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Tapia v. Roman

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART H

-----X

Daniel Tapia,

Petitioner

Index No. LT # 301677/21

- against -

DECISION/ORDER

Cybill Roman
182 Van Siclen Avenue
1st Floor
Brooklyn, New York 11207

Respondent,

“JOHN DOE”
“JANE DOE”

Respondent-Undertenants.

-----X

HON. HANNAH COHEN:

Recitation, as required by CPLR 2219(a), of the papers considered in the review of respondents motion for summary judgment which is unopposed.

Papers
Notice of Motion

Numbered
1

Upon the foregoing cited papers, the Decision and Order on the unopposed Motion is as follows:

Petitioner, commenced this holdover proceeding against the Cybill Roman by service of a 90 day notice of termination dated November 17, 2020 and effective on February 28, 2021. The

premises is located in a two family home, not occupied by the petitioner.

Respondent now with counsel seeks summary judgment pursuant to CPLR 3212 in that the petitioner brought this holdover proceeding in retaliation for respondent making good faith complaints to a government agency, to wit DHPD. Respondent argues that the 90 days notice and petition and petition are within one year of her numerous housing code violation complaints and is in violation of RPL 223-b(1)(a-b).

In support of its motion respondent attaches the following documents: (1) certified deed; (2) HPD registration; (3) affidavit from Cybill Roman; (4) copy of DHPD violations issued most recently in March 2020, July 2020, November 2020, January 2021, March 2021, April 2021 and December 2021. The HSTPA and RPL 223-b(1)(a-b) provides that no landlord shall serve a notice to quit upon any tenant in retaliation for a good faith complaint to the landlord's agent or governmental authority of any warranty of habitability violations. The actions must be taken in good faith by the tenant to secure any rights under the lease or rental agreement.

Summary judgment will be granted "if upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party" (CPLR 3212[b]). The proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (*Zuckerman v City of New York*, 49 NY2d 557 [1980]). In considering a summary judgment motion, the courts function is to determine whether a material issue of fact exists, not to determine said issues (*Esteve v Abad*, 271 AD 725 [1st Dept 1947]). Summary judgement should be granted when the moving party makes a prima facie showing of entitlement to judgment as a mate of law, giving sufficient evidence to

eliminate any material issues of fact from the case. See (*Winegrad v New York University Medical Center*, 64 NY2d 851 [1985]). Moreover, "...when there is no genuine issue to be resolved at trial, the case should be summarily decided, and an unfounded reluctance to employ the remedy will only serve to swell the trail calendar and thus deny other litigants the right to have their claims promptly adjudicated." See (*Andre v Pomeroy*, 35 NY2d 361 [1974]).

Respondent's unopposed motion for summary judgement is hereby granted and the petition is hereby dismissed as respondent has presented a retaliatory motive by the petitioner in commencing this proceeding.

This constitutes the decision and order of this court.

Dated: April 26, 2022
Brooklyn, New York

Hannah Cohen, J.H.C.