

River Park Residences, L.P. v. Davis, L&T#61891/16

April 19, 2017

- Civil Court, Bronx County, Housing Part B
- L&T 61891/16
- Judge Elizabeth Tao
- For Plaintiff: Attorney for petitioner: Isidore Scipio, Esq.
- For Defendant: Attorney for respondent: Etondi Mbame, Esq., Bronx Legal Services.

Cite as: River Park Residences, L.P. v. Davis, L&T#61891/16, NYLJ 1202783907091, at *1 (Civ., BX, Decided March 20, 2017)

River Park Residences, L.P., Petitioner-Landlord v. Cotreana Davis, 40 Richman Plaza, Apt. 38G, Bronx, New York 10453, Respondent-Tenant

Decided: March 20, 2017

DECISION AND ORDER

*1

In this summary nonpayment proceeding, petitioner seeks rent for the subject premises, 40 Richman Plaza, Apt. 38G, Bronx, New York 10453 in the sum of \$12,946 through February 2017. Respondent, who is represented by Bronx Legal Services, does not dispute the amount owed but, as her defense, seeks an abatement of rent due to petitioner's alleged breach of the warranty of habitability.

The facts are as follows. Respondent moved into the premises in January 2014. She noticed a foul odor coming from her kitchen almost immediately and contacted management. When the condition was not corrected she commenced an HP Action L&T Index#63656/14. (An earlier HP Action L&T#50185/14 was dismissed on September 15, 2014 for failure to serve the right landlord). A class "A" violation was reported on September 3, 2014 verifying that a foul odor was emanating from the lower cabinets in the kitchen. The matter first appeared in the HP Part on November 17, 2014. After several adjournments and agreements to abate the odor failed, the Hon. Steven Weissman, after trial, issued an order on April 2, 2015 finding that the landlord was liable for civil penalties as a result of their failure to correct the odor issue timely. He directed that the repairs be completed on specific access dates. Upon petitioners' failure to correct the conditions, respondent, who retained counsel at that time, restored the HP Action in June 2015 seeking to hold the landlord in contempt. The Hon. Michael Pinckney adjourned the matter for conference and to schedule a hearing date. Access was also directed. After several adjourned dates, the motion was denied on March 23, 2016 as a result of the tenant's failure to appear. A motion was made by the tenant to restore the matter in June 2016, as the odor still persisted, and again the proceeding was adjourned several times to effectuate repairs. At some point during the many access dates, the landlord contended that the source of the odor was from

a neighboring unit. After gaining *2 access to that unit and resolving the issue there, the odor abated. A reinspection of the premises by DHPD on December 11, 2016 confirmed that there was no foul odor in the kitchen and the violation for this complaint issued in September 2014 was dismissed upon petitioner's compliance. The Hon. Laurie Marin as a result dismissed the tenant's HP proceeding without prejudice to commencing a new proceeding in the event that the odor reoccurred.

When the odor reoccurred sporadically in January 2017, instead of commencing a new HP proceeding, Respondent contacted the Department of Health and Mental Hygiene, Division of Environmental Health. The department inspected the premises on January 9, 2017 and determined that there was a foul/offensive odor in the kitchen, emanating from the cabinets under the kitchen sink. (Respondent's "d" in evidence) A prior inspection by the health department was done on November 14, 2014 after a complaint by respondent and also found evidence of a strong odor. That complaint was deemed inactive in January 2015. The current complaint was set down for a hearing on February 8, 2017. Petitioner was notified of the findings and the hearing date by the Department of Health. No determination was made as of the trial date. During the pendency of the above mentioned HP proceeding, the instant nonpayment proceeding was commenced as a result of respondent's failure to pay rent.

The instant nonpayment proceeding first appeared in Resolution Part L on November 1, 2016. It was adjourned several times until the matter was referred to this part for trial on February 7, 2017. The trial commenced that day and was completed on February 8, 2017. Both sides submitted post trial memorandums on February 22, 2017. The matter was marked submitted on that day.

After careful consideration of the documentary and testimonial evidence submitted at trial, the court finds as follows. Petitioner has established its' prima facie case in that \$12,946.00 is due as rent through February 2017. Respondent's application to have this matter dismissed because petitioner did not produce a certificate of occupancy for the premises is denied. Petitioner is not required to plead or produce a certificate of occupancy as part of its' prima facie case.

Respondent has satisfied her burden in establishing that she is entitled to an abatement of rent due to the petitioner's breach of the warranty of habitability. Respondent's credible testimony and the evidence submitted overwhelmingly establishes that petitioner was made aware of the odor emanating from under her kitchen sink cabinet since 2014 but failed to make a concerted effort to investigate the cause of the problem and correct it until the end of 2016. This diminished respondent's ability to enjoy the full use and enjoyment of the apartment during this time. The history of the above noted HP proceeding is replete with findings that petitioner failed to comply with numerous, agreements and orders to correct, subjecting them to civil penalties and a motion for contempt. Although some efforts were made to correct the conditions or possibly relocate the tenant, it was not sufficient to resolve the ongoing problem. Petitioner's claim that respondent contributed to the delay by failing to give access was not supported by the *3 contents of the HP proceeding file or by the limited testimony of petitioner's witness on rebuttal, who addressed complaints from the respondent from January 2017 forward. Accordingly, respondent is granted an abatement in the amount of \$4,531.10 through February 2017.

As a result of the foregoing, petitioner is awarded a final judgment of possession in the amount of \$8,414.90 (\$12,946 — \$4531.10). Issuance of the warrant stayed five (5) days after service of a copy of the judgment with notice of entry upon respondent and her counsel.

This constitutes the decision and order of the court.

Dated: March 20, 2017
Bronx, New York
Trial dates:

Tuesday, February 7, 2017 S:3:23:35 E:3:47:17
Wednesday, February 8, 2017 S:10:03:32 E:11:39:35

