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106 Ave. B Owner LLC v. Hossain

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[*1]

106 Ave. B Owner LLC v Hossain
2020 NY Slip Op 50508(U)
Decided on May 1, 2020
Civil Court, New York County
Kraus, J.
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
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Decided on May 1, 2020

Civil Court, New York County

<p>106 AVENUE B OWNER LLC, Petitioner-Landlord</p> <p>against</p> <p>ANWAR HOSSAIN d/b/a ANWAR GROCERY 106 Avenue B Ground Floor, North Store New York, New York 10009 , Respondent-Tenant "XYZ Corp." Respondent- Undertenant</p>

Index No.: L & T 65435/19

ROSENBERG & ESTIS, P.C.

Attorneys for Petitioner

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ANWAR HOSSAIN d/b/a ANWAR GROCERY Respondent Pro Se

106 Avenue B

Ground Floor, North Store

New York, New York 10009

Sabrina B. Kraus, J.

BACKGROUND

Petitioner commenced this summary nonpayment proceeding against Anwar Hossain d/b/a Anwar Grocery (Respondent) seeking to recover possession of the ground floor, north store, at 106 Avenue B, New York, New York 10009 (Subject Premises), based on the allegation that Respondent is the tenant of record and has failed to pay rent due for the Subject Premises.

PROCEDURAL HISTORY

Petitioner issued a fourteen day rent demand dated June 26, 2019 seeking \$35,900 00 in arrears for a period from June 2018 through June 2019 at a monthly rent of \$3,100 00

The petition was filed on August 8, 2019, and the notice of petition along with proof

of service were filed on August 19, 2019.

Respondent appeared *pro se* on September 9, 2019, and filed an answer asserting a general denial, that the amount of the monthly rent sued for was incorrect, that part of the rent had been paid, and a counterclaim asserting that respondent had sent in checks for the rent but Petitioner had refused to cash them.

The proceeding was initially returnable on September 9, 2019, and was adjourned on Respondent's application to October 28, 2019. On October 28, 2019, Matthew Gordon, Esq. Filed a notice of appearance on behalf of the Law Offices of Augustin D. Tella, PLLC on behalf of "all" respondents, and the proceeding was again adjourned at Respondent's request to November 13, 2019.

On November 13, 2019, Richard S. Neubarth, Esq. filed a notice of appearance on behalf of Respondent, and the proceeding was again adjourned to December 9, 2019, and then to January 27, 2020.

On January 27, 2020, Respondent's application for a further adjournment was denied and the trial commenced. The proceeding was adjourned for continued trial to February 10, 2020. On February 7, 2020, Respondent's counsel moved by order to show cause for leave to be relieved as counsel. The motion was granted, on that date, by this court, pursuant to an order which adjourned the continued trial to February 24, 2020, to afford Respondent an opportunity to obtain new counsel. The trial was further adjourned to March 9, 2020, and on March 9, 2020, the trial concluded and the court reserved decision.

PENDING RELATED PROCEEDING

Petitioner commenced a residential licensee holdover proceeding against Respondent, and his wife, Taslima Akter, seeking to take back possession of Apartment 2A in the same building. The proceeding was initially returnable on March 15, 2019. Both Respondent and his wife appeared by counsel in said proceeding. They both asserted that Bachu Meah, the father of Respondent, was the last tenant of record of said apartment and that they lived with him in the apartment for more than two years prior to his permanent vacateur in 2012. They further asserted that Petitioner's predecessor in interest and Respondent executed a lease in January 2016 for both the regulated unit and the commercial space, thereby recognizing AH's tenancy in the apartment.

The proceeding was adjourned to March 4, 2020 for trial with a final marking, and has since been resolved pursuant to a stipulation, which was not submitted at the trial herein.

FINDINGS OF FACT

Petitioner is a Delaware limited liability company authorized to do business in the State of New York (Court Ex 1). [EN1] Respondent is an individual doing business as Anwar Grocery at the Subject Premises.

Petitioner is the owner of the Subject Building pursuant to a deed dated May 18, 2018 (Ex 1). The Subject Building is a multiple dwelling and properly registered with HPD as such (Ex 2). Petitioner's predecessor Michael Chang executed an assignment of rents and leases in favor of Petitioner dated May 18, 2018 (Ex 9).

