Fordham Law School

FLASH: The Fordham Law Archive of Scholarship and History

All Decisions

Housing Court Decisions Project

2024-03-13

Eleven Eleven Realty Assoc. v. Elizabeth

Follow this and additional works at: https://ir.lawnet.fordham.edu/housing_court_all

Recommended Citation

"Eleven Eleven Realty Assoc. v. Elizabeth" (2024). *All Decisions*. 1417.
https://ir.lawnet.fordham.edu/housing_court_all/1417

This Housing Court Decision is brought to you for free and open access by the Housing Court Decisions Project at FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in All Decisions by an authorized administrator of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

[*1]

Eleven Eleven Realty Assoc. v Elizabeth
2024 NY Slip Op 50288(U)
Decided on March 13, 2024
Civil Court Of The City Of New York, Kings County
Golden, 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This opinion is uncorrected and will not be published in the printed Official Reports.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 March 13, 2024

Civil Court of the City of New York, Kings County

Eleven Eleven Realty Assoc., Petitioner-Landlord,

against

Jose Elizabeth, Respondent-Tenant(s).

Index No. LT-310678-22

Hertz, Cherson & Rosenthal
Attorneys for Petitioner
118-35 Queens Blvd, 9th fl
Forest Hills, NY 11375
By: Michael Rosenthal

Brooklyn Legal Services
Attorneys for Respondent
1709 Saint Marks Ave
Brooklyn, NY 11233
By: Emi Foto

Tashanna B. Golden, J.

Recitation as required by CPLR 2219(a), of the papers considered in the review of the Respondent's Motion for Summary Judgment:

Papers: Numbers
Respondent's Motion, Affirmation in Support, and Exhibits 31-45
Petitioner's Affirmation in Opposition and Exhibits 46-49
Respondent's Reply and Exhibits 50-62
Court File *Passim*

Petitioner filed this instant nonpayment proceeding on or about May 18, 2022, seeking a money judgment in the amount of $15,753.64 and final judgment and possession of the unregulated premises located at 1111 Ocean Ave, Apt 410, Brooklyn, New York 11230, from Respondent. Petitioner predicated its nonpayment proceeding upon service of a 14-day rent [*2]demand. On June 23, 2022, Respondent filed a *pro se* answer asserting conditions; latches; a general denial; and a counterclaim (ERAP). On July 12, 2022, Brooklyn Legal Services, by Le'Shera Hardy entered a notice of appearance on behalf of Respondent. On August 31, 2023, Respondent filed an amended answer asserting; 1) no rental agreement in effect; 2) failure to comply with the filing requirements of RPAPL 735; 3) failure to plead the regulatory status; and 4) rent impairing violations. [FN1] On or about January 29, 2024, the Respondent filed the instant motion for summary judgment pursuant to CPLR 3212 (b) seeking a one hundred percent (100%) abatement for the period of July 1, 2021 through May 25, 2023, pursuant to NY Mult. Dwell. Law. § 302-a.[FN2] Petitioner opposes the motion.

Summary judgment will be granted "if upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party" (CPLR 3212[b]). The proponent of a motion for summary judgment must make prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact". *Zuckerman v City of New York*, 49 NY2d 557 (1980). In considering a summary judgment motion, the courts function is to determine whether a material issue of fact exists, not to determine said issues. *Esteve v Abad*, 271 AD 725, 68 N.Y.S.2d 322 (1st Dept 1947). Summary judgment should be granted when the moving party makes a prima facie showing of entitlement to judgment as a matter of law, giving sufficient evidence to eliminate any material issues of fact from the case. *See Winegrad v. New York University Medical Center*, 64 NY2d 851, 476 N.E.2d 642, 487 N.Y.S.2d 316 (1985).

<u>Multiple Dwelling Law 302</u>:

Respondent believes summary judgment is warranted based on the conditions in the

common area of the subject premises which have been designated "rent impairing conditions" by HPD. Pursuant to NY Mult. Dwell. Law § 302-a, if official HPD records note that a rent impairing violation exists in respect to a multiple dwelling and that notice of such violation has been given by the department, by mail, to the owner last registered with the department, and such note of the violation is not cancelled or removed of record within six months after the date of such notice of such violation, then for the period that such violation remains uncorrected after the expiration of said six months, ***no rent*** shall be recovered from a resident who resides where the condition constituting such rent impairing violation exists. *See* MDL § 302-a. Emphasis added. Further, "if a condition constituting a rent impairing violation exists in the part of a multiple dwelling used in common by the residents or in the part under the control of the owner thereof, the violation shall be deemed to exist in the respective premises of each resident of the multiple dwelling." *See* MDL § 302-a(3)(a). MDL §302-a(3)(c) mandates that to raise this defense in a nonpayment case, the Respondent must "affirmatively plead and prove the material facts under subparagraph (a) and must also deposit with the clerk of the court in which the action or proceeding is pending at the time of the filing of the resident's answer the amount of the rent sought to be recovered in the action." *Id*.

