

1616 President St. Assoc., LLC v Brathwaite

2024 NY Slip Op 34302(U)

November 21, 2024

Civil Court of the City of New York, Kings County

Docket Number: Index No. LT-309299-20/KI

Judge: Juliet P. Howard

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Civil Court of the City of New York
County of Kings

Index # **LT-309299-20/KI**



1616 PRESIDENT STREET ASSOCIATES, LLC
Petitioner (s)

Decision / Order

-against-
Silvester Brathwaite

Respondent (s)

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

Papers	NYSCEF Documents Numbered
Order to show Cause/ Notice of Motion and Affidavits /Affirmations annexed	44-51
Answering Affidavits/ Affirmations/Memo of Law	52-53
Reply Affidavits/ Affirmations	54
Other	1-43

Upon the foregoing cited papers, the Decision/ Order on the respondent’s motion for summary judgment sequence # 3 is decided as follows for the following reasons:

Petitioner filed this nonpayment proceeding in December 2020 seeking \$4,720.92 in alleged rent arrears for the period June 2020 through November 2020 for this rent stabilized unit based on a monthly rent of \$785.19. Following is an abbreviated summary of the history of this proceeding. This proceeding was filed during the height of COVID restrictions in the courthouse and respondent filed an initial Covid Hardship Declaration in May 2021. The Hardship Declaration stayed the proceeding from moving forward. See NYSCEF Doc # 4. Counsel for respondent filed a Notice of Appearance in May 2021 and in August 2021 counsel for both sides stipulated that if the parties did not settle before September 15, 2021, respondent’s counsel would file an answer on NYSCEF no later than September 30, 2021. During the interim the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020 (CEEFPFA) was further extended, and respondent filed a second Hardship Declaration on September 13, 2021 which stayed the instant nonpayment proceeding through January 15, 2022 (see NYSCEF Doc. No. 7). Immediately prior to the lifting of the stay (January 15, 2022), respondent, by counsel, filed his answer on January 14, 2022. Annexed to respondent’s answer was a two attorney out-of-court agreement dated January 14, 2022. The written agreement signed by counsel for both sides

stated that any deposits necessary throughout the duration of legal proceedings between the parties would be kept in an escrow account owned and managed by Brooklyn Legal Services/Legal Services NYC, and that the money shall be released only upon court order or two-attorney agreement between the parties. *See*, NYSCEF Document # 8, page 11.

The respondent's answer raised various defenses, affirmative defenses and counterclaims including allegations of improper petitioner, improper rent demand, rent impairing violations, failure to serve notice of late payment, retaliation, the Tenant Safe Harbor Act (TSHA), rent overcharge, warranty of habitability, order to correct and civil penalties, harassment, and sought attorney's fees. Respondent, who has resided in the unit for approximately fifty-four years, initially moved for summary judgment pursuant to CPLR § 3212(b) on his Rent Impairing Violation defense, per N.Y. Mult. Dwell. Law § 302-a; sought a 100% rent abatement for the period of June 2020 through May 2022, pursuant to N.Y. Mult. Dwell. Law §302-a; and sought an award of attorneys' fees. In the alternative respondent sought permission to deposit said rents into the court. The initial motion for summary judgment was fully briefed, arguments were heard by this court and the court denied summary judgment without leave to file any future motions and without prejudice to either sides right to their claims and/or counterclaims. This court denied respondent's initial motion for summary judgment as respondent had failed to deposit required funds with the clerk of the court and only showed the deposit of funds sought in the petition into respondent attorney's escrow account pursuant to the two attorney out of court agreement. NYSCEF Doc. No. 8 This court did, however, grant respondent's alternative request for relief which sought time to withdraw deposited monies from Brooklyn Legal Services' escrow fund to then deposit with the clerk of the court. Respondent in support of his alternative request for relief relied on *46 E. 91st St. Assoc. v. Bogoch*, 23 Misc. 3d 36, (AT 1st Dept, 2009). There the Appellate Term granted respondent's motion seeking to file an amended answer, asserting an MDL §302-a defense, conditioned upon a deposit of the amount allegedly due at the time of the

tenant's motion to amend its answer seeking to add an MDL defense, and not the amount alleged in the petition. This court required a deposit of the amount due at the time of the filing of respondent's answer, not the amount sought in the petition and granted respondent's alternative relief and required the deposit of funds due through the date of the answer, filed in January 2022.