The earliest lease for the Subject Premises that was entered into evidence is a lease for a term from March 15, 2005 through March 14, 2010 (Ex 5). Michael Chang was the lessor and Respondent and his wife were the lessees. The monthly rent under the lease was \$2000.00 for the first half of the lease and \$2200.00 for the latter part of the lease.

The most recent lease for the Subject Premises was for a period between January 1, 2016 and December 31, 2019. Several copies of the lease were entered into evidence. One was signed by the landlord (Ex 6), and the other was signed by Respondent (Ex 8). The lessor under said lease was Mike Chang and the lessee is Respondent. The monthly rent under the lease is \$3100.00 per month. To the extent Respondent denied that it was his signature which appeared on Exhibit 8, the court does not credit said testimony.

Josh Potash (JP) was called as a witness by Petitioner. JP is the registered managing agent for the Subject Building (Ex 2). His duties include overseeing the building, tenant communication and maintenance issues. Through JP's testimony a rent ledger for the Subject Premises was admitted into evidence (Ex 4). The ledger shows arrears totaling \$54,500 from [*2] June 2018 through December 2019, when the lease expired. The only rent payments reflected during this period were two payments of \$2200 each made in July 2018.

On the second day of trial, Petitioner called William O'Connor (WOC) to testify. WOC is the CEO of Greentree Management which manages the Subject Building. Through WOC's

testimony additional documents were admitted in evidence.

Respondent then testified on his own behalf. Essentially, Respondent testified that the rent for the Subject Premises is \$2200.00 per month and that the sum of \$3100 includes rent for the apartment he lives in with his wife at the rate of \$900 per month.

Respondent submitted 13 checks they were all signed by his wife (Ex A1-13). Most of the checks were rent for the apartment Respondent and his wife live in, four were for the Subject Premises and were dated October and November 2018 and January and February 2019. None of the checks were cashed. All were returned by the landlord in connection with the residential holdover proceeding (Ex B).

DISCUSSION

The court finds that Petitioner has established a *prima facie* case for nonpayment of rent. The court does not find credible, Respondent's testimony that the rent for the Subject Premises is \$2200 per month, rather than the \$3100.00 per month indicated in the lease.

While the lease did not contain a description of the premises rented, it was clear that the Subject Premises was the premises conveyed by the lease. This was not disputed and it is well settled that parole evidence is admissible to clarify what premises was rented when the lease is not specific [*Myers v Sea Beach Ry Co*, 43 A D 573, 574 (App Div 1899) aff'd, 167 NY 58 (1901)].

Finally, the fact that Petitioner inadvertently rejected four checks for the Subject Premises, which were sent by Respondent's wife, who at the time was an unrecognized occupant in a residential unit in the building does not constitute a defense to the nonpayment of rent in this proceeding.

Petitioner admitted a rent ledger showing \$54,500.00 due through December 2019, however, Petitioner never moved to amend the petition to date at trial and is therefore limited to a judgment for rent through June 2019 as sought in the petition [*NYCHA v Sinclair* 21 Misc 3d 133(A)]. The court finds that there was \$35,900.00 due through June 2019.

Based on the foregoing:

IT IS ORDERED that a judgment of money and possession be entered against Respondent in the amount of \$35,900.00 for all rent due through June 2019; and

IT IS FURTHER ORDERED that the proceeding be dismissed as against XYZ Corp ; and

IT IS FURTHER ORDERED that issuance of the warrant be stayed five days for payment; and

IT IS FURTHER ORDERED that Respondent's counterclaim is dismissed.

This constitutes the decision and order of this Court.

Dated: New York, New York

May 1, 2020

Hon Sabrina B Kraus, JCC

ROSENBERG & ESTIS, P.C.

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Respondent *Pro Se*

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Footnotes

Footnote 1: Petitioner served a notice to admit dated January 17, 2020. Respondent's counsel acknowledged receipt of the notice a week before the trial and further acknowledged he did not respond to same. The Notice to Admit is referenced as Court Exhibit 1.

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