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Martinez v. M Nadlan LLC

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Martinez v M Nadlan LLC
2020 NY Slip Op 51232(U)
Decided on October 21, 2020
Civil Court Of The City Of New York, Bronx County
Ibrahim, J.
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Decided on October 21, 2020

Civil Court of the City of New York, Bronx County

Yolanda Martinez, Petitioner, M Nadlan LLC, Respondent.

41219/2019

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Shorab Ibrahim, J.

After a virtual trial held on October 14, 2020, the court makes the following findings of fact and conclusions of law:

BACKGROUND

Yolanda Martinez ("petitioner"), the tenant of apartment 3 located at 912 Summit Avenue, Bronx, NY ("the subject premises"), commenced this housing part ("HP") proceeding against M Nadlan LLC ("respondent") alleging various conditions in need of repair.

The Department of Housing Preservation and Development ("DHPD") inspected the subject premises and issued violations on or about September 27, 2019. Thereafter, this matter took a path familiar to practitioners in this part—respondent stipulated to abate the violations on agreed upon access dates. This was formalized in both the October 22, 2019 and November 14, 2019 stipulations entered into by the parties.

By the December 16, 2019 court date, however, the parties no longer saw eye-to-eye. The December 16, 2019 stipulation lays it bare: "Petitioner alleges that conditions originally alleged 10/22/19 persist. Respondent alleges conditions have been repaired." When there is such a fundamental disagreement, this court will often ask DHPD to again inspect the

premises to [*2] resolve the dispute and a reinspection was scheduled. The December 26, 2019 reinspection did not resolve the dispute and additional violations were placed by DHPD.

On January 6, 2020, the parties agreed to further access dates for respondent to "correct all violations as required by law." On January 29, 2020, the parties stipulated to adjourn the case to March 4, 2020 with yet another inspection to occur on February 19, 2020. The February 19, 2020 inspection yielded four (4) new violations. [FN1] However, the violations did not "issue" until March 16, 2020, well after the March 4, 2020 court appearance. On March 4, 2020, with the results of the February 19, 2020 inspection apparently unknown and the parties unable to agree about what, if any, conditions remained outstanding, the matter was adjourned to April 29, 2020 for trial; another inspection was scheduled for March 25, 2020.

Due to the COVID-19 pandemic, neither the inspection nor the trial went forward as planned. However, upon a request from petitioner, this court signed a "Judicial Request for Housing Inspection" on June 30, 2020. The inspection, which took place on July 13, 2020, found two (2) violations—13518532 and 13304901 placed in September and December 2019—both for plaster and paint the ceiling in the 2nd bathroom, had not been corrected. The inspector did not find violations for the eight (8) other items petitioner requested in the reinspection.

The July 13, 2020 inspection did not resolve matters; petitioner insisted the inspector must have made a mistake and demanded a trial to prove the existence of violations through her own testimony and evidence. As the existence of violations may be proved by DHPD or inspection reports, DHPD or other governmental computerized records, photographs, *or through testimony*, (Scherer and Fisher, *Residential Landlord-Tenant Law in New York* § 19:65 [2019 Update]; *Mite v Pipedreams Realty*, 190 Misc 2d 543, 740 NYS2d 564 [Civ Ct, Bronx County 2002]; *see also* NYC Admin Code § 27-2115(h)(1)), a trial was scheduled. The court noted that just as the placement of a violation creates a rebuttable presumption that the condition exists, the refusal of DHPD to place a violation also creates a presumption that the condition does not exist. ([*Schlueter v East 45th Development LLC*, 9 Misc 3d 1105\[A\]](#) at *8, 2005 NY Slip Op 51405[U] [Civ Ct, New York County 2005]).

The trial was held virtually over the Microsoft Teams platform on October 14, 2020. As narrowed by the parties and the court in prior conferences, the issue for the court to determine is whether the following conditions warrant the issuance of violations and an order to correct:

Repair the roof so that it will not leak over the ceiling in the 2nd bathroom [violation No.13304902 placed on September 27, 2019, but subsequently "dismissed" per certified DHPD records];

Cracked sink basin in bathroom;

Defective kitchen countertop to the right of kitchen sink;

Refit the entrance door;

Scratched or damaged wood floor. [\[FN2\]](#)

FINDINGS OF FACT

Prior to commencing the hearing, the court suggested that, since petitioner was in the apartment testifying through Microsoft Teams, the court could do a virtual inspection of the complained of conditions and rely on its own observations, rather than rely on dated photos and conflicting testimony of witnesses. The parties agreed.

