2019-09-12

Triumph Baptist Church, Inc. v. Anderson

[*1]

Triumph Baptist Church, Inc. v Anderson
2019 NY Slip Op 51454(U) [64 Misc 3d 1238(A)]
Decided on September 12, 2019
Civil Court Of The City Of New York, New York County
Stoller, J.
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on September 12, 2019

Civil Court of the City of New York, New York County

Triumph Baptist Church, Inc., Petitioner,

against

Portia Anderson, Respondent.

77301/2018
Jack Stoller, J.

Triumph Baptist Church, Inc., the petitioner in this proceeding ("Petitioner"), commenced this summary proceeding against Portia Anderson, the respondent in this proceeding ("Respondent"), seeking a money judgment and possession of 214 Lenox Avenue, Room 8, New York, New York ("the subject premises") on the basis of nonpayment of rent. Respondent served an answer on December 6, 2018 containing counterclaims of rent overcharge and breach of the warranty of habitability. Petitioner served a reply to Respondent's counterclaims. Petitioner discontinued its proceeding against Respondent. The Court proceeded to trial on Respondent's counterclaims on August 7, 2019 and then adjourned the matter for post-trial submissions to August 30, 2019.

Respondent's Rent Overcharge Counterclaim

At Respondent's request, the Court took judicial notice of the information about the building in which the subject premises is located ("the Building") on the website maintained by the Department of Housing Preservation and Development of the City of New York ("HPD") pursuant to MDL §328(3). The multiple dwelling registration pursuant to MDL §325 therein ("MDR") listed Petitioner as a "corporation" and another entity as the registered managing agent ("the agent") and further stated that the Building contains nine "B" units.[FN1] Respondent introduced into evidence a one-year lease she entered into with the agent as the lessor dated September 23, 2016 and commencing October 1, 2016 with a monthly rent of $600.00.

Respondent testified that there are eight rooms in the Building; that she moved into the subject premises in October of 2016; that she paid $300.00 in fees and $300.00 for a security deposit upon moving in; that she didn't know what the fees were for; that a broker did not get the subject premises for her; that Petitioner did not tell her that the subject premises was subject to the Rent Stabilization Law; that she was never given a renewal lease; that, in September of 2017, she added a roommate to the lease; that her landlord levied a $50.00 charge on her; and that her [*2]roommate was given a lease.

Respondent introduced into evidence a history of rent registrations ("the registration history") filed with the New York State Division of Housing and Community Renewal ("DHCR"). The registration history showed that the last registered rent for the subject premises was in 2005 with a monthly rent of $100.00; that prior registered rents were on a weekly basis; and that the subject premises had been registered as "HOTEL/SRO ("TRANSIENT)[sic.]" for twelve years before 2005.

Respondent introduced into evidence receipts of $600.00 for payment of a security deposit and fees and a number of receipts for payment of rent from September of 2016 through December of 2017 which show payments totaling $8,290.00. In addition to that, Respondent introduced into evidence the agent's rent ledger dated February 26, 2018, which shows a credit for a payment of $600.00 which Respondent did not have a receipt for.

Petitioner argues that Respondent has not proven her counterclaim against it for rent overcharge because Petitioner's name is not on the lease in evidence. A tenant's cause of action for rent overcharge accrues against an "owner." N.Y.C. Admin. Code §26-516(a). The MDR, which an owner of a building must file with HPD, N.Y.C. Admin. Code §27-2097(a), requires an identification of the owner by, *inter alia*, name, and if the owner is a corporation, the identification shall include, *inter alia*, the name of such corporation. N.Y.C. Admin. Code §27-2098(a)(2). The identification of

Petitioner as a "corporation" on the MDR, as distinct from the identification of the agent as a registered managing agent, therefore constitutes an admission that Petitioner is the owner of the Building.

As the MDR shows that the subject premises has nine "B" units, the subject premises is subject to the Rent Stabilization Law. 9 N.Y.C.R.R. §2520.11(d). The record shows, in particular, that the subject premises is subject to the hotel provisions of the Rent Stabilization Law, as Respondent testified that the units in the Building are "rooms" and as the prior registration designated the subject premises as hotel units.

