is warranted where the court lacks subject matter jurisdiction over one or more causes of action.

On a motion to dismiss pursuant to CPLR 3211(a)(7), the pleading is to be afforded a liberal construction, the court must deem the facts alleged as true, accord the non-moving party the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]).

Plaintiff contends that this court lacks jurisdiction to hear defendant's counterclaim for harassment under Administrative Code of City of NY §§ 27-2005(d) ("The owner of a dwelling shall

not harass any tenants or persons lawfully entitled to occupancy of such dwelling as set forth in paragraph 48 of subdivision a of section 27-2004 of this chapter”) and 27-2115 (m) (providing for imposition of a civil penalty). However, the Appellate Division, First Department has held that the Supreme Court is a court of competent jurisdiction for the purposes of Administrative Code § 27-2115(m)(2), the provision under which plaintiff seeks relief. (See *Carlson v Chelsea Hotel Owner, LLC*, 202 AD3d 589, 589 [1st Dept 2022]; *Berg v Chelsea Hotel Owner, LLC*, 203 AD3d 484, 485 [1st Dept 2022]; *Jobe v Chelsea Hotel Owner LLC*, 198 AD3d 440, 441 [1st Dept 2021].)

There is no common-law cause of action for harassment in New York, and any remedy for harassment derives from statute (see *Jerulee Co. v Sanchez*, 43 AD3d 328, 329 [1st Dept 2007], *lv denied* 9 NY3d 815 [2007]; *Edelstein v Farber*, 27 AD3d 202, 202 [1st Dept 2006]; *1068 Winthrop St. LLC v Zimmerman*, 65 Misc 3d 1107, 1118 [Civ Ct, Kings County 2019]).

The New York City Housing Maintenance Code defines “harassment” as “any act or omission by or on behalf of an owner that (i) causes or is intended to cause any person lawfully entitled to occupancy of a dwelling unit to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy, and (ii) includes one or more of the following acts or omissions, provided that there shall be a rebuttable presumption that such acts or omissions were intended to cause such person to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy ...” (Administrative Code of the City of NY [Administrative Code] § 27-2004[a][48]). Defendant contends that plaintiff committed harassment by providing “false or misleading information relating to the occupancy of the unit,” Administrative Code § 27-2004 (a)(48)(a-1), “commencing repeated baseless or frivolous court proceedings,” Administrative Code § 27-2004 (a)(48)(d) or committing “other repeated acts or omissions of such significance as to substantially interfere with or disturb the comfort, repose, peace or quiet” of her tenancy. Administrative Code § 27-2004(a)(48)(g).

Defendant contends that plaintiff’s failure to issue a notice of intent not to renew her lease prior to the expiration of the lease on July 31, 2021, resulted in an automatic creation of a month-to-month tenancy at the conclusion of her written lease (NYSCEF Doc. No. 36 at 3-8) under Real Property Law § 226-c. Thus, the letters from plaintiff’s attorney threatening legal action if she did not surrender the premises on July 31, 2021, contained false and misleading information and the holdover proceeding commenced by plaintiff was frivolous. Defendant contends that the e-mails exchanged between the parties, or their respective attorneys do not satisfy the service requirement of the notice of intent to not to renew (*id.*). Defendant further contends that as part of the harassment, plaintiff’s counsel violated professional ethics by continuing to repeatedly contact defendant directly after being notified that defendant was represented by counsel, including copying defendant directly on e-mails to her attorney (*id.* at 7-8).

Plaintiff contends that the letters to defendant were not threatening as they contained “reasonable, lawful demands,” which are permissible (NYSCEF Doc. No. 38 at 5).

Contrary to plaintiff’s contention, defendant’s allegations concerning the dissemination of false and misleading information under Administrative Code § 27-2004(a)(48)(a-1) and substantial interference with or disturbance of the comfort, repose, or peace or quiet under Administrative Code § 27-2004(a)(48)(g) are sufficient to withstand the very limited scrutiny to which the allegations are subject to at this early stage in the litigation. In opposition, defendant amplified her pleadings in an affidavit with additional facts detailing plaintiff’s alleged misconduct. (See *Sargiss v Magarelli*, 12

NY3d 527, 531 [2009] [“On a CPLR 3211 motion to dismiss, a court may consider affidavits to remedy pleading problems.”]). Cumulatively, the alleged frequency, duration, and tone of the requests, demands, and communication complained of could be considered as harassing.