Petitioner's video and audio quality had some connection issues but proved to be reliable for the court to make its observations. Petitioner testified with the assistance of a Spanish language translator. Petitioner was sworn in and proceeded to her bathroom where she showed a hole in the ceiling. Though relatively small, it was clear to this court that the hole was the result of a water leak. Since petitioner lives on the top floor and testified that the last time the ceiling leaked was on October 13, 2020 [a day of heavy rain per the court's own observations], the court finds that the roof continues to leak into the bathroom. Respondent provided nothing to rebut this evidence and nothing was offered to prove that the roof was ever fixed.

Petitioner proceeded to show a small hairline crack at the back of the bathroom sink basin. Though at first it did not appear to rise to the level of a violation, when petitioner turned the water on, moisture was clearly visible underneath the sink. Petitioner testified that the bathroom sink leaks when she uses it. This evidence and petitioner's testimony were un rebutted.

Next, petitioner showed the countertop in the kitchen to the right of the kitchen sink. Petitioner lifted the top piece off the "wood" countertop. The loose top piece appeared to be made of vinyl or a similar material. It clearly improperly attached to the countertop. Respondent did not offer any evidence or testimony regarding the countertop.

As to the apartment door, petitioner showed that the door does not close flush with the wall. The top appears proper but tapers out away from the wall/frame toward the bottom. Additionally, there is a metal plate at the top of the door, rather than a door that fits the frame. Petitioner stated that the metal strip covers a two inch space, but only on the inside of the door and that it could easily come off. Respondent presented no evidence or testimony regarding this item.

Though the wood flooring in the living room and dining room appeared scratched, there was no evidence of structural damage or any non cosmetic issue with the floors.

Respondent's entire defense was focused on the hallway directly outside of petitioner's apartment door and the alleged accumulation of items there. Respondent called petitioner as its first witness. Petitioner took her camera to the hallway. She acknowledged that she had some Halloween decorations [hanging bats] in the hall. She acknowledged she has bikes on a bike rack outside the door. She acknowledged a shovel and broom stored in the hall. She also acknowledged that a small ladder stored behind the egress ladder leading up to the roof belongs to her.

Respondent's second and final witness, Ernest Thompson, [\[FN3\]](#) confirmed that the items in the hall were petitioner's and that he had seen them there for a long time, up until the morning of [\[*3\]](#) his testimony. He offered into evidence photos [respondents 1-4] taken in either August or September 2020 showing the same items as well as small cardboard boxes. Mr. Thompson testified that the items blocked his access to the roof and made it dangerous for him to access the roof. Respondent did not offer any relevant testimony about any efforts made to have petitioner clear the hall of her items. Still, there is an open violation (#

13304895) directing removal of "all encumbrances consisting of household items at scuttle later at public hall, 3rd Story," which was apparently issued as a result of the items petitioner acknowledges having placed at the location. However, the court declines to grant any further relief as none was sought.

As to the apartment door, Mr. Thompson testified it is secure, has a top lock and mortise lock and is self-closing. He did not address why a metal plate was placed at the top of the door rather than the landlord installing a properly fitted door.

Respondents did not rebut any of petitioner's credible testimony regarding the conditions inside the apartment

DISCUSSION

As an initial matter, the court notes that in person judicial inspections have long been a part of the fact-finding process, particularly when the court is deciding whether to place violations for conditions in dwellings. (*see 501 New York LLC v Anekwe*, 14 Misc 3d 129[A] at *2, 2006 NY Slip OP 52513[U] [App Term, 2nd & 11th Jud Dists 2006] ("In keeping with their inherent authority to fashion any procedure to accomplish their mandate of maintaining housing standards, housing judges themselves conducted inspections of premises in the presence of litigants to more adequately evaluate the respective claims of the parties"); *Bassett v West Side Equities LLC*, 306 AD2d 70, 762 NYS2d 43 [1st Dept 2003]; [*Infante Leocadio v GBR Creston Avenue LLC*, 63 Misc 3d 1207\[A\]](#), 2019 NY Slip Op 50430[U] [Civ Ct, Bronx County 2019]).