Petitioner's failure to register the subject premises with DHCR bars Petitioner from collecting any rent in excess of the legal regulated rent in effect on the date of the last preceding registration statement. N.Y.C Admin. Code §26-517(e). *Bradbury v. 342 W. 30th St. Corp.*, 84 AD3d 681, 683-684 (1st Dept. 2011), *100 Audubon Holdings LP v. Hernandez*, 28 Misc 3d 140(A)(App. Term 1st Dept. 2010), *Commer. Hotel v. White*, 194 Misc 2d 26, 28 (App. Term 2nd Dept. 2002), *Ernest & Maryanna Jeremias Family Partnership, LP v. Matas*, 39 Misc 3d 1206(A)(Civ. Ct. NY Co. 2013). As the last registered monthly rent for the subject premises was $100.00, the legal monthly rent for the subject premises therefore remains at $100.00.

Petitioner's reply to Respondent's counterclaims asserted that no overcharge existed because the subject premises was vacant for more than six years before Respondent moved in. While Petitioner did not register the subject premises with DHCR, such a failure to register does not necessarily prove that the subject premises was vacant. After all, the subject premises was not vacant when Respondent moved there in 2016 and Petitioner did not register the subject premises at that time. Petitioner did not otherwise introduce any evidence that the subject premises was vacant during the time period.

Assuming *arguendo* that the subject premises was vacant in the six years before Respondent moved in, Petitioner's defense had some support according to the incarnation of the [*3]Rent Stabilization Law at the time that Respondent interposed her defense in December of 2018. At that point in time, N.Y.C. Admin. Code §26-516(a)(2) restricted an inquiry of a history of rents charged in a rent-stabilized apartment to the four years before the interposition of the cause of action ("the base date"). When a vacancy on the base date caused DHCR to only consider rents charged after the base date in determining a rent overcharge complaint, the First Department upheld this determination as a rational interpretation of the statute as it then existed. *Marmelstein v. State Div. of Hous. & Cmty. Renewal Co.*, 292 AD2d 207 (1st Dept. 2002).

However, DHCR subsequently amended the Rent Stabilization Code, on January 8, 2014, to permit examinations of rent histories before the base date ("the prior rent history") when the apartment was vacant on the base date, 9 N.Y.C.R.R. §2526.1(a)(2)(ix), 9 N.Y.C.R.R. §2526.1(a)(3)(iii).

More significantly, the Legislature amended N.Y.C. Admin. Code §26-516 as of June 14, 2019 ("the effective date") so as to apply to, *inter alia*, any overcharge claims pending on the effective date. 2019 NY ALS 36, 2019 NY Laws 36, 2019 NY Ch. 36, 2019 NY SB 6458. Although Respondent interposed her rent overcharge counterclaim before the effective date, the Court had not entered a final judgment regarding her counterclaim as of the effective date, rendering her cause of action "pending" as of the effective date. *US Bank Nat'l Ass'n v. Saintus*, 153 AD3d 1380, 1382 (2nd Dept. 2017), *Cooke-Garrett v. Hoque*, 109 AD3d 457 (2nd Dept. 2013), *Knapek v. MV Sw. Cape*, 110 AD2d 928, 929 (3rd Dept. 1985), *In re Bailey*, 265 A.D. 758, 761 (1st Dept. 1943). *Cf. 400 E58 Owner LLC v. Hernson*, 2019 N.Y.L.J. LEXIS 3091 (Civ. Ct. NY Co.), *315 Jefferson LLC v. Dominguez*, 2019 NY Slip Op. 29255 (Civ. Ct. Kings Co.)(a rent overcharge claim was not "pending" as of the effective date when the Court had already dismissed the claims before the effective date).

