2020-03-06

TWIN PARKS LP. v. WEBSTER

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX: HOUSING PART G

X

TWIN PARKS LP.,

Index No.
L&T 21110/19

Petitioner,

Present:
Hon. Christel F. Garland

-against-

LONISE WEBSTER,

DECISION/ORDER

Respondent.

X

Petitioner commenced this residential nonpayment proceeding on or about April 19, 2019, seeking rent it alleged became due for Apartment #4L, located at 2260 Crotona Avenue, Bronx, New York, an apartment the petition alleges is not subject to the rent stabilization law as it is within a building owned by a limited profit housing company that is organized under Article 2 of the Private Housing Finance Law and supervised by New York State Homes and Community Renewal. The petition seeks rent arrears totaling $2,056.75 which represent a balance of $882.75 for March 2019 and rent for April 2019 at the rate of $1,174.00.

Respondent Lonise Webster ("Respondent") initially appeared *pro se* and interposed an answer asserting a general denial and that the amount sought in the petition was incorrect. Respondent subsequently appeared by counsel and sought leave to interpose an amended answer. By decision and order dated December 20, 2019, Respondent's proposed amended answer, which includes, *inter alia*, her claim that the petition seeks rent in excess of the amount reserved in the last expired lease and a counterclaim for breach of the warranty of habitability, was deemed served and filed.

When no resolution could be reached, the proceeding was transferred to the Expediter and referred to this part for trial.

At trial, Petitioner's witness, Patricia Guzman, testified to the elements of Petitioner's prima facie case. In addition, Ms. Guzman testified that she is employed by Reliant Realty, the company that manages the subject building for Petitioner, as the property manager. According to Ms. Guzman, generally prior to commencing a proceeding, the lease for an apartment is sent to Petitioner's legal department. Following this practice, Ms. Guzman testified that prior to commencing this proceeding the 2017 lease between the parties was sent to the legal department.

Later, Ms. Guzman testified that the lease sent to the legal department was the lease for the term which ran from January 1, 2018 through December 31, 2018 since at the time there was not yet a lease for 2019 and that the 2019 lease was signed in January 2020.

In defense to the proceeding, Respondent testified that she signed the lease for 2019 during the second week of January 2020, and that until then the 2018 lease with a reserved monthly rent of $1,074 was the last lease in effect between the parties. In addition, Respondent testified that the recertification for 2019 which should have taken place in November 2018 was done in the middle of 2019 while this proceeding was already pending as confirmed by a stipulation in the Court file[1]. Respondent further testified that she did not receive a notice of rent increase for 2019 but acknowledged having received one for 2020.

In support of her abatement claim, Respondent testified that the stipulation between the parties dated October 29, 2019 lists the conditions which existed in the apartment at the time of the stipulation, and that despite the access dates scheduled between November 12, 2019 and November 14, 2020 Petitioner did not visit the apartment until December 2019. Respondent testified that she began notifying Petitioner of the conditions in the apartment prior to the October 29, 2019 stipulation, and even informed the previous management company. According to Respondent, she would call and visit the management office to speak with the property manager who at the time was Ms. Ora, but Petitioner took no action to address the conditions. Respondent testified that as a result of Petitioner's inaction, she took care of the mold in the apartment and glued back the "rubber part" of the refrigerator that was preventing the refrigerator from properly closing. Respondent testified that notwithstanding her efforts to address the mold, it is growing again; the refrigerator remains infested with roaches; and the vents in the bathroom and t0he kitchen remain clogged with dust because Petitioner informed her that the condition is not something that it corrects. Respondent also recalled a gas leak in the apartment in December 2019 as a result of which her stove had to be removed. Respondent testified that the gas leak lasted approximately four to five days, and it caused her fall asleep at random times. Respondent also testified that her son suffers from chronic asthma which caused multiple hospital visits due to his allergy to mice droppings and the clogged vents which provide poor circulation in the apartment.

Petitioner called Ms. Guzman as its rebuttal witness. Ms. Guzman testified that when a tenant in the building needs a condition addressed, Petitioner has ten days to correct except in the case of an emergency such as a gas leak which must be repaired immediately. Ms. Guzman testified that prior to the stipulations between the parties in this proceeding listing the conditions in need of repair in Respondent's apartment, Respondent never complained about conditions in her apartment. However, Ms. Guzman testified that all the conditions Respondent raised within the context of this proceeding were addressed in December 2019.[2] Ms. Guzman also testified that the lease rider between the parties allows Petitioner to increase Respondent's rent without the parties' executing a lease provided Petitioner sends Respondent a thirty-day notice of the increase.

