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Jahaca Acquisitions, LLC v. Van Oss

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS; HOUSING PART P

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L&T Index No. 304138/20

Jahaca Acquisitions, LLC

Petitioner

Decision/Order

-against-

Elizabeth Van Oss, John Doe, Jane Doe

Respondents

-----X

Petitioner commenced this non-payment proceeding on October 9, 2020, seeking rent from May 2020 through August 2020. Respondent, Elizabeth Van Oss, appeared and interposed a pro se answer. Subsequently, the parties consented to the filing of an amended answer which asserted that the rent demanded in the petition was paid, and listed the following conditions that breached the warranty of habitability: door to south bedroom coming off hinges, water damage, peeling plaster and corrosion of west wall of the apartment, leak in living room ceiling, windows in both bedrooms badly fitted to frames resulting in leaks, windows in both bedrooms do not open properly, broken pane in north bedroom window, deterioration of kitchen cabinet under sink requiring replacement, defective radiator cover on north wall of kitchen, malfunctioning/non-functioning front door intercom, elevator in the building not working. In addition, respondent interposed three counterclaims: the second for repairs, one for key replacement overcharge and the third for attorney's fees.

At trial, petitioner's witness, Winston Roach, of Gilman Managing Corp., testified in support of petitioner's prima facie case. Petitioner introduced a rent ledger for respondent into evidence which reflects a balance of \$36,102.04 due through June 2022.

Respondent, Elizabeth Van Oss, testified that there is a leaky wall in the apartment, there are paint dust particles, the kitchen and bathroom cabinets are corroded, and the hallway is filthy. The elevator cab is not even with the floor, and there is an approximately 4" difference from the floor of the elevator cab to the floor outside the elevator. Ms. Van Oss stated the height difference has caused her to fall on her knees. The interior and exterior stairs are damaged,

and there is rubbish in the side yard. Ms. Van Oss testified that a wall was removed in the living room and there is no radiator in the living room. According to Ms. Van Oss, the heat in the apartment is either overwhelming or non-existent in certain areas. Ms. Van Oss explained that there are two bedrooms in the apartment, which was originally a one-bedroom apartment and was converted to two bedrooms. There are radiators in each of the bedrooms, but not in the living room. Consequently, the heat does not circulate properly and there is too much heat in one of the bedrooms and not enough heat in the living room. The excessive heat in the bedroom causes the paint to chip. Ms. Van Oss reported that the landlord sent painters to the apartment after she complained during the winter. However, nothing was done about the heat. Ms. Van Oss added that there are continuous leaks in the walls, the outer wall leaks and this results in the deterioration of the paint, the wall was crumbling and there was dust in the apartment. One of the walls became swollen and felt wet after a storm and the paint became corroded. The landlord sent someone to paint over the wall, but the problem reoccurs. The lintels also leak and the paint around the windows chip. Ms. Van Oss stated that the dust that this condition creates bothers her eyes when she sweeps and cleans up the dust and debris. The landlord painted around the windows two or three times, and Ms. Van Oss denied the workers entry on one occasion because the problem was ongoing.

Ms. Van Oss also testified that that the entrance door to the building is difficult to open, the stairs are cracked and are not level, and the intercom does not work. Ms. Further, Ms. Van Oss stated that although she paid \$40.00 for a key, she is unable to get one.

Respondent filed complaints with DHCR alleging a decrease in services. In respondent's complaint under Docket No. JU 210021 B filed on September 24, 2001, DHCR found that the following services were not maintained: intercom, janitor service in the hall, stairs and flooring, elevator condition and janitorial services in the side yard. DHCR also found the following services were maintained: building entry door and roof/exterior walls. Based on the foregoing, DHCR determined that respondent's rent should be reduced to the rent in effect prior to the most recent guidelines increase effective December 1, 2021. The DHCR findings in respondent's complaint to DHCR under Docket NO. JU 210157 S were as follows: services not maintained - radiator in the kitchen, bathroom sink plumbing, plaster and paint in bedroom 1, living room radiator, dining room radiator and kitchen window. DHCR found that the following services were maintained: radiator bedroom 1, no leaks or stains in the living room, paint and plaster in the living room, ceiling in the living room/beam, no leaks or stains in the dining room, no mold/mildew in the dining room. DHCR then issued an order decreasing respondent's rent to the rent in effect prior to the most recent rent guidelines increase effective February 1, 2022. Respondent also filed two earlier complaints alleging decrease in services under Docket Nos GV 210023 S and GV 210022 S which terminated upon respondent's failure to provide access. Respondent filed a Petition for Administrative Review (PAR) for the determination made under Docket No. GV210023 S stating that there was a violation for a pest infestation and that the apartment was infested with water bugs. Also, respondent claimed that the kitchen was poorly renovated. Respondent's PAR was dismissed on August 13, 2020.