Defendant alleges that “plaintiff engaged in a concerted campaign and course of conduct intended to harass Chemtob and the family members residing with her at the subject premises in order to cause Chemtob and her family to vacate the subject Premises” (NYSCEF Doc. No. 21, *Chemtob aff.*, ¶ 113). Defendant complains of receiving a barrage of threatening communications from plaintiff’s attorney, even after she retained representation, and experienced frequent unwanted intrusions into the premises, actions which defendant contends were designed simply to harass her in the enjoyment of her residential unit. Defendant avers that plaintiff’s frequent visitations and those of his acquaintances disrupted her and her family’s schedule and routines and caused them to be fearful for their health and safety, as not all visitors followed COVID-19 safety protocols (*id.*, ¶¶ 11-15). Defendant further avers that she was “terrified,” and “anxious” that plaintiff would remove and discard her possessions without her knowledge (*id.*, ¶¶ 16, 18, 19), and found the repeated communication from plaintiff and his attorney to be threatening, “alarming and upsetting” (*id.* at ¶¶ 17, 19), and went beyond “reasonable, lawful demands,” causing her to vacate or surrender the premises quickly.

Plaintiff’s reliance on the e-mail exchanges from defendant is misplaced, as they are insufficient to establish entitlement to relief on a pre-discovery motion to dismiss. (*VXI Lux Holdco S.A.R.L. v SIC Holdings, LLC*, 171 AD3d 189, 193 [1st Dept 2019] [“A paper will qualify as documentary evidence only if it satisfies the following criteria: (1) it is unambiguous; (2) it is of undisputed authenticity; and (3) its contents are essentially undeniable”] [internal quotation marks and citation omitted]). Plaintiff’s evidence does not resolve all factual issues and does not conclusively dispose of defendant’s claims concerning the dissemination of false and misleading information under Administrative Code § 27-2004(a)(48)(a-1) and substantial interference with or disturbance of the comfort, repose, or peace or quiet under Administrative Code § 27-2004(a)(48)(g). (*See Lawrence v Graubard Miller*, 11 NY3d 588, 596-597 [2008] [denial of motion to dismiss affirmed where unresolved questions remained, and the full record was not developed].) Accordingly, plaintiff is not entitled to dismissal of the harassment claim to the extent that it is based on substantial interference with or disturbance of her comfort, repose, peace or quiet.

On the other hand, plaintiff is correct that a single baseless or frivolous court proceeding, does not support a claim for harassment, there must be a plurality of court proceedings (NYSCEF Doc. No. 38 at 6). The only court proceeding identified is plaintiff’s unsuccessful holdover proceeding in New York City Housing Court on August 3, 2021, which was never given an index number and never served on defendant (*id.*). This single court proceeding is insufficient to sustain defendant’s counterclaim under Administrative Code § 27-2004(a)(48)(d). Accordingly, to the extent the counterclaim is based on a single frivolous court proceeding, it is dismissed. (*See Martinez v Pinnacle Group*, 34 Misc 3d 131[A], 2011 NY Slip Op 52340[U] [App Term, 1st Dept 2011] [a single nonpayment proceeding dismissed for landlord’s nonappearance on the initial return date was insufficient to satisfy the statute’s requirement that landlord commenced “repeated” baseless or frivolous court proceedings]).

Defendant relies upon General Obligations Law § 7-108 to claim that plaintiff improperly retained her \$24,000.00 security deposit and challenges the adequacy of the itemized statement provided by plaintiff, contending that plaintiff only provided an undated, unsigned estimate that fails

to identify the damage allegedly caused by defendant (NYSCEF Doc. No. 36 at 9-10). Defendant argues that the estimate is more akin to a list of work that plaintiff intends to have performed and is unrelated to any damage allegedly caused by defendant, and does not demonstrate how much, if anything, plaintiff has paid to repair damage allegedly caused by defendant (*id.*). Defendant also argues that she is entitled to a refund of her security deposit because plaintiff continued to hold \$24,000.00 as security deposit even though the monthly rent was \$15,000.00 (*id.* at 10).

