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2022-03-22

### Rogers Plaza LLC v. Sam

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#### Recommended Citation

"Rogers Plaza LLC v. Sam" (2022). *All Decisions*. 551.  
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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF KINGS: PART 11CV

-----X  
ROGERS PLAZA, LLC,

Index No. CV-032597-18KI

Plaintiff,

-against-

**DECISION AND ORDER**

JONATHAN SAM, KAYLA AYBAR, JOHN  
CARLOS RAMIREZ,

Defendants.

-----X  
**NICHOLAS W. MOYNE, J.**

**AFTER TRIAL**

A trial on this matter seeking unpaid rent was held on March 9, 2022. Defendant Jonathan Sam (“Sam”) appeared pro se. Defendants Kayla Aybar and John Carlos Ramirez failed to answer or appear.

The plaintiff is the former landlord of the defendants. This suit seeks \$7850 in allegedly unpaid rent. The plaintiff contends that the defendants failed to pay any rent for the months of September, October, and November of 2017, and that only partial rent was paid for August 2017. Additionally, the plaintiff seeks \$100 in late fees for each of these four months. The rent on the apartment was \$2150 per month and a security deposit in the amount of \$2150 was paid to the landlord and retained by the landlord. The defendants surrendered the apartment on November 30, 2017 (Tr at p. 13, ln 19).

There was no testimony as to the amount of the alleged underpayment for August 2017. However, the amount may be deduced by subtracting the other amounts the plaintiff is claiming are owed from the total sought. Here the plaintiff seeks \$6450 for the months of September to November 2017 and \$400 in late fees, totaling \$6850. Therefore, the amount sought for August 2017 rent must be \$1000.

Ultimately, the petitioner landlord is seeking the following amounts:

Month	Rent Arrears	Late Fee	Total
August 2017	\$1000	\$100	\$1100
September 2017	\$2150	\$100	\$2250
October 2017	\$2150	\$100	\$2250
November 2017	\$2150	\$100	\$2250

Defendant Sam demonstrated that he paid \$1000 for August rent, which was not credited by the landlord (3/9/2022 Tr at p. 34-36). Accordingly, the evidence and testimony show that

the August 2017 rent was paid in full, and the plaintiff is not entitled to judgment as to any rent or late fees for August 2017.

Additionally, the court finds that the plaintiff is not entitled to late fees for the other months as the rent was withheld in an effort to compel the landlord to correct issues with the apartment (Tr at p. 37). There was no rent paid for the months of September, October, or November 2017.

Defendant Sam contends that the warranty of habitability was breached. Mr. Sam testified to an infestation of vermin – mice and cockroaches – as well as the existence of mold and peeling paint. The plaintiff made unsuccessful attempts to get rid of the vermin in June and August of 2017 (Tr at p. 23-24, 46). Photos of the apartment substantiated the defendant's claims that the warranty of habitability was breached. "The obligation of the tenant to pay rent is dependent upon the landlord's satisfactory maintenance of the premises in habitable condition" (*Park W. Mgt. Corp. v Mitchell*, 47 NY2d 316, 327 [1979]; *cert denied* 444 US 992 [1979]).

Furthermore, the breach of the warranty of habitability entitles the defendants to a partial rent abatement (*see 501 New York LLC v Anekwe*, 14 Misc 3d 129(A) [App Term 2d Dept 2006] [40% rent abatement for vermin infestation and other violations]; *see also Morrisania Apartments, LLC v Rivera*, 57 Misc 3d 141(A) [App Term 1<sup>st</sup> Dept 2017]). "In ascertaining damages, the finder of fact must weigh the severity of the violation and duration of the conditions giving rise to the breach as well as the effectiveness of steps taken by the landlord to abate those conditions" (*Park W. Mgt. Corp.*, *supra* at 329). Here the conditions existed from at least June of 2017 and persisted until the defendants surrendered the apartment. The landlord's attempts to remedy the situation were admittedly unsuccessful. The conditions were severe – the apartment was infested with rodents, cockroaches, and had mold, all of which are harmful to the health of the occupants. These conditions ultimately resulted in the defendants vacating the property. Accordingly, the defendants are entitled to a rent abatement of 30% of the rent for each of the months of July, August, September, October, and November of 2017. As the defendants paid the full rent for July and August, they are entitled to a credit in the amount of the abatement for each of those months – an overpayment of \$645 per month. For the months of September, October, and November 2017, the petitioner is only entitled to rent at the discounted rate of \$1505 per month.

The landlord has retained the security deposit instead of seeking breached lease damages – as the defendants vacated before the expiration of the lease term (Tr at p. 27). However, pursuant to RPL § 227, if the premises becomes untenable and unfit for occupancy, the lessee or occupant may quit and surrender possession of the leasehold premises; and he or she is not liable to pay to the lessor or owner, rent for the time subsequent to the surrender. The presence of a large number of rodents may constitute such a nuisance as to justify a tenant in abandoning the demised premises (*see Batterman v Levenson*, 102 Misc 92, 94 [App Term 2d Dept 1917]). This is what happened here. Therefore, the landlord was not entitled to retain the security deposit for breached lease damages. The landlord may however retain a security deposit to pay for unpaid rent (*see General Obligations Law* § 7-108 [1-a] [b]). Here, after applying the security deposit to the \$3225 due in rent, the plaintiff should have judgment in the amount of \$1075. Pursuant to provision 50 of the lease (Exh. 3, Lease) the defendants are jointly and severally liable for the unpaid rent.

Month	Rent	Paid	30% abatement	Owed
July 2017	\$2150	\$2150	\$645	-\$645
August 2017	\$2150	\$2150	\$645	-\$645
September 2017	\$2150	\$0	\$645	\$1505
October 2017	\$2150	\$0	\$645	\$1505
November 2017	\$2150	\$0	\$645	\$1505
Security Deposit	n/a	\$2150	n/a	-\$2150
<b>Total</b>				\$1075

For the reasons set forth hereinabove, it is hereby

ORDERED that the plaintiff have judgment against the defendants in the amount of \$1,075, for which the defendants shall be jointly and severally liable.

This constitutes the decision and order of the court.

ENTER:



Nicholas W. Moyne, J.C.C.

Dated: Brooklyn, New York  
March 22, 2022