The Legislature's amendment to N.Y.C. Admin. Code §26-516(a) not only specifically struck the language precluding an examination of the prior rent history, 2019 NY ALS 36, 2019 NY Laws 36, 2019 NY Ch. 36, 2019 NY SB 6458, but expressly provided that a vacancy on the base date occasions a review of "all available rent history ... reasonably necessary" to determine overcharge complaints. N.Y.C. Admin. Code §26-516(h)(viii). Petitioner's failure to register the subject premises renders an examination of the prior rent history "reasonably necessary" to determine the legality of the rent.

Petitioner argues that the Court should infer that Petitioner engaged in improvements to effectuate a lawful rent increase. However, Petitioner bears the evidentiary burden of proving an individual apartment improvement ("IAI"), *Ruggerino v. Prince Holdings 2012, LLC*, 170 AD3d 568, 569 (1st Dept. 2019), to prove that the work consisted of improvements as opposed to ordinary maintenance and repair, *Matter of Rockaway One Co., LLC v. Wiggins*, 35 AD3d 36, 42-43 (2nd Dept. 2006), *461 Cent. Park W. Co., LLC v. Wang*, 12 Misc 3d 135(A)(App. Term 1st Dept. 2006), *appeal withdrawn*, 2007 NY App. Div. LEXIS 7256 (1st Dept. 2007), and to prove the reasonableness of the cost of the work. *Id.*, *PWV Acquisition, LLC v. Toscano*, 2003 NY Slip Op 51048(U)(App. Term 1st Dept.). As Petitioner did not introduce any evidence to any of these points,

the Court cannot presume that it made IAI's.

As the legal regulated rent for the subject premises has been $100.00, Respondent's rent liability from October of 2016 through December of 2017 would have been $1,500.00. The evidence shows that Respondent instead paid $8,290.00 in this time period, constituting an [*4]overcharge of $6,790.00.

In addition to that, Respondent paid $600.00 in fees and/or deposits in September of 2016, before she moved into the subject premises. Petitioner was only allowed to have collected $100.00 as a security deposit from Respondent as one months' rent. 9 N.Y.C.R.R. §2525.4. As Courts have ratified DHCR's use of rent overcharge remedies for a landlord's charge of an excess security deposit, *985 Fifth Ave. v. State Div. of Hous. & Cmty. Renewal*, 171 AD2d 572 (1st Dept.), *leave to appeal denied*, 78 NY2d 861 (1991), *Matter of 554 W. 181, LLC v. New York State Div. of Hous. and Community Renewal*, 30 Misc 3d 1233(A) (S. Ct. NY Co. 2011), and as the Housing Court has concurrent jurisdiction with DHCR to adjudicate rent overcharge claims, *Lirakis v. 180 Seventh Ave. Assoc. LLC*, 10 Misc 3d 131(A)(App. Term 1st Dept. 2005), *Vazquez v. Sichel*, 12 Misc 3d 604, 605 (Civ. Ct. NY Co. 2005), this Court may afford Respondent a remedy for Petitioner's charge of an excess security deposit. *See Wai Chan v. Gao Xiao Ying*, 10 Misc 3d 1065(A)(Civ. Ct. NY Co. 2005) (reserving for trial in Housing Court a fact dispute about payment of an excess security deposit), *Tan Holding Corp. v. Wallace*, 182 Misc 2d 422, 435 (Civ. Ct. NY Co. 1999), *rev'd on other grounds*, 187 Misc 2d 687 (App. Term 1st Dept. 2001). The Court therefore adds $500.00, the overcharge in the security deposit, to the award of $6,790.00 for a total overcharge of $7,290.00.

Prior to the amendment of the Rent Stabilization Law, N.Y.C. Admin. Code §26-516(a) precluded an award of treble damages on an overcharge award attributable to a failure to register. However, the Legislature specifically struck that language from the statute. 2019 NY ALS 36, 2019 NY Laws 36, 2019 NY Ch. 36, 2019 NY SB 6458. The current incarnation of N.Y.C. Admin. Code §26-516 specifically provides for treble damages upon an overcharge as the one herein. Accordingly, Respondent's overcharge damages are three times $7,290.00, or $21,870.00.

