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320 W. 111th St. HDFC v. Lang

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

-----X
320 WEST 111th STREET HDFC,

L&T Index No.79057/18

Petitioner-Landlord
-against-

DECISION/ORDER

PEGGY LANG,

Respondent-Tenant.
-----X

RECITATION AS REQUIRED BY CPLR §2219(A) OF PAPERS CONSIDERED IN THE
REVIEW OF RESPONDENT'S MOTION TO FOR A JUDGMENT PURSUANT TO
CPLR §4401

PAPERS:
RESPONDENT'S MOMORANDUM IN SUPPORT
PETITIONER'S MEMORANDUM OF LAW

NUMBERED
1-15
1-7

HON. ANNE KATZ:

Petitioner commenced this nonpayment proceeding by Notice of Petition and Petition dated November 27, 2018. Petitioner seeks to gain possession of 320 West 111th Street, Apartment 22, New York, New York 10026 ("premises"). The petition alleges that the premises are not subject to the NYC Emergency Housing Rent Laws or the Rent Stabilization Laws of 1969 as amended, as the premises are in a building owned and operated by a cooperative corporation. According to the petition, respondent entered into possession of the premises under a written lease agreement wherein respondent promised to pay \$800.00 each month.

Procedural History

In response to the Petition, respondent submitted a *pro se* Answer which alleged: the rent was refused; the rent was not legal or on the current lease; rent had been paid; and a general denial. The proceeding was returnable on January 9, 2019 in Part G. After the initial court appearance, respondent retained counsel who submitted a Verified Amended Answer with Counterclaims. The Amended Answer alleged, *inter alia*: statute of limitations defense; defective predicate notice; month to month tenant without a lease; retaliatory eviction; rent was paid and refused; and laches. Respondent's counterclaims were based upon the breach of warranty of habitability, harassment and requested legal fees.

The proceeding was transferred to Part R for trial on September 18, 2019 and a trial commenced on November 12, 2019. At the conclusion of petitioner's *prima facie* case, respondent moved for a judgment pursuant to CPLR §4401. According to respondent, petitioner failed to prove a critical element of its *prima facie* case: the existence of an agreement to pay the rent. Moreover, respondent alleges that in addition to petitioner's failure to prove its *prima facie* case, the rent demand was defective because, *inter alia*, it included a "lump sum balance".

Facts

Although petitioner plead that respondent entered into possession of the premises pursuant to a written lease for \$800.00 per month, respondent alleges that no lease ever existed and she is a month to month tenant. At trial, the only written agreement petitioner offered into evidence was a "So Ordered" Stipulation dated May 12, 2008, which settled a holdover proceeding between the parties (P3). The Stipulation provided for a final judgment of possession with execution of the warrant of eviction stayed through May 31, 2010. Respondent acknowledged owing \$4,415.87 through May 31, 2008 at the rate of \$596.97 per month. Respondent agreed to pay \$800.00 per month from June, 2008 through May, 2009; and \$850.00 per month from June, 2009 through May, 2010. Upon full compliance, the judgment and warrant were to be vacated and respondent's monthly tenancy would be reinstated. At that time, the Stipulation stated that the parties could negotiate the terms of a new lease. In the event of a default, petitioner could move the court for an Order to execute on the warrant.

Petitioner's first witness at trial was the petitioner's property manager, Myra Caban. When Ms. Caban was questioned about the "So Ordered" Stipulation (P3) she testified that respondent's rent was \$850.00 per month. Later in the trial, petitioner submitted a rent ledger (P6) and Ms. Caban then stated that respondent's rent was \$800.00 per month. On cross examination, Ms. Caban stated that she was not aware whether respondent moved into the premises pursuant to an agreement and testified that respondent's rent never increased from \$800.00 to \$850 in accordance with the Stipulation.

Petitioner's second witness at trial was the treasurer for the HDFC, Ali Hamoudeh. Mr. Hamoudeh testified that petitioner always charged respondent \$800.00 a month and denied that respondent is a month to month tenant based upon the 2008 Stipulation. According to the testimony of Mr. Hamoudeh, respondent paid rent until 2016 and her rent payments in 2015 were sporadic. Mr. Hamoudeh testified that, at the conclusion of the Stipulation, he sent respondent a lease however there was no testimony that respondent signed the alleged lease. Mr. Hamoudeh also testified he and respondent orally modified the Stipulation and petitioner agreed to charge respondent \$800.00 per month instead of the \$850.00 as required by the Stipulation (P3).