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[1] See court stipulation dated September 20, 2019.

[2] Respondent's exhibit 6

Section 711 (2) of the Real Property Actions and Proceedings Law ("RPAPL"), provides for the maintenance of a special proceeding where the tenant has defaulted in the payment of rent, *pursuant to the agreement under which the premises are held*, and a written demand of the rent has been made with at least fourteen days' notice (emphasis added). The Appellate Term has upheld this requirement and recently held that a "nonpayment proceeding can be maintained only to collect rent owed pursuant to an agreement between the parties" (*West 152nd Associates, L.P. v Gassama*, 65 Misc 3d 155(A), App Term, 1st Dept 2019]) (internal quotation marks and citation omitted). In *Gassama*, the Appellate Term held that the landlord in that proceeding "failed to meet its burden to establish the existence of an agreement to pay the rent demanded in the petition, for the period sought in the petition", noting that "in view of tenant's continuing challenges to the legality of the rent charged, no implied agreement to pay this rent can be found" (*id*) (see also *East Harlem Pilot Block Building IV HDFC Inc. v Diaz* (46 Misc 3d 150 (A) [App Term, 1st Dept 2015]) (internal quotation marks and citation omitted).

Here, Petitioner seeks rent at the rate of $1,174, and specifically paragraph 2 of the petition alleges that Respondent is in possession of the subject apartment pursuant to a written agreement and promised to pay Petitioner rent in advance of the first day of each month. However, the undisputed facts adduced at trial established that Respondent did not sign the lease for the term covering the period of January 1, 2019 through December 31, 2019 with the rent increase until January 2020 which was after this proceeding had already been commenced. This renders the petition defective as it prematurely seeks rent at an amount the parties had not yet agreed upon.

Turning to Respondents counterclaim for breach of the warranty of habitability, pursuant to § 235-b of the Real Property Law ("RPL") "Warranty of Habitability", every written lease shall be deemed to covenant and warrant that the premises are fit for human habitation and for the uses reasonably intended by the parties and that the occupants of such premises shall not be subjected to any conditions which would be dangerous, hazardous or detrimental to their life, health or safety. "To prevail on a defense or counterclaim based on a breach of the warranty of habitability, a tenant must offer proof as to the dates, severity and duration of the conditions complained of and show that notice of the conditions was given to the landlord. Additionally, the tenant must show that the landlord was provided with access and an opportunity to repair the conditions yet failed to do so" (*EB Management Properties, LLC v Sultan Al Maruf*, 63 Misc 3d 155(A) [App Term, 2d Dept, 2d, 11th and 13th Jud Dists 2019] (internal quotation marks and citation omitted). And, the "proper measure of damages for breach of the warranty 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 v Mitchell*, 47 NY2d 316, 329 [1979]).

The preponderance of the credible evidence adduced at trial established the presence of conditions in the apartment in need of repair, that Petitioner was on notice of the conditions in Respondent's apartment, and that Petitioner did not address the conditions until December 2019. The evidence also established that at some point Respondent glued the refrigerator door gasket and remediated the mold on her own. However, Respondent's testimony lacked the level of specificity required for the Court to establish an award that extends beyond the period of rent sought in the petition and the period when the Court could establish with certainty that notice of

the conditions was given Petitioner which the Court finds was the September 20, 2019 stipulation since none of the stipulations preceding mentioned conditions in the apartment. Further, the Court finds that there was insufficient evidence to establish that the conditions in the apartment caused any resulting health conditions and the failure to establish causation warrants no abatement.

Based on the foregoing, the petition is hereby dismissed without prejudice. In addition, Respondent is granted a rent abatement in the amount of $322.20 or 15% calculated at the rate of $1,074 for the months of October 2019 and November 2019. Petitioner is directed to credit this amount to Respondent's account upon receipt of this Court's decision. In addition, Respondent credibly testified that her refrigerator remains infested with roaches, the vents in the apartment continue to be clogged and that the mold is reoccurring. Petitioner is directed to inspect and repair these conditions upon receipt of this Court's decision, and the conditions must be addressed within 30 days from the date of this Court's order upon default of which Respondent may seek all appropriate relief.

This constitutes the decision and order of this Court.

A copy of this decision/order will be mailed to all.

All trial exhibits may be picked up in Part G, Room 560 within 30 days after receipt of this decision/order.

Dated: March 6, 2020

SO ORDERED:

HON. CHRISTEL F. GARLAND

Christel F. Garland, JHC