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Durst Pyramid, LLC v. Griffin

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SUPREME COURT, APPELLATE TERM, FIRST DEPARTMENT

December 2020 Term

Cooper, J.P., Higgitt, McShan, JJ.

Durst Pyramid, LLC, NY County Clerk's No.
Petitioner-Landlord-Respondent, 570107/20

-against-

Kevin Griffin, Calendar Nos.
Respondent-Tenant-Appellant. 20-165/166

Tenant appeals from two orders of the Civil Court of the City of New York, New York County (Timmie Erin Elsner, J.), each entered on or about January 15, 2020, after a hearing, which granted landlord's motion to enforce a stipulation of settlement in a holdover summary proceeding and conditionally stayed execution of the warrant for five months.

Per Curiam.

Orders (Timmie Erin Elsner, J.), entered on or about January 15, 2020, affirmed, with one bill of \$10 costs.

The evidence adduced at the hearing supports Civil Court's determination that tenant breached the two-attorney, so-ordered stipulation settling the underlying holdover proceeding (*see Hotel Cameron, Inc. v Purcell*, 35 AD3d 153, 155 [2006]). The unrebutted evidence, fairly interpreted, established that tenant violated the term of the stipulation

that required him to refrain from "harassing other tenants in the building, following them and/or making them feel uncomfortable and fear for their safety," by engaging in various episodes of antisocial behavior during the probationary term including "sp[itting] at," lurking, whistling and following a female tenant as she exited the building and approaching her so closely that his "face could have touched her face" (see *Domen Holding Co. v Aranovich*, 1 NY3d 117, 124-125 [2003]). Contrary to tenant's claim, a fair interpretation of the evidence supports the conclusion that the breach was substantial. Additionally, the loss of possession of the premises is not a forfeiture. Rather, it is "the contracted-for . . . consequence of the tenant['s] own failure to do that which [he] promised to do" (*1029 Sixth v Riniv Corp.*, 9 AD3d 142, 150 [2004], *lv dismissed* 4 NY3d 795 [2005])).

We do not find that there was any error warranting reversal when the court refused to hear the testimony of tenant's social worker, who, according to the offer of proof, had no knowledge of tenant's compliance with the stipulation or any of the incidents underlying landlord's case in chief. Rather, the social worker's testimony was offered regarding

the "effect an eviction would have on [tenant's] life," and, in the event the Court ruled in favor of landlord, the "length of the stay the Court would grant." Most significantly, while declining to hear the social worker's testimony at the hearing, the Court indicated that if it ultimately ruled that tenant breached the stipulation, it would invite submission of papers as to the length of the stay, including an affidavit from the social worker, and tenant's counsel voiced no objection to this procedure.

In any event, even assuming there was error, we find the error harmless in the particular circumstances of this case, since an extended stay was granted, tenant is still in possession and a motion is presently pending in Civil Court seeking a determination as to whether tenant is entitled to an extended or permanent stay of the warrant of eviction or a "reasonable accommodation" based upon an alleged mental disability (see *Matter of Prospect Union Assoc. v DeJesus*, 167 AD3d 540, 543 [2018]).

We have considered tenant's remaining contentions and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

I concur

I concur

I concur