2022-08-29

Zarate v. A&E Tiebout Realty LLC

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Zarate v A&E Tiebout Realty LLC
2022 NY Slip Op 51401(U)
Decided on August 29, 2022
Civil Court Of The City Of New York, Bronx County
Zellan, J.
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This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on August 29, 2022
Civil Court of the City of New York, Bronx County

Andrea Zarate, Claimant,

against

A&E Tiebout Realty LLC, Defendant.

Index No.: SC-909-20/BX

Jeffrey S. Zellan, J.

After trial, the decision of the Court is as follows: Judgment for claimant in the amount of $2,198.40.

Claimant seeks money damages of $5,496.00, equal to a 25% rent abatement for previously owed rent. Claimant is a tenant of defendant's rent-stabilized multiple dwelling building and alleges that defendant has failed to properly address claimant's noise complaints regarding her upstairs neighbors over a course of nearly a decade, though the instant claim is limited to the 24 months proceeding the complaint. Claimant reports that the offending tenants would often make excessive by stomping and running around, thereby adversely affecting claimant's quiet use and enjoyment of her tenancy. Claimant further alleges that their neighbors repeatedly came downstairs and kicked claimant's door when claimant called 911 or 311 to make noise complaints. Claimant provides evidence corroborating approximately 20 calls complaining about noise at all hours of the day and night. Claimant

alleges that the police initially responded to her complaints (followed by her neighbors kicking her door in apparent retaliation), but that City enforcement personnel eventually stopped coming to follow up on her complaints. Claimant alleges that she complained to her landlord (the defendant), as well.

Defendant does not contest that claimant's neighbors have been making noise. Rather, defendant's primary argument appears to be that they, as landlord, owe no duty to their tenants to abate alleged nuisances caused by other tenants. Defendant also contends that claimant has been the cause of equivalent numbers of complaints from neighbors, and that no other tenant has alleged the type of noise complaints that claimant has raised. Further, defendant asserts that even if they did have a duty to abate a nuisance caused by another tenant, they have tried to cure the situation by adding carpeting in the upstairs tenants' apartment, and confronting and writing letters to the tenants and claimant, although defendant offered no evidence or testimony of such corrective actions. Defendant also asserts a res judicate/collateral estoppel defense based upon a report by the New York State Division of Housing and Community Renewal ("DHCR") that purportedly states that the noise was de minimis and, as a result, dismissed claimant's DHCR complaint. Defendant also asserted that because claimant and her allegedly offending neighbors are all rent-stabilized tenants, defendant's ability to police their tenants' behavior toward each [*2]other was severely limited by the state's tenant-protection laws and regulations, and therefore there was nothing defendant could do to abate the alleged nuisance.

Defendant's Duty and Failure to Cure

Contrary to defendant's argument, defendant has a duty to control (or at least take reasonable measures that could be reasonably expected to control) the other tenants from disrupting the quiet enjoyment of other tenants and can be held liable via rent abatement for the failure to do so. *See, e.g, Kaniklidis v. 235 Lincoln Place Housing Corp*, 305 AD2d 546, 547 (2d Dept. 2003); and *Nostrand Gardens Co-Op v. Howard*, 221 AD2d 637 (2d Dept. 1995); and *Armstrong v. Archives L.L.C.*, 46 AD3d 465, 466 (1st Dept. 2007). At trial, defendant did not provide any evidence (e.g. documents or competent testimony by someone with personal knowledge) of the alleged carpeting or letters to claimant's neighbors, or indeed any record of any mitigation efforts. Even assuming other tenants elsewhere in the same building have complained about claimant (as there is no corroborating evidence or testimony either way), such would not have supported or detracted from claimant's allegations or defendant's obligations.

Defendant's Res Judicata/Collateral Estoppel Defense

For many reasons, the DHCR document presented by defendant is not entitled to res judicata or collateral estoppel effect. Indeed, the document has little relevance to the issues before the Court in the instant matter, and, thus, the Court's decision is not affected by this document. The document appears to be a letter from a staff attorney at DHCR, and there is no indication that the letter represents a final administrative decision following a hearing or other proceeding during which both parties had an opportunity to be heard and present evidence. Moreover, the issue before DHCR was whether there was evidence of harassment by the landlord, which the letter writer concluded there was not. The issue before the Court, however, is not alleged landlord harassment, but rather whether defendant landlord had a duty to abate a nuisance caused by one tenant against the quiet use and enjoyment of another tenant's leasehold, and, if so, whether such a duty was breached. In that regard, the DHCR letter is inapposite. For instance, the letter does not address claimant's nuisance claims arising from tenants kicking claimant's door, which is more than a mere noise issue. Further, the DHCR letter only addresses allegations to the date of the report, while claimant alleges (without meaningful opposition) that noise issues continue through the present. Accordingly, the Court gives no weight to the DHCR letter.

Conclusion

The record before the Court indicates that claimant's use and quiet enjoyment of her apartment has been violated, and defendant has not provided evidence indicating that the violating condition had been cured or that reasonable efforts to cure were undertaken despite the landlord's duty to do so. On that basis, claimant is entitled to relief. Prior precedent indicates a broad range of potential abatement amounts in considering money damages for the loss of quiet enjoyment, in extremes ranging up to 50% of the rent. *See, e.g., Nostrand, supra.* Given the duration of issues, balanced with the lack of findings supporting the type of extreme conditions present in *Nostrand* and other circumstances, the Court finds that reduced damages would be appropriate. Applying the standard of substantial justice, the Court finds that a reasonable abatement, limited solely for the period sought in the complaint between August 2018 through August 2020, is 10%. The Court is not, however, making any findings that claimant's rent should or should not be abated after August 31, 2020.

Accordingly, it is

ORDERED that the clerk enter judgment in favor of plaintiff and reward plaintiff the amount of $2,198.40, together with costs, disbursements, and interest from the date of judgment.

This constitutes the Decision and Order of the Court.

Dated: August 29, 2022
Bronx, New York
Hon. Jeffrey S. Zellan, J.C.C.