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Morrison Management LLC v Rodriguez

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX: HOUSING PART C

Morrison Management LLC,
Petitioner,
- against -

Decision and Order
L & T # 58631/15

Samuel A. Rodriguez,
Ann Rodriguez,
Respondents.

Marian C. Doherty, J.:

The petitioner commenced the instant non-payment proceeding in October 2015 seeking rent for June through October of that year at \$1,260.48 per month plus a balance of \$836.44 for May 2015. The respondent's daughter appeared and interposed an answer of general denial while also indicating that conditions existed in the apartment that the petitioner failed to repair, and requesting that legal fees be waived. The clerk assigned a trial date for October 22, 2016.

On October 22, 2015, Ann Rodriguez appeared and tendered \$3,300.00. The matter was then adjourned until November 24, 2015, for the tenant of record to appear. On November 24, 2015, a default judgment was entered against Samuel A. Rodriguez. Ann Rodriguez was added as a respondent tenant in a stipulation. The agreement further provided for a judgment to enter against Ann Rodriguez in the amount of \$4,849.32, with execution of the warrant stayed until January 9, 2015, for payment. The stipulation of settlement further provided for the petitioner to make repairs and for future renewal leases to name Ann Rodriguez.

The respondent next obtained an order to show cause returnable January 26, 2016. In her supporting affidavit she indicated that she had applied for a one shot deal and had paid the January rent. By stipulation dated January 26, 2016, the petitioner agreed to stay execution of the

warrant until February 19, 2016, for payment of \$5, 832.28 and to complete repairs by March 9, 2016.

The respondent obtained her second order to show cause on February 19, 2016, returnable on March 9, 2016. In support of her application she annexed a printout from DSS indicating that approximately \$4,500 had been paid. She sought time to pay the balance. She also alleged that the repairs had not been done. The parties entered into another stipulation extending her time to pay the balance of \$2,501.91 until March 28, 2016. The petitioner again scheduled access dates on March 24th and March 25th for repairs.

On March 28, 2016, the respondent obtained her third order to show cause, returnable April 11, 2016. In her supporting affidavit she alleged that she was waiting on her tax refund to pay the balance of arrears and that she also needed a current copy of her lease for the FEPS program. The parties entered into another stipulation, which extended the time for her to pay \$3,762.39 plus the rent for May until May 6, 2016. She further agreed to meet with management the next day regarding a lease renewal.

On May 6, 2016, the respondent obtained her fourth order to show cause, returnable on May 20, 2016. In her affidavit she stated that she was working with BronxWorks to obtain the balance and that she still needed a copy of her lease. In the resulting stipulation the parties provided that she was to sign a copy of her lease at the landlord's office on May 23, 2016, and pay the balance of \$2,312.87 by June 20, 2016.

On June 20, 2016, the respondent obtained her fifth order to show cause returnable on July 5, 2016. In her affidavit she alleged that she still had not obtained a copy of a lease and that she needed more time to obtain funds. On July 5, 2016, she made an application for an

adjournment based upon a letter from Bronx Legal Services NYC indicating that they were in the process of considering whether to represent her. The motion was adjourned until July 21, 2016.

On July 21, 2016, the respondent appeared with counsel. The court adjourned the motion until July 29, 2016, and directed that the supplemental affidavit in support of the motion be served by July 25, 2016, with opposition papers by July 28th, and with the reply, if any, to be in court by July 29th.

On July 29, 2016, the attorneys stipulated to adjourn the matter until September 13, 2016. Opposition papers had been served and the respondent was to serve the reply by August 19, 2016.

On September 13, 2016, the parties again stipulated to adjourn the matter until October 13, 2016, at which time the motion was argued and marked submitted.

In the supplemental affidavit in support of the current order to show cause, the respondent's counsel seeks to vacate the judgment and warrant and to interpose a defense and counterclaim for rent overcharge. In support of the motion, the respondent presented the DHCR annual rent registration. It reflects that the registered rent for this unit for the previous tenant was \$745.82 and that the vacancy lease offered to the respondent, effective April 2013, was for \$1,200.00. The respondent argues that the legal rent for a vacancy lease should have been \$929.04 and that she was overcharged and is therefore entitled to treble damages.

The petitioner's opposition papers, which were prepared timely according to the court's order but perhaps not with sufficient time to provide all the necessary documentation, indicate that there were individual apartment improvements of approximately \$16,000.00 expended in the

apartment and that in fact the rent charged was less than what the petitioner was legally entitled to collect.

Based upon the foregoing, the court finds that the respondent has set forth a prima facie claim for rent overcharge. Accordingly, the motion is granted, the judgment and warrant are deemed vacated and the matter is restored to the calendar for trial on November 17, 2016, at 9:30 a.m, Part C, Room 390. The sole issues for the court to determine are: the legal rent, whether there has been an overcharge and if so, whether the respondent is entitled to treble damages.

This constitutes the decision and order of the court.

Dated: November 3, 2016
Bronx, New York


J.H.C.