Conclusion of Law and Application to Proceeding

A cause of action for nonpayment of rent sounds in contract. *Solow v. Wellner*, 86 NYS2d 82, 589-90 (1995) and as an essential element of petitioner's *prima facie* case, it must prove there is a contract or agreement to pay rent between the parties. Pursuant to RPAPL §711(2), a landlord is only permitted to commence a nonpayment proceeding if the tenant has defaulted in the payment of rent pursuant to an agreement under which the premises are held. *East Harlem Pilot Block Bldg. IV HDFC Inc. v. Diaz*, 46 Misc3d 150 (A) (AT 1st Dept 2015). *615 Nostrand Ave. Corp. v. Roach*, 15 Misc3d 1, 832 NYS2d 379 (AT 2nd and 11th dis. 2006); *Underhill Avenue Realty v. Ramos*, 49 Misc3d, 29 NYS3d 850 (AT 2nd, 11 and 13th Dist. 2015). To establish the existence of an enforceable agreement, petitioner must also establish a meeting of the minds on all essential terms. *554-558 W. 1818 St LLC v. Cochrane*, 61 Misc3d 1203(A), 110 NYS3d 793 (2018). In other words, to create a binding contract, there must be a manifestation of mutual assent sufficiently definite to assure that the parties are truly in agreement with respect to all material terms. *See Cochrane, supra*. Absent such meeting of the minds there is no agreement which exists and any proceeding predicated on default of such an agreement is without a legal basis. *See Cochrane, supra*.

This Court finds that petitioner failed to prove that respondent took possession of the premises pursuant to a lease. Petitioner never mentioned nor offered into evidence any lease between the parties. The only written agreement submitted by petitioner was a "So Ordered" Stipulation from 2008 in which respondent agreed to pay a certain amount each month for a two year period which expired May, 2010. Pursuant to the Stipulation, in June, 2010, respondent was to convert back to a month to month tenant and the parties could negotiate a new lease. Although petitioner argues that Mr. Hamoudeh and respondent orally modified the Stipulation, Mr. Hamoudeh did not specify the length of time that agreement. If the modified agreement were for over a year, as petitioner suggests, the agreement is in violation of the statute of frauds. *General Obligations Law §5-703* provides that an estate or interest in real property for a term exceeding one year must be in writing and is void unless the contract or some note or memorandum thereof, expressing consideration, is in writing, subscribed by the party to be charged, or by his or her lawful agent thereunto authorized in writing.

For a month to month tenant, the owner must serve a statutory notice of termination at least 30 days before the expiration of the monthly term as a condition precedent to bringing a holdover proceeding. *RPL §232-a; Weiden v. 926 Park Ave. Corp.*, 154 AD2d 308 (AD 1st Dept 1989). Although petitioner may be entitled to use and occupancy for the fair and reasonable value of the premises during the period of the occupation, *RPL §220; RPAPL 749 (3); 1400 Broadway Assoc. v. Henry Lee & Co* 161 Misc2d 497, 614 NYS2d 704 (1994), they may not maintain a nonpayment proceeding when there is no current rental agreement. To allow petitioner to maintain a nonpayment proceeding would permit a landlord to unilaterally bind a tenant to pay a rate predicated on an old agreement even though there was no longer a meeting of the minds. *See Henry & Lee supra*. and such result would vitiate the intent of *RPL §232-c*. should not be cast aside. *Hallock v. State*, 64 NY2d 224, 228, 485 NYS2d 510, 511, 474 NE2d 1178, 1179 (1984).

Accordingly, it is clear that the petition is fatally defective as it fails to state the facts upon which the proceeding is based as required by *RPAPL 741 (4)*. Specifically, paragraph 3 of the petition wrongly alleges that respondent entered into possession of the premises pursuant to a rental agreement to pay \$800.00 per month. This allegation is contradicted by the evidence presented at trial. Petitioner's inability to prove there was a written agreement and/or a meeting of the minds as to the monthly rent for the premises is an indispensable element of its *prima facie* cases and therefore the proceeding must be dismissed.

Additionally, a review of the rent demand shows that the demand is not valid. A rent demand must clearly inform the tenant of the period for which rent payment is in default and of the approximate good faith sum due for each period. *RPAPL §711(2); 542 Holding Corp. v. Prince Fashions, Inc., 46 AD3d 309, 311, 848 NYS2d 37, 39 (AD 1st Dept. 2007)*. Lump sums contained in rent demands have been declared "vague and misleading". *St. James Court LLC v. Booker, 176 Misc2d 93, 695 (1998)*. Petitioner's rent demand begins in September, 2012 with an unexplained "Retro Charge" of \$5,234.67. It is clear that the "Retro Charge" contained in the rent demand for \$5,234.67 renders the demand vague and misleading and therefore not valid and the rent demand cannot be cured by amendment. *Chinatown Apts. V. Chu Cho Lam, 51 NY2d 786, 433 NYS2d 86 (1980)*.

Respondent's motion for a judgment pursuant to CPLR §4401f granted. This proceeding is dismissed. This Constitutes the Decision and Order of the Court. The trial Exhibits may be picked up at Window 9 in Room 225 within 30 days of this Decision.

Dated: New York, New York
August 18, 2020



HON. ANNE KATZ, J.H.C.

**ANNE KATZ
JUDGE, HOUSING COURT**