Respondent was required to deposit \$11,787.63 in funds allegedly due through the date of his answer filed in January 2022 within fifteen days of the date of this order with the Clerk of the Court and submit proof of said deposit via NYSCEF. See NYSCEF Doc. No. 41 The court calculated the above sum using the amount sought in the petition of \$4720.92, for the period June 2020 through November 2020 based on a monthly rent of \$785.19, in addition to \$7066.71, representing rent for the period December 2020 through August 2021, based on a monthly petition rent of \$785.19. The amount to deposit excludes ERAP payments received on respondent Brathwaite's behalf for the remaining period at issue of September 2021 through January 2022 (the filing of the answer). Furthermore, it is undisputed that ERAP issued payments on behalf of Mr. Brathwaite totaling \$11,508.30 for the period of September 2021 through November 2022. See, NYSCEF Doc. No. 40 The amount to be deposited was to be adjusted if there were any legal rent increases during this period and/or rent payments previously credited to respondent's rent ledger, but not reflected above. A tenant cannot recover rent already voluntarily paid to the landlord during a period when the rent-impairing violation existed. NY MDL § 302-a(3). During oral argument it was confirmed by counsel for both sides that ERAP paid \$11,508.30 for the period noted above (which includes a portion of the period when the violation existed) and that respondent has subsequently been paying his ongoing use and occupancy.

This court notes there was an inquiry by the clerk of the court/cashier's office on the second floor to the court seeking clarity at the time the MDL deposit was being made on behalf of respondent on September 28, 2023, as the court had failed to put a specific date certain for the

deposit in the initial decision and order dated September 8, 2023 and had required deposit of the funds within fifteen days of the date of the order. NYSCEF Doc. No. 41 This court explained to the clerk/cashier that the deposit was to be deemed timely as fifteen business days from the date of the order as that was the intent of this court's order. Part of the petitioner's opposition to respondent's current motion for summary judgment is that the deposit was untimely. However, this court finds that the required rent deposit was timely, as fifteen business days would have required a deposit by September 29, 2023 and the deposit was made on September 28, 2023. See NYSCEF Doc. No. 43.

Respondent moves for summary judgment in respondent's favor, pursuant to CPLR 3212 (b), dismissing the petition with prejudice based on his rent impairing violation defense under Multiple Dwelling Law § 302-a; issuing a 100% rent abatement for the period of June 2020 through May 2022, pursuant to Multiple Dwelling Law § 302-a; and seeks additional relief including scheduling this matter for a hearing on respondent's counterclaims; and awarding respondent attorney's fees. Petitioner opposes the respondent's motion in its entirety. The court held oral argument on this motion for summary judgment sequence # 3 and finds as follows after argument and review of the moving papers.

Summary judgment is a drastic remedy where a movant must make a prima facie showing of entitlement to judgment as a matter of law, while submitting sufficient evidence to eliminate any material issues of fact from the case. *See, Winegrad v. New York Univ. Med. Ctr.*, 64 Misc NY2d 851 [1985]). Pursuant to CPLR § 3212(b), summary judgment may be granted as to any cause of action, or part thereof where, upon the proof submitted, said cause of action or defense is proven sufficiently for the court to direct judgment as a matter of law. Respondent moves for summary judgment as to his rent impairing violation defense pursuant to NY Mult. Dwell. Law § 302-a and seeks an order for a 100% rent abatement for the period of June 1, 2020 through May 3, 2022. A tenant is entitled to an abatement of rent that has been withheld if there