Respondent's Habitability Counterclaim

A cause of action for breach of the warranty of habitability sounds in breach of contract. *170 W. 85th St. Hous. Dev. Fund Corp. v. Marks*, 40 Misc 3d 1227(A)(Civ. Ct. NY Co.), *citing Bandler v. Battery Park Mgmt. Co.*, 10 Misc 3d 133(A)(App. Term 1st Dept.). Petitioner argues that the parties

are not in a contractual relationship with one another because the lease in evidence is with the agent, not with Petitioner. However, as a hotel-stabilized tenant, Respondent is a statutory tenant. *Park Summit Realty Corp. v. Frank*, 107 Misc 2d 318, 322 (App. Term 1st Dept. 1980), *aff'd for reasons stated*, 84 AD2d 700 (1st Dept. 1981), *aff'd*, 56 NY2d 1025, 1026 (1982). "Statutory tenants" are distinguished from tenants who possess apartments according to leases (i.e., contracts), *Duell v. Condon*, 84 NY2d 773, 779 (1995), such that a cause of action sounding in nonpayment of rent lies as against statutory tenants, even if there is no lease, *Seaman Arms LLC v. McMahon*, 2006 NY Misc. LEXIS 4121 (Civ. Ct. NY Co. 2006), as indeed Petitioner demonstrated upon its commencement of this nonpayment proceeding against Respondent. A cause of action for breach of the warranty of habitability is the legal converse of Respondent's obligation to pay rent as such. *601 W. Realty, LLC v. Chapa*, 19 Misc 3d 1133(A)(Civ. Ct. NY Co. 2008).

Moreover, the statutory warranty of habitability imposes the obligation to maintain residential premises upon a "landlord *or* lessor." RPL §235-b(1)(emphasis added). A fundamental principle of statutory construction requires a Court to construe a statute to give [*5]effect to every word, if possible, and every word, phrase, clause or paragraph must be presumed to have some meaning. *Matter of Tristram K.*, 36 AD3d 147, 151 (1st Dept. 2006). The word "or" as used in a statute is "a disjunctive particle indicating an alternative and it often connects a series of words or propositions presenting a choice of either." *In re Gerald R.M.*, 12 AD3d 1192, 1194 (4th Dept. 2004), *Festa v. Leshen*, 145 AD2d 49, 59 (1st Dept. 1989). Thus, the Legislature drafted RPL §235-b(1) so as to impose liability for breach of the warranty of habitability upon a landlord who might not necessarily be the lessor. As noted above, the MDR shows that Petitioner is the owner of the subject premises. Accordingly, the Court considers Respondent's evidence.

As noted above, the Court took judicial notice of information about the Building on the HPD website pursuant to MDL §328(3), which also included the following violations of the New York City Housing Maintenance Code placed on November 26, 2018, including "A" violations for a door, a saddle, painting and plastering a ceiling, and a floor, and "B" violations for inadequate hot and cold water and a missing smoke detector.[FN2]

Respondent testified that Petitioner attempted to repair her ceiling, but it got damaged again and the ceiling still drips and plaster falls from the ceiling; that her floor has cracks; that wood in the floor is exposed; that the floor warps such that it's not level; that the front door does not have a lock on it, such that people come in and out and leave the door open; that she observed rodents and roaches; that the power is irregular; that she has no hot water; that the water pressure is low, such that

she cannot reliably use the shower at the Building or cook at the Building; that she uses a shower at a gym; that she complained in writing to Petitioner and by texting and calling; that the door problem started in 2017; that she told Petitioner about the door; and that she did not give Petitioner notice of a defect in her floor tiles.

Respondent introduced into evidence photographs from 2019 of her doorframe; cracked floor tiles; a deteriorated ceiling; her bathroom; and the front door to the Building, which does not have a knob.

Respondent introduced into evidence a video recordings from 2018 of a mouse and of her ceiling leaking, the latter depicting a leak that is audible.

Respondent testified on cross-examination that she had numerous meetings with Petitioner and that someone from Petitioner has been in the subject premises.