General Obligations Law § 7-108(1-a)(e) provides that a landlord must return the security deposit within fourteen (14) days after a tenant vacates a rental unit and must provide the tenant with an itemized statement explaining the basis for withholding any amount of the security deposit. The First Department has held that the forfeiture penalty only applies to the failure to provide an itemized statement (*14 East 4th St. Unit 509 LLC v Toporek*, 203 AD3d 17, 22, 26 [1st Dept 2022], *lv dismissed* 38 NY3d 1019 [2022] [failure to provide written notice of the right to request an inspection before a tenant vacates an apartment does not mandate forfeiture of the right to retain any portion of the security deposit, rather “[t]he forfeiture penalty only applies to General Obligations Law § 7-108(1-a)(e), failure to provide an itemized statement”).

Here, defendant alleges plaintiff never provided the requisite notice of non-renewal and the itemized list or breakdown provided does not adequately reflect how the security deposit was applied. Defendant contends that the estimate provided by plaintiff contains “outrageous and unexplained charges” (NYSCEF Doc. No. 36 at 13). Defendant further disputes that there was any damage to the premises other than “ordinary wear and tear” (NYSCEF Doc. No. 25, *Chemtob aff.*, ¶ 24). Contrary to plaintiff’s contention, the invoice attached to the complaint fails to sufficiently indicate how the charges were computed, except in very general terms, and fails to identify the damage allegedly caused by defendant. The invoice is also ambiguous as it states it is a “proposal” and is not marked paid (NYSCEF Doc. No. 20 at Exhibit L). Accordingly, there are questions concerning the sufficiency of the itemized statement and whether it satisfies the statutory requirement; thus, plaintiff’s motion to dismiss the counterclaim for return of defendant’s security deposit is denied.

Plaintiff is not entitled to dismissal of defendant’s counterclaim for attorney’s fees. “Under the [general] rule, attorney’s fees are incidents of litigation and a prevailing party may not collect them from the loser unless an award is authorized by agreement between the parties, statute or court rule” (*Sage Sys., Inc. v Liss*, 39 NY3d 27, 30–31 [2022], quoting *Hooper Assoc. v AGS Computers.*, 74 NY2d 487, 491 [1989]). Here, defendant points to the terms of the lease and statute as a basis for her recovery of attorney’s fees.

Defendant contends her counterclaim for attorney’s fees is valid under the lease (NYSCEF Doc. No. 36 at 11). Defendant alleges that plaintiff breached his obligations under the lease by failing to return her security deposit and should she prevail on her counterclaim, she would be entitled to recovery of attorney’s fees (*id.*). Defendant also argues that if she prevails on her counterclaim for harassment, she would also be entitled to attorney’s fees and thus, it would be premature to dismiss defendant’s counterclaim for attorney’s fees (*id.*). Defendant argues that “[t]enants who prove harassment may obtain placement of housing maintenance code violations, an injunction restraining a landlord from engaging in such conduct, civil penalties payable to the New York City Commissioner of Finance, Administrative Code § 27-2115(m)(2), compensatory damages, punitive damages, and attorneys’ fees. Administrative Code §27-2115(o)” (*Hucey v Frezza*, 70 Misc 3d 1222[A], 2021 NY Slip Op 50186[U], *14 [Civ Ct, Kings County 2021]).

As a determination of defendant's counterclaims for harassment and return of her security deposit remains, dismissal of the counterclaim for attorney's fees is premature.

