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34-15 PARSONS BLVD., LLC v. MING HANG ZHAO

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2022 NY Slip Op 50283(U)

**34-15 PARSONS BLVD., LLC, Respondent,
v.
MING HANG ZHAO and CAI WANG, Appellants, ET AL., Undertenants.**

2021-317 QC.

Supreme Court, Appellate Term, Second Department.

Decided March 4, 2022.

Appeal from a decision of the Civil Court of the City of New York, Queens County (John S. Lansden, J.), dated November 30, 2020, deemed from a final judgment of that court entered November 30, 2020 (see CPLR 5512 [a]). The final judgment, upon the decision, after a nonjury trial, awarded landlord possession and the sum of \$36,045.49 in a nonpayment summary proceeding.

Law Offices of Chen & Associates (Yimin Chen of counsel), for appellants.

Kucker, Marino, Winiarsky & Bittens, LLP (Nikolaos Preponis of counsel), for respondent.

PRESENT: THOMAS P. ALIOTTA, P.J., MICHELLE WESTON, DONNA-MARIE E. GOLIA, JJ.

ORDERED that the final judgment is affirmed, without costs.

Landlord commenced this nonpayment proceeding based upon rent arrears from March 2019 through November 2020. Tenants did not dispute that they had not paid the rent sought but alleged that they were entitled to a 100% abatement based upon a breach of the warranty of habitability due to mold, a lack of heat, and a leak. Following a nonjury trial, the Civil Court found that rent in the sum of \$50,620.49 was due but abated that amount by \$14,575 to \$36,045.49, due to a mold issue. Consequently, the court awarded landlord possession and the sum of \$36,045.49. On appeal, tenants argue that the abatement was inadequate.

In reviewing a determination made after a nonjury trial, this court's power is as broad as that of the trial court, and it may render the judgment it finds warranted by the facts, bearing in mind that the determination of a trier of fact as to issues of credibility is given substantial deference, as a trial court's opportunity to observe and evaluate the testimony and demeanor of the witnesses affords it a better perspective from which to assess their credibility (see [Northern Westchester Professional Park Assoc. v Town of Bedford](#), 60 NY2d 492, 499 [1983]; [Hamilton v Blackwood](#), 85 AD3d 1116 [2011]; [Zeltser v Sacerdote](#), 52 AD3d 824, 826 [2008]).

Here, tenants failed to offer credible proof as to the dates, severity and duration of a lack of heat and a leak, or that landlord had notice of those conditions and failed to remedy them (*see Bloorian v Pittman*, 71 Misc 3d 140[A], 2021 NY Slip Op 50520[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2021]). The proof tenants offered at trial as to the mold condition was insufficient to sustain a further abatement.

Accordingly, the final judgment is affirmed.

ALIOTTA, P.J., WESTON and GOLIA, JJ., concur.