Respondent's testimony, the HPD violations, and the photographs in evidence prove that Respondent's front door needs repair and that the problem started in 2017, although Respondent did not testify which month in 2017 it started. Petitioner did not rebut Respondent's testimony that she communicated with Petitioner about repairs. The measure of damages for breach of the warranty of habitability is the difference between the rent and the value of the premises during the period of the breach. *Park West Management Corp. v. Mitchell*, 47 NY2d 316, 329, *cert. denied*, 444 U.S. 992 (1979), *Elkman v. Southgate Owners Corp.*, 233 AD2d 104, 105 (1st Dept. 1996). The door condition diminished the habitability of the subject premises by five percent. [*6]Five percent of $100.00 is $5.00. The earliest date that Respondent's testimony shows that the condition could have started was December of 2017. A rent abatement of $5.00 a month from December of 2017 through July of 2019 totals $100.00.

Respondent's testimony and the HPD violations prove that her ceiling leaked and Respondent's testimony that Petitioner attempted to repair it compels the conclusion that Petitioner had notice of the condition. The video from 2018 and the HPD violation from November of 2018 shows that the condition started at least as of November of 2018. The ceiling condition diminished the habitability of the subject premises by sixteen percent. Sixteen percent of $100.00 is $16.00. A rent abatement of $16.00 from November of 2018 through July of 2019 totals $144.00.

While Respondent's testimony and the HPD violations prove that her floors were defective, she did not give Petitioner notice of a defect in her floor tiles. Accordingly, the Court dismisses

Respondent's cause of action for an abatement for that condition. *Matter of Moskowitz v. Jorden*, 27 AD3d 305, 306 (1st Dept.), *appeal dismissed*, 7 NY3d 783 (2006), *1050 Tenants Corp. v. Lapidus*, 16 Misc 3d 70, 72 (App. Term 1st Dept. 2007), *Windemere Chateau, Inc. v. Hirsch*, 22 Misc 3d 1108(A)(Civ. Ct. NY Co. 2008).

Respondent's testimony and the HPD violations prove that Petitioner has not provided her with adequate water service. The HPD violation as of November of 2018 shows that the condition started at least as of that month. The inadequate water diminished the habitability of the subject premises by sixteen percent. Sixteen percent of $100.00 is $16.00. A rent abatement of $16.00 from November of 2018 through July of 2019 totals $144.00.

While Respondent introduced a photograph of a mouse from 2018, HPD did not place a violation for a mouse infestation and Respondent's testimony is otherwise not specific enough to identify a time period during which a mouse infestation diminished the habitability of the subject premises. Accordingly, the Court dismisses Respondent's cause of action for a rent abatement for that condition.

The total rent abatement that Court awards is $388.00. Adding that amount to the overcharge award totals $23,158.00. The Court awards Respondent a judgment against Petitioner on her counterclaims in the amount of $23,158.00. Pursuant to New York City Civil Court Act §110, the Court also directs Petitioner to correct the extant "B" violations of the Housing Maintenance Code in the subject premises on or before October 15, 2019 and the "A" violations on or before December 11, 2019, with access to be arranged between the parties.

The parties are directed to pick up their exhibits within thirty days or they will either be sent to the parties or destroyed at the Court's discretion in compliance with DRP-185.

This constitutes the decision and order of this Court.

Dated:September 12, 2019

New York, New York

HON. JACK STOLLER

J.H.C.

Footnotes

Footnote 1:"B" dwellings are those "occupied, as a rule transiently ... includ[ing] hotels, lodging houses, rooming houses, boarding houses ...." MDL §4(9).

Footnote 2:A class "A" violation is "non-hazardous" pursuant to N.Y.C. Admin. Code §27-2115(c)(1); class "B" violation is "hazardous" pursuant to N.Y.C. Admin. Code §27-2115(c)(2); and a class "C" violation is "immediately hazardous" pursuant to N.Y.C. Admin. Code §27-2115(c)(3). *Notre Dame Leasing LLC v. Rosario*, 2 NY3d 459, 463 n.1 (2004).

Return to Decision List