are rent-impairing violations in the tenant's apartment or in common areas of the building, if HPD rent-impairing violations have been on record and uncorrected for a minimum of six months and where a landlord has had notice of such violations. Pursuant to Multiple Dwelling Law § 302-a(3)(a) no rent can be collected by the owners for the period that the violation remains uncorrected after the expiration of the six-month period. *See, Food First HDFC Inc v. Turner*, 69 Misc 2d 1202(A) (NY Civ Ct, 2020) (In *Food First HDFC Inc*, tenants were granted summary judgment on their MDL 302-a defense where they "fulfilled every condition to the letter of the statute." The landlord's position that there was no affidavit in support from respondent-tenants and that conditions were not in the tenants' apartment and that the tenants' denied access was unpersuasive to the court. The court in *Food First* granted summary judgment in the tenant's favor based on tenant's rent impairing violation defense and awarded her a 100% rent abatement for the period beginning six months after the notice of violation was issued and until the violation was certified as corrected by HPD.) Respondent seeks the same remedy here and asserts that the relief he seeks is for a nearly identical rent impairing violation.

MDL § 302-a(3)(c) requires that to raise the defense of a rent impairing violation, "the resident 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 filing of the resident's answer the amount of rent sought to be recovered in the action." In this proceeding there was at least one building-wide rent impairing violation in the common areas of respondent's building, HPD Violation Number 13170794, which was subsequently corrected as of May 3, 2022. The violation stated, as taken verbatim from the HPD violation report was: "M/D LAW PROPERLY FIRE RETARD IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THIS DEPARTMENT THE CELLAR CEILING AT NORTHEAST." See, HPD Notice of Violation, NYSCEF Doc. No. 50 Respondent asserts that he has met the required summary judgment standard by providing this Court with HPD records documenting the

relevant facts necessary to direct judgment as a matter of law, specifically the existence and duration of the qualifying rent impairing violation. Respondent seeks a 100% rent abatement pursuant to NY Mult. Dwell. Law § 302-a, as the violation in question existed in a common area of the subject building, becoming “ripe” under NY Mult. Dwell. Law § 302-a on January 17, 2020 (six months after the date reported in July 2019), and, upon information and belief, was not certified corrected until May 3, 2022. During oral argument it was confirmed that the HPD rent impairing violation was certified as corrected as of May 3, 2022. As such it is undisputed that the rent impairing violation was corrected as of May 3, 2022. The required MDL rent impairing deposit has now subsequently been made into the court pursuant to this court’s prior decision and order and this court finds that the respondent’s deposit was timely. This court in its prior order determined there was no disputed issue of fact as to the HPD rent impairing violation and the period in question, which is June 2020 through May 3, 2022, when said violation was corrected.


Respondent’s counsel now asserts that respondent properly interposed his defense under NY Mult. Dwell. Law § 302- a(3)(c), by affirmatively pleading the defense in his answer and now by depositing the required arrears into the court as required by this court’s order dated September 8, 2023.

Based on the above this court is constrained to grant respondent’s motion for summary as the court has found that respondent has properly plead an MDL 302-a claim and timely made the required deposit; and awards a 100% abatement for the period of June 2020 through May 3, 2022, when the violation was corrected. According to the facts Respondent has demonstrated by this motion, the statute precludes Petitioner from recovery of rent “for the period that such violation remains uncorrected after the expiration of said six months” MDL §302-a(3)(a). The Court further directs the clerk of the Court to release to Respondent the \$11,787.63 that Respondent had deposited with the Court on September 28, 2023, which was memorialized as transaction #3539, minus any appropriate court fees to respondent. (NYSCEF Doc. No. 43).

Based on the above, the petition is dismissed without prejudice to petitioner's right to seek any post-May 3, 2022 rent due and owing in a subsequent proceeding. After dismissal what remains of the proceeding is respondent's counterclaims. As such, the proceeding is restored to December 13, 2024 at 9:30am in Part J, room 502 for all purposes, including to be sent out for a hearing on respondent's counterclaims.

This constitutes the decision and order of this Court. A copy of this order to be uploaded to NYSCEF and a courtesy copy to be emailed to the counsel for both sides.

Dated: November 21, 2024



Hon. Juliet P. Howard
Housing Court Judge