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Kew Gardens BAP, LLC v. Hale

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Kew Gardens BAP, LLC v Hale
2020 NY Slip Op 51306(U) [69 Misc 3d 1213(A)]
Decided on November 2, 2020
Civil Court Of The City Of New York, Queens County
Li, J.
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on November 2, 2020

Civil Court of the City of New York, Queens County

<p>Kew Gardens BAP, LLC, Plaintiff(s),</p> <p>against</p> <p>Hale, Defendant(s).</p>

CV-035654-18/QU

Plaintiff's Counsel:

Stephen Einstein & Associates, P.C. 39 Broadway, Suite 1250 New York, NY 10006 Pro Se
Defendant

Wendy Changyong Li, J.

I.

During the coronavirus pandemic, the following papers filed with the court on March 11, 2020 were read on this motion ("**Motion**") by Plaintiff for a summary judgement against Defendant seeking monetary damage in the amount of \$4,164 plus interest pursuant to CPLR 3212:

Papers Numbered

Notice of Motion for summary judgement dated February 18, 2020¹

Affidavit of Fabrizio, Executive Director of Plaintiff, dated February 6, 2020²

Affirmation in support of Motion dated February 18, 2020³

Copy of Certificate of mailing dated February 25, 2020⁴

Exhibit A — Standard Form of Apartment Lease ("**Original Lease Agreement**") between Plaintiff and Defendant dated March 13, 2012

Exhibit A — Renewal lease ("**Renewed Lease**", together with the Original Lease Agreement, the "**Lease Agreement**") between Plaintiff and Defendant dated February 20, 2013^{5 6}

Exhibit B — Plaintiff's resident ledger ("**Ledger**") for Defendant dated March 11, 2019 reflecting Defendant's account activities from March 1, 2012 to August 8, 2014⁷

Exhibit C — Notice of Entry dated April 19, 2019

Exhibit C — Order ("**Judge Evan's Order**") granting summary judgement dated April 18, 2019 by Judge Lance Evans

Exhibit C — Affidavit of service of Order with Notice of Entry upon Defendant dated April 19, 2019

Exhibit D — Order to Show Cause to Vacate Decision/Order Granting Summary Judgement and Restore Case to the Trial Calendar and Defendant affidavit dated May 9, 2019

Exhibit D — Decision vacating summary judgement by Judge Phillip Hom dated June 10, 2019^{8 9 10 11 12}

Exhibit E — Summons and Verified Complaint filed with the court on November 14, 2019, together with affidavit of service

Exhibit F — Answer by Defendant dated December 7, 2018

Exhibit G — Notice of Motion for Summary Judgement, Affirmation in Support, and all supporting documents filed with the court on April 1, 2019, in connection Judge Evan's Order

Exhibit H — Order for Discovery ("**Order for Discovery**") issued by Judge Tracy Catapano-Fox dated September 20, 2019^{13 14 15 16}

II.

On March 13, 2012, Plaintiff and Defendant entered into the Original Lease Agreement, pursuant to which Defendant leased a rent regulated apartment ("**Apartment**") located at [XXX], Flushing, NY 11367 from Plaintiff. The Original Lease Agreement started on March 1, 2012 and expired on February 28, 2013 with a monthly preferential rent of \$1,125. On February 20, 2013, Defendant renewed the Original Lease Agreement for another year starting on March [*2]1, 2013 and expiring on February 28, 2014 with an increased monthly preferential rent of \$1,147.50. The Lease Agreement was not renewed after February 28, 2014. Defendant allegedly moved out of the Apartment on July 31, 2014 (see Ledger). From March 1, 2014 to July 31, 2014, Plaintiff charged Defendant a holdover monthly rent in the amount of \$1,193 (see Ledger). On March 11, 2020 and after prior litigation procedures, Plaintiff filed this Motion seeking monetary damage in the amount of \$4,164.00 plus interest against Defendant. No opposition was filed by Defendant. Defendant also failed to comply with the Order for Discovery and failed to provide Plaintiff with proof of rent payments and "any documents relating to [Defendant]'s defense" 120 days after September 20, 2019, the date of the Order for Discovery (see Order for Discovery).

III.

CPLR 3212 states that "a motion for summary judgment shall be supported by affidavit, by a copy of the pleadings and by other available proof, such as depositions and written admissions " (CPLR 3212 [b]).

Here, Plaintiff failed to present this Court with affidavit or affirmation of mailing of this Motion, or any documents to support the alleged monthly holdover rent in the amount of \$1,193 from March 1, 2014 to July 31, 2014.

In addition, the Ledger showed that on January 1, 2013, Plaintiff charged Defendant \$25 for a smoke detector. The charge for the smoke detector was silent in the Lease Agreement, although it stated that "if repairs or replacement [were] made necessary because of [Defendant's] negligence or misuse, [Defendant would] pay [Plaintiff] for the cost such repair or replacement as additional rent" (see Original Lease Agreement). Plaintiff did not allege that Defendant damaged the smoke detector and failed to provide any documents to support this \$25 charge for the smoke detector.

IV.

Accordingly, it is

ORDERED that Plaintiff's motion for summary judgment is denied in its entirety, without opposition and without prejudice.

This constitutes the DECISION and ORDER of the Court.

Dated: November 2, 2020
Queens County Civil Court

Honorable Li, J.C.C.

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