In addition, respondent submitted into evidence an HPD violation summary report which reflects that since January 4, 2019, four "Class C" violations, fifteen "Class B" violations and two "Class A" violations have been issued for the subject apartment. The "Class C" violations were all issued for roach infestations. The "Class B" violations included violations written for the defective intercom, water leaks and plastering and painting. In addition, the violation summary report for the building reflects that HPD issued violations for the broken terrazzo floor in the vestibule at the building entrance, broken tread in the public hall stairs, cleaning of floors and stairs in the public areas, cleaning of the yard and removal of the rubbish in the east yard.

Further, respondent submitted Department of Buildings violations for the elevator into evidence. One violation, which was issued on October 18, 2021, required petitioner to adjust the stops on the 2nd, 3rd and 4th floors and maintain the elevator conveying system. Another violation was issued on March 10, 2022, for petitioner to properly install fireman's service and to apply for a permit to test the leveling of the car floor to landing sill.

On cross-examination, Ms. Van Oss acknowledged receipt of a letter from petitioner requesting access, and she stated that she gives access, but she cannot take time off without prior notice.

On re-direct, Ms. Van Oss explained that she gave access to the HPD inspectors on her day off and she had to communicate directly with the inspectors to schedule their visits.

In rebuttal, Mr. Winston Roach testified that he was aware of the HPD violations, and the superintendent attempted to gain access in October 2021. Access was given by Ms. Van Oss's children, but that was the only time access was provided. Mr. Roach explained that a tree and vines were cleared from the roof and placed in black bags in the yard. Mr. Roach also explained that respondent's dog had accidents on the stairs which result in the stairs being stained. Further, Mr. Roach stated that when the violations were issued, petitioner tried to arrange access in order to repair the windows and petitioner was finally able to gain access three weeks ago.

Petitioner also moved to amend the petition to date and stated that respondent had not paid any rent since the petition was filed.

In closing, petitioner maintained that respondent has been compensated with DHCR's rent reduction order. Further petitioner asserts that the conditions in the apartment and building are negligible.

The warranty of habitability, as codified in RPL§ 235-b, requires that landlords of residential premises maintain the rental properties so that they are fit for human habitation and the occupants are not subject to conditions which would be dangerous, hazardous or detrimental to their health, life or safety. Breach of the warranty of habitability can be shown through housing code violations. However, the code violation must have an impact on the habitability of the leased premises and tenants must show how the condition affected their health, safety and welfare, *Park West Village Management Corp. v Mitchell*, 27 NY2d 316 (1979). In addition,

a tenant seeking an abatement must show that the landlord had actual or constructive notice of the conditions in need of repair *Nachajski v Siwiec*, 31 Misc3d 150(A) [App Term 2nd Dept. 2011]. In calculating an abatement award, the court looks at "the difference between the fair market value of the premises as warranted and the reduced value as a result of the breach" *111 East 88th Partners v. Simon*, 106 Misc 2nd 693 (1980) (aff'd as modified), *Park West Village Management Corp. v Mitchell*, *supra*.

There is some overlap in the conditions found by DHCR and the violations issued by HPD, including the intercom, janitorial services, plastering and painting, and the conditions in the public hallways and east yard. Further, there are two Department of Buildings violations for the elevator and one violation mirrors respondent's description of the elevator cab not being level with the floor. Petitioner did not need access to respondent's apartment to correct violations such as the elevator, the violations for the common area and to some extent, the intercom.

Although petitioner's agent explained that the bags in the east yard contained tree clippings, it appears that the yard is used as a storage area for garbage. HPD issued a violation for the rubbish and unclean condition of the yard on September 16, 2021, and DHCR found unclean conditions and bags of garbage in the yard on March 17, 2022.