Here, the Petition alleges arrears from March 2021-April 2022. Respondent has [*3]presented evidence showing there were "ripe" rent impairing violations from July 2021 through May 2023, long past the Petition period.[FN3] Per the Order dated October 10, 2023, Respondent deposited $15,753.64 with the Clerk of the Court, which both Parties acknowledged, represents all money alleged to be owed in the Petition.[FN4] As such, unless the Petitioner can set forth a viable defense to the MDL-302, Respondent's motion must be granted.

The MDL 302-a statute enumerates only a few defenses to defeat a properly raised MDL 302-a abatement claim. Specifically, a rent abatement may not be awarded under MDL 302-a if 1) the condition referred to in the department's notice did not in fact exist, notwithstanding the notation thereof in the records of the department; or (2) the condition has in fact been corrected, though the notice thereof in the department has not been removed or cancelled; or (3) the violation has been caused by the resident from whom rent is sought to be collected or by members of his/her family or by his/her guests or by another resident of the multiple dwelling or the member of the family of such other resident or by his/her guests; or (4) the resident proceeded against for rent has refused entry to the owner for the purpose of

correcting the condition giving rise to the violation. MDL § 302a-(3)(b).

In opposition, Petitioner argues not that the rent-impairing conditions do not exist, but instead that because the conditions are in the common area and because the subject premises is in a co-operative, the Petitioner is not liable. The language of MDL § 302 clearly states that violations in the common area of which are in the control by the owner is covered. *See* MDL 302(a)(3). Petitioner owns the shares appurtenant to Respondent's unit and owns 83 of the 110 units in the building.[FN5] Petitioner argues that despite owing the majority of the units, they do not have control over the building and cannot make decisions about repairs or maintenance of the common areas because they are not on the Board of Directors.

RPAPL 235-b outlines that a landlord has the responsibility to maintain the habitability of the premises. RPAPL 235-b applies to cooperative apartments. See *Matter of Levandusky v One Fifth Ave. Apt. Corp.*, 75 NY2d 530 (1990). *See also, 315-321 E. Parkway Dev. Fund Corp v. Wint-Howell,* 9 Misc 3d 644, 647 (Civ Ct, Kings County 2005). Thus, if the Petitioner does in fact have control, they shall be liable under MDL 302. In their Reply, Respondent submitted an affidavit from Brent Meltzer, the former Bureau Chief of the Real Estate Finance Bureau and current Chief of the Housing Protection Unit with the Office of the Attorney General of the State of New York ("OAG"), wherein he attests that the sponsor of the cooperative at 1111 Ocean Ave is the Petitioner, Eleven Eleven Realty Associates, and its principals are Sam and Esther Wasserman.[FN6] He further attests that the principals have owned the majority of the units, and that despite representing in the offering plan that they would not exercise control of the board, they have "always exercised voting control. The Wassermans, including Sam and his son Abraham Wasserman have made all decisions about building maintenance and operating the coop. The cooperative corporation has no functioning board and exercises no control over the management [*4]of the building. There have been NO recorded board meetings other than one in 2018 which was held, upon information and belief, for a regulatory purpose and seems to have been attended by only Sam and Abraham Wasserman."[FN7] The Court finds this Affidavit in conjunction with the Petitioner's own admission that Petitioner owns the vast majority of the units is "sufficient evidence to eliminate any material issues of fact" regarding the Petitioner's control over the common areas. *See Winegrad* Supra.

As the Court has found the Petitioner has control, and the Respondent has properly plead a MDL 302-a claim, as well as made the required deposit, the Court hereby grants

Respondents motion for Summary Judgment; and awards a 100% abatement for the period of July 1, 2021 through May 25, 2023 pursuant to MDL 302-a. The matter is hereby dismissed.

The foregoing is the Decision/Order of this court.

Dated: March 13, 2024
Brooklyn, New York
SO ORDERED
HON. TASHANNA B. GOLDEN
JUDGE, HOUSING COURT

Footnotes

Footnote 1: See NYSCEF Doc 10. Amended Answer.

Footnote 2: On or about December 12, 2023 Respondent filed a SJ seeking the same relief, but withdrew that motion via letter correspondence to the court dated January 11, 2024. See NYSCEF Doc. 30.

Footnote 3: See NYSCEF Doc 36 39 Exhibits C F

Footnote 4: Petitioner argues that the rent deposit is insufficient The Court rejects this argument for two reasons, 1) the Parties agreed to the deposit amount before the Order dated Oct 10, 2023 was issued; and 2) MDL 302 requires a deposit of the "rent sought" which has been interpreted to be the Petition amount. *See Food First HDCF v. Turner*, 69 Misc 3d 1202(A) Civ. Ct. Kings Cty 2020.

Footnote 5: See NYSCEF Doc 46. Pet Aff in Opp at ¶ 27-28.

Footnote 6: See NYSCEF Doc 53 at ¶ 1-3.

Footnote 7: Id. at ¶ 4-6.