Pursuant to CPLR 3211(b), "[a] party may move for judgment dismissing one or more defenses, on the ground that a defense is not stated or has no merit." In other words, "the plaintiff bears the heavy burden of showing that the defense is without merit as a matter of law" (*Alpha Capital Anstalt v General Biotechnology Corp.*, 191 AD3d 515, 516 [1st Dept 2021] [internal quotation marks and citation omitted]). "The allegations set forth in the answer must be viewed in the light most favorable to the defendant, and the defendant is entitled to the benefit of every reasonable intendment of the pleading, which is to be liberally construed" (*Granite State Ins. Co.*, 132 AD3d at 481 [internal quotation marks and citations omitted]). A defense should not be stricken where there are questions of fact requiring a trial (*534 E. 11th St. Hous. Dev. Fund Corp. v Hendrick*, 90 AD3d 541, 542 [1st Dept 2011]).

Defendant alleges the following affirmative defenses: (1) failure to state a cause of action upon which relief may be granted; (2) there is a defense founded upon documentary evidence; (3) the complaint is barred by the culpable conduct of plaintiff; (4) plaintiff failed to mitigate damages; (5) the complaint is barred in whole or in part by the doctrine of equitable estoppel; (6) the complaint is barred in whole or in part by the doctrine of waiver; (7) the plaintiff is barred from seeking relief by the doctrine of unclean hands; and (8) the complaint is barred in whole or in part by plaintiff's failure to serve predicate notices required by the Housing Stability and Tenant Protection Act of 2019 (NYSCEF Doc. No. 21 at 11-13). Defendant argues that her affirmative defenses are not boilerplate and that support for each defense is set forth in the four corners of the answer (NYSCEF Doc. No. 36 at 11-15).

CPLR 3013 expressly requires that all "[s]tatements in a pleading shall be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action or defense." CPLR 3013 is satisfied so long as the pleading gives notice of the transactions or occurrences giving rise to a claim (*Colleran v Rockman*, 232 AD2d 322, 323 [1st Dept 1996]).

Plaintiff has not eliminated material factual disputes presented by the defendant's affirmative defenses (*Granite State Ins. Co.*, 132 AD3d at 481 [a defense should not be dismissed "where there remain questions of fact requiring a trial"]). Defendant's answer provides sufficient notice of the transaction giving rise to the claims to withstand plaintiff's motion to dismiss. Defendant provided facts and details for the basis of each affirmative defense and amplified those details in her supporting affidavit submitted in opposition to plaintiff's motion to dismiss (NYSCEF Doc. No. 25). Material factual dispute remains as to whether plaintiff's alleged behavior constitutes harassment. There are also material factual disputes concerning whether defendant is entitled to the return of her security deposit and if defendant caused any damages to the premises beyond normal wear and tear. As plaintiff failed to affirmatively demonstrate the lack of merit of defendant's affirmative defenses, they will stand at this juncture (*MTown Mgt. Group, Inc. v Telepro Realty, LLC*, 68 Misc3d 1212[A], 2020 NY Slip Op 50917[U], *4 [Sup Ct, NY County 2020] [denial of motion where plaintiff failed to eliminate material factual disputes presented by defendants' affirmative defenses]). Accordingly, it is hereby

ORDERED that the branch of plaintiff's motion seeking dismissal of defendant's claims for harassment by providing false or misleading information relating to the occupancy of the unit, or

committing other repeated acts or omissions of such significance as to substantially interfere with or disturb the comfort, repose, peace, or quiet of her tenancy is denied; and it is further

ORDERED that the branch of plaintiff's motion seeking dismissal of defendant's counterclaim for harassment for commencing repeated baseless or frivolous court proceedings is granted; and it is further

ORDERED that the branch of plaintiff's motion seeking dismissal of defendant's counterclaim for return of her security deposit is denied; and it is further

ORDERED that the branch of plaintiff's motion seeking dismissal of defendant's counterclaim for attorney's fees is denied; and it is further

ORDERED that the branch of plaintiff's motion seeking dismissal of defendant's affirmative defenses is denied; and it is further

ORDERED that, within twenty (20) days after this decision and order is uploaded to NYSCEF, counsel for defendant shall serve a copy of this decision and order, with notice of entry, upon plaintiff.

May 31, 2023

HON. VERNA L. SAUNDERS, JSC

CHECK ONE:

CASE DISPOSED
GRANTED

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART

OTHER