

200-230 W 99 Realty LLC v Wilson

2015 NY Slip Op 30246(U)

February 23, 2015

Civil Court, New York County

Docket Number: 80231/2014

Judge: Sabrina B. Kraus

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART R

200-230 W 99 REALTY LLC X

Petitioner

HON. SABRINA B. KRAUS

-against-

DECISION & ORDER
Index No.: L&T 80231/2014

VIE WILSON
206 West 99th Street, Apt. # 6-B
New York, NY 10025

Respondent- Tenant

“JOHN DOE” and “JANE DOE”

Respondent-Undertenant

X

BACKGROUND

This summary nonpayment proceeding was commenced by **200-230 W 99 REALTY LLC** (Petitioner) against **VIE WILSON** (Respondent) the rent-stabilized tenant of record seeking to recover possession of 206 West 99th Street, Apt. # 6-B, New York, NY 10025 (Subject Premises) based on the allegation that Respondent has failed to pay rent for the Subject Premises.

PROCEDURAL HISTORY

Petitioner issued a rent demand dated September 15, 2014, seeking rent for August and September 2014 at a monthly rent of \$1897.78. The petition is dated October 3, 2014. Respondent appeared *pro se* and filed an answer on October 14, 2014. The answer asserted

improper service of the notice of petition and petition and breach of warranty of habitability.

The proceeding was initially returnable October 23, 2014.

On that date, the court (Schreiber, J) ordered an inspection. The inspection took place on November 3, 2014. The inspection resulted in one Class “A” violation, seven Class “B” violations and two Class “C” violations. The violations were issued for conditions including painting and plastering, unsafe wiring consisting of exposed electrical wires at the roof bulkhead, missing copping at all parapet walls on the roof, an uncapped inactive gas in the kitchen ceiling, defective smoke detector and carbon monoxide detector and a defect in the fire escape.

On February 23, 2015, the proceeding was assigned to Part R for trial and the trial took place. Immediately prior to the commencement of trial, Respondent waived traverse.

FINDINGS OF FACT

Petitioner is the owner of the Subject Building pursuant to a deed dated June 3, 1999 (Ex 1). There is a valid MDR effective August 2014 (Ex 2). Respondent is the tenant of record for the Subject Premises, pursuant to a lease most recently renewed in November 2013 for a two year term from December 1, 2013 through November 30, 2015, at a monthly rent of \$1897.78 (Ex 4).¹ The legal registered rent for the Subject Premises is \$1897.78 as of July 2014 (Ex 3).

It is undisputed that Respondent stopped paying rent in August 2014. Both parties seek a determination on the amount of rent due through the date of the trial, and Petitioner on its direct case sought a judgment for rent due through February 2015. The primary issue at trial was what if any abatement Respondent is entitled to.

¹ The term of one or two years is not indicated on the face of the lease, but it is undisputed that the agreed rent is \$1897.78 per month corresponding to a two year term.

Respondent credibly testified at trial that there were leaks in the Subject Premises from 2012 forward. Respondent has a thirty-six year tenancy and has never had issues with the landlord doing repairs prior to the 2012 leaks. Respondent notified Petitioner regarding stains from water intrusions in late 2012.

Isaac Benishai (Isaac) has been the managing agent for the building since October 15, 2012.

Isaac told Respondent she would have to wait until the Spring for them to address problems with the roof. In the Spring of 2013, Petitioner did send someone to plaster and paint inside the Subject Premises. During this period the building was undergoing extensive renovations.

By the end of 2013, the stains had reoccurred and developed into active leaks. The damage had spread from one room to several rooms. There were leaks in both bedrooms and the living room. Later, there were also leaks in the dining room and parts of the kitchen. Respondent notified Petitioner of the leaks and was told to be patient and that a full roof repair was planned.

Isaac acknowledged being advised of the leaks again in late 2013, and met with Respondent at the Subject Premises in January 2014 and personally observed the active leaks in multiple rooms. Isaac told Respondent that the roof would not be repaired until the Spring because of weather conditions.

To the extent that Isaac testified that a roof repair was done in January 2014 and that the Subject Premises was plastered and painted at this time, the court does not credit this testimony.

In January and February of 2014 Petitioner filed plans with DOB for repairs to the roof, chimney and parapet walls of the building. At the same time, Petitioner also filed plans to make repairs to the facade of the building. Permits were issued for the work in July 2014.² These filings show that Petitioner had ongoing knowledge of the defects in the roof and the necessity for the repairs.

In September 2014, the roof was completely replaced. In November 2014, all work was done inside the Subject Premises and the violations from the court ordered inspection were corrected.

HPD records on line indicate that between September 21, 2014 and November 18, 2014 tenants from apartments 6A, 6B and 6C in the subject building filed complaints with HPD pertaining to conditions caused by a leaking roof. This is referenced in the on line complaint history for the Subject Building.

Respondent testified that during the relevant periods she was often away from the Subject Premises and staying with her boyfriend. Respondent testified that she moved out of the Subject Premises in November 2014, because she did not want to be living in there while repairs were taken place.

DISCUSSION

New York Real Property Law §235-b provides for an implied warranty of habitability. Landlords of residential premises are required to keep the premises “fit for human habitation” and free of conditions that are dangerous, to the life, health or safety of the tenants (*Park West Management Corp. v. Mitchell*, 47 N.Y.2d 316 at 327).

² The court takes judicial notice of the filings as indicated on DOB’s website.

If the landlord breaches the warranty of habitability, the proper measure for damages is “... the difference between the fair market value of the premises if they had been as warranted, as measured by the rent reserved under the lease, and the value of the premises during the period of the breach (*Park West Management Corp.* 47 N.Y.2d 316, 329).”

The Court must weigh the severity of the violation and duration of the conditions giving rise to the breach, as well as the effectiveness of steps taken by the landlord to abate those conditions (*N. Town Roosevelt Assoc. v. Mullen*, NYLJ, Oct. 27, 1980. P.6, col. 45; *Concord Village Management v. Rubin*, 101 Misc.2d 625).

The court finds that a rent impairing condition in the form of water intrusion based on a defective roof affected the habitability of the Subject Premises from 2012 forward. Petitioner had notice of these conditions as of the Spring of 2013, and Isaac acknowledge personally inspecting them in 2013. By December 2013, the conditions became more severe. The roof replacement was not completed until September 2014 and the work in the Subject Premises was not completed until November 2014.

Respondent had to keep items in the Subject Premises wrapped in plastic because of peeling paint and leaks.

To the extent Petitioner alleged Respondent failed to put Petitioner on notice of the alleged conditions or that Respondent refused access the court does not find these allegations supported by a preponderance of credible evidence at trial.

Based on the foregoing, the court finds Respondent is entitled to a rent abatement of 15% from April 2013 through December 2013, and a 20% abatement for the period from January

2014 through November 2014. The total abatement Respondent is entitled is \$6573.31. The total outstanding arrears through February 2015 is \$13,284.46.

Petitioner is awarded a final judgment as against Respondent in the amount of \$6711.15 for all rent due through February 2015. As there was no evidence offered of any other occupants in the Subject Premises the proceeding is dismissed as against John and Jane Doe. Issuance of the warrant is stayed five days for payment.

This constitutes the decision and order of the Court.³

Dated: New York, New York
February 23, 2015

Sabrina B. Kraus, JHC

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VIE WILSON
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3 Parties may pick up Trial Exhibits within thirty days of the date of this decision from the second floor record room, Window 9, located at 111 Centre Street. After thirty days, the exhibits may be shredded in accordance with administrative directives.