Undoubtedly, petitioner has had notice of the conditions through the violations issued by the various agencies and petitioner raised no issue regarding notice. Respondent made it clear that her ability to grant access is limited by her work schedule. Both HPD and DHCR have reported lack of access to respondent's apartment, which petitioner has also cited. Petitioner introduced into evidence one letter dated October 12, 2021, requesting access from respondent.

Respondent testified that petitioner painted the water damaged wall and window frames which failed to address the underlying problems. Therefore, it is evident that respondent has granted some access, but she has not consistently done so.

RPL§235-b (3)(c) provides that when there is a DHCR rent reduction order in place, damages for breach of the warranty of habitability must be reduced by the amount of the DHCR rent reduction order. The DHCR orders which reduce the rent to the level in effect prior to the most recent guidelines increase became effective on February 1, 2022, and December 1, 2021. Respondent's lease, which was entered into evidence as petitioner's Exhibit 6, reflects that respondent's legal rent was \$2328.06 and respondent was given a preferential rent of \$2300.00 for the lease term commencing on July 1, 2018, and ending on June 30, 2019. In 2019, 2020, and 2021, petitioner registered respondent's rent as \$2328.06, with a preferential rent of \$2300.00. In 2018, petitioner registered the former tenant's rent as \$1952.25. Petitioner asserts that the last registered rent should be \$2300.00. However, that amount was only registered as the preferential rent, not the legal rent. Therefore, \$1952.25 is the last registered rent. Based on the evidence presented, the DHCR rent registration states that the rent in effect

prior to respondent's lease was \$1952.25. Therefore, any rent abatement after December 2021 would be reduced by the rent decrease ordered by DHCR.

Petitioner seeks rent from May 2020 and its rent ledger goes through June 2022. In making its request to amend the petition to date, petitioner represented that respondent had not paid any rent since the petition was filed. However, the rent ledger does reflect that respondent made rent payments in 2021 and the court will only grant the request to amend through June 2022 which includes the period covered on the ledger.

The HPD report reflects that there were three violations issued on December 28, 2020, for which respondent did not provide access on April 30, 2021, and the court will not include these conditions in calculating an abatement award. Respondent did not provide dates that the conditions began occurring. Therefore, the dates for correction of the violations and the dates of the DHCR orders will be used to calculate the amount of the abatement. The five remaining HPD violations were issued for plastering and painting after the DHCR orders became effective. A violation for a water leak from the ceiling in the third room was issued on February 16, 2022. There are also four violations issued after February 1, 2022, for repair of the leak and plastering and painting the window casing, walls and ceiling of the east wall in the third room from the east at north as well as a broken counterbalance at the lower sash of the window in the third room from the east at north. Therefore, the court will not grant any abatement for HPD violations issued before February 2022.

On February 23, 2022, the Department of Buildings sustained the violation issued for the elevator adjustment and conveying system.

Petitioner's rent ledger reflects that respondent was billed \$2300.00 per month, from July 1, 2018, through December 2018 when petitioner began billing respondent \$2328.06 which is prior to the end of the lease term. There was also a concession of \$28.06 granted each month. Therefore, it appears that respondent was given an extra discount for the first five months of the lease term. Petitioner contends that the DHCR order reduces the rent to \$2300.00. However, as previously stated, the last registered rent prior to respondent's lease is \$1952.25.

Based on the evidence presented, this court determines that respondent is entitled to an additional 10% abatement commencing in December 2021, thereby reducing respondent's rent to \$1757.02. Therefore, after abatement, respondent owes a balance of \$32,501.53 through June 2022 and petitioner is granted a final judgment for that sum. A warrant of eviction may issue in five days. Petitioner is directed to correct all outstanding violations and conditions in need of repair identified by DHCR within 30 days. Respondent's counterclaim for key replacement overcharge is granted to the extent that petitioner is directed to provide respondent with a working key to the building entrance within five days. Respondent's counterclaim for attorney's fees is denied as neither party is the prevailing party (see *4702 Chiel Kurtz Realty v Molano*, 36 Misc3d 8 [App Term 2nd Dept., 2012]).

This constitutes the decision and order of this court.

Date: March 2, 2023


~~HON. CHERYL J. GONZALES~~

Hon Cheryl J. Gonzales