

St. Marks Place Assoc. v Scott

2012 NY Slip Op 32282(U)

September 6, 2012

Civil Court, New York County

Docket Number: 95928/2008

Judge: Sabrina B. Kraus

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

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

ST MARKS PLACE ASSOCIATES X

HON. SABRINA B. KRAUS

Petitioners-Landlord

-against-

DECISION & ORDER
Index No.: L&T 95928/2008

DAMION K. SCOTT
81 St Marks Place, Apartment 2W
New York, NY 10003

Respondent-Tenant

X

BACKGROUND

This summary nonpayment proceeding was commenced by **ST MARKS PLACE ASSOCIATES** (Petitioner) and seeks to recover possession of Apartment 2W at 81 St Marks Place, New York, NY 10003 (Subject Premises) based on the allegation that **DAMION K. SCOTT** (Respondent) the tenant of record had failed to pay rent sue for the Subject Premises.

PROCEDURAL HISTORY

The petition issued in this proceeding on December 4, 2008. The petition sued for \$5,135.00 in rent arrears, through December 2008, at a monthly rent of \$2205.00. Respondent filed an answer on December 8, 2008, asserting partial payment, and warranty of habitability issues. The proceeding was initially returnable on December 15, 2008. The proceeding was adjourned to January 9, 2009, and on that date the parties entered into a stipulation settling the case. Pursuant to the stipulation, Respondent acknowledged \$7840 in arrears and agreed to pay the amount over time at a rate of \$500 per month.

On April 1, 2011, Respondent sought by *ex parte* application to restore the proceeding and to vacate the 2009 stipulation of settlement. The court (Wendt, J) declined to sign the Order to Show Cause, finding that the application came too late, but the denial was without prejudice to Respondent filing an overcharge complaint at DHCR.

Respondent filed an overcharge claim with DHCR on May 19, 2011, under Docket Number ZE 410087 R.

On April 28, 2011, Petitioner moved to restore the proceeding to the calendar for a judgment and a warrant, based on the allegation that Respondent defaulted on the stipulation. The motion was denied by the court (Schreiber, J) on July 6, 2011, without prejudice, because the copy of the stipulation annexed to the motion was not executed.

On July 28, 2011, Petitioner moved a second time for restoration to the calendar, and for relief based on the breach of the stipulation. That motion was adjourned by the Court on several dates to October 2011, for Respondent to make a cross motion. Respondent did cross move for an order vacating the stipulation, and setting the matter down for a trial, based on his assertion that the rent sought in the underlying proceeding was not a legal rent.

On December 27, 2011, the motion and cross-motion were granted by the court (Gonzales, J) to the extent of setting the matter down for a hearing to determine whether there was a basis to vacate the underlying stipulation of settlement.

On April 3, 2012, Respondent retained counsel.

On June 25, 2012, after the hearing, the court (Gonzales, J) issued a decision vacating the underlying stipulation based on a finding that the original so-ordered stipulation in the court file had not been signed by the *pro se* Respondent. The trial was set for July 3, 2012.

On July 20, 2012, the proceeding was assigned to Part R for trial. The trial commenced and concluded on that date. The proceeding was adjourned to August 3, 2012, for the submission of post trial memoranda. On August 3, 2012, the Court reserved decision.

FINDINGS OF FACT

Petitioner is the owner of the subject building, pursuant to a deed dated January 11, 1977 (Exhibit 1). Respondent is the tenant of record of the Subject Premises pursuant to a lease agreement dated March 22, 2007 (Ex 4). The lease was for a one year term expiring March 31, 2008, at a monthly rent of \$2100.00. The petition asserts that the Subject Premises is governed by Rent Stabilization. Respondent agrees, but has taken the position that the rent sued for is not a legal rent. Respondent has filed a rent overcharge complaint at DHCR, which remains pending (Ex A), but has asserted no defense or counterclaim in this proceeding for rent overcharge.

Petitioner submits a certified record from DHCR showing the registered legal rent (Ex 2). The registration shows the current legal registered rent is \$2726.20, and the preferential rent is \$2205. Petitioner at trial agreed to limit its rent claim to \$2100.00 per month, through the date of the trial, and withdrew any claim for any higher monthly rent. This rental amount is based on the last two executed renewal leases between the parties which provides for a rent of \$2100.00 per month (Exs 4 & 5).

At trial, Petitioner established a *prima facie* case including a personal rent demand and service of the petition. The Court found the testimony of Edward Teitelbaum regarding the personal demand to be credible and sufficient to serve as a predicate for the underlying proceeding. Respondent raised no affirmative defense in his answer regarding the demand. Similarly, there is no pleading asserted by Respondent in this proceeding asserting a defense or

counterclaim of rent overcharge. Respondent has elected to litigate that issue at DHCR. While there are discrepancies in the rental history, those discrepancies are therefore not before this court.

Petitioner has met its obligation to show that the rent sought of \$2100.00 per month does not exceed the legal registered rent. Although, the Petitioner seeks rent from 2008, the rent ledger offered by Petitioner starts in January 2009, with a prior opening balance of \$5210.00, which was not otherwise accounted for or addressed. Therefore, any claim for rent prior to January 2009 is dismissed. From January 2009 through July 2012, there is a total of 43 months at a rent of \$2100.00 per month, the total amount due for said period is \$90,300.00. During this same period Respondent made payments totaling \$59,385.00.¹

Although Respondent raised the issue of repairs in his answer, at trial he testified that the Subject Premises is in good condition, and that Petitioner and the Super are responsive to any repair requests which are made. Respondent testified that the Subject Premises does not have new appliances, and that the bathroom is dated, but that really addresses the rent overcharge claim pending before DHCR, not any warranty of habitability claim. Respondent did submit proof of four payments made in 2009, but each payment had been credited by Petitioner as reflected in Exhibit 7. In January 2011, DSS started paying \$215 a month towards Respondent's rent. The last payment made by Respondent, other than said DSS payments, was in October 2011.

¹ The last line on page three of Exhibit 7, the rent ledger offered by Petitioner, indicates a total credit for payments of \$97,375.00. However the totals on the last line do not correspond to the individual identified payments above. This was not addressed by either party at trial. The court thus disregards the totals listed on page three and is guided instead by the individual payments listed in the document.

Respondent failed to establish any defense to Petitioner's claim of nonpayment at trial.

Based on the foregoing, the Court finds that Petitioner is entitled to a final judgment in the amount of \$30,915.00 for all rent due through July 2012. Issuance of the warrant is stayed five days for payment. This decision is without prejudice to any determination made by DHCR in the pending rent overcharge case.

This constitutes the decision and order of this Court.²

Dated: New York, New York
September 5, 2012

Hon. Sabrina B. Kraus

TO: GREEN & COHEN, PC
Attorneys for Petitioner
By: Michael Cohen, Esq.
319 East 91st Street
New York, NY 10128
(212) 831-4400

KAPLAN & CHUN, PC
Attorneys for Respondent
By: Howard Chun, Esq.
30 Avenue B
New York, New York 10009
(212) 777-0320

² Petitioner may pick up its exhibits within thirty days from Window 9 on the second floor of the Courthouse. After said date, the exhibits may be shredded in accordance with administrative directives.