During the ongoing COVID-19 pandemic, it would fly in the face of current social distancing guidelines to have a judge, officer(s), petitioner, petitioner's counsel, respondent, and respondent's counsel all congregate in an apartment for the purposes of an in-person judicial inspection. This court finds that the virtual inspection accomplishes the goals of the in-person inspection without unnecessarily placing anyone's health in danger. (*see C.C. v A.R.*, 2020 NY Slip Op 20245 [Sup Ct, Kings County 2020]) ("Pursuant to New York Judiciary Law 2-b(3), the Court has the power "to devise and make new process and forms of proceedings, necessary to carry into effect the powers and jurisdiction possessed by it.").

The court here notes that the parties consented to the form of the inspection and hearing. Absent such consent, it is likely the court would have similarly proceeded given the current pandemic and its effects on the courts. To paraphrase *People v Rivera*, (39 NY2d 519, 523 [1976]), as cited by Justice Sunshine in *C.C. v A.R.*, *supra*, the right to a fair trial does not guarantee a perfect trial.

Despite DHPD's refusal to find that certain conditions in petitioner's apartment constituted violations on July 13, 2020, petitioner was able to prove and the court observed that the bathroom ceiling [hole and leak], bathroom sink leak, kitchen countertop, and apartment door [improperly fitted] all constitute violations of the Housing Maintenance Code ("HMC").

However, the court's observations confirm the inspector's refusal to place a violation for the wood floor damage.

ORDER TO CORRECT AND NOTICE OF VIOLATIONS

Based on the credible evidence and testimony presented and following the virtual judicial [*4] inspection conducted by this court, the court issues the following violations:

"Class A" violation for hole at bathroom ceiling [§ 27-2005];

"Class B" violation for leak at bathroom ceiling—landlord to repair the roof so that it will not leak into bathroom [§§ 27-2005; 27-2026; 27-2027];

"Class A" violation for leak at bathroom sink basin [§ 27-2026];

"Class B" violation for defective kitchen countertop at cabinet to right of sink [§ 27-2005];

"Class B" violation for improperly fitted apartment door—landlord to repair or replace front door so that it properly fits the frame [§ 27-2005];

The "Class A" violations must be corrected within ninety (90) days and "Class B"

Violations must be corrected within thirty (30) days of service of this Order upon respondents' counsel via email. (see NYC Admin Code § 27-2115(c)(1). Petitioner is directed to provide reasonable access for repairs upon prior notice.

The parties are directed to comply with all appropriate safety protocols in light of the

COVID-19 pandemic, including but not limited to: wearing gloves and face masks, complying with all rules, regulations, and orders related to social distancing, and following the recommendations of the Centers for Disease Control ("CDC"), the NYS and NYC Departments of Health and other health officials, and to take into consideration the health and safety vulnerabilities of the petitioner and members of her household to the extent the landlord and/or its agents have knowledge.

Failure to comply with this order shall subject respondents to the contempt powers

of the court and civil penalties, as appropriate.

This court shall retain continuing jurisdiction over this matter.

CONCLUSION

After trial, an Order to Correct is hereby entered in favor of petitioner and against respondent. This constitutes the Decision and Order of the court.

SO ORDERED

Dated: October 21, 2020

Bronx, NY

SHORAB IBRAHIM, JHC

Footnotes

Footnote 1: *The "C" violation for mice infestation found on February 19, 2020 was only "new" as a new violation under a new number had issued. A "C" violation for mice infestation had also issued on December 30, 2019.*

Footnote 2: *This item was not listed on the inspection request dated June 30, 2020. A review of the certified DHPD records indicate no violation was ever placed for damaged wood floors.*

Footnote 3: *Ernest Thompson is listed as "GEN. PART" of M Nadlan LLC per DHPD records. The court takes this to mean General Partner of the Limited Liability Corporation.*

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