CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS: HOUSING PART O

OREGON REALTY COMPANY

Petitioner-Landlord

-against-

SARA SIMON-TOV
97-25 64th Avenue, Apartment B2
Rego Park, New York 11374

Respondent-Tenant

L&T Index # 75654/16

DECISION/ORDER

Hon. Clifton A. Nembhard

Background

Petitioner commenced the instant nonpayment proceeding by notice of petition and petition. Respondent joined issue by interposing a pro se answer alleging, as an affirmative defense, that there are or were conditions in her apartment which petitioner did not repair. The parties could not reach a settlement therefore the Court conducted a trial.

The following constitutes the Court's findings of fact and conclusion of law after trial.

Trial

Petitioner's property manager Jennifer Almonte established the elements of its prima facie case through the introduction of the deed, multiple dwelling registration, Division of Housing and Community Renewal rent roll, respondent's last renewal lease and her rent ledger. Almonte also testified that respondent owes twelve months of rent totaling $6,629.00 through February.[1]

Respondent Sara Simon-Tov then testified that she hasn't paid rent for the last fourteen months because of past and present conditions in her apartment. The former included a leak in the closet which started in 2014 and wasn't fixed until the beginning of 2014, the bathtub which leaked for five years and the toilet which ran until 2016. In addition, petitioner last painted her apartment in 2014 but did not do a good job. As for the present conditions, the apartment floor which was lacquered by petitioner smelled and remained sticky for eight months and is now discolored. There is also an exposed electrical wire in the kitchen, the front door lock is broken and the

[1]Per the rent demand and petition this total includes a $107.65 balance for February 2016.

saddle is not one color. She also testified that in February 2016, the petitioner changed the lock while she was on vacation and since then the lock has been broken.

On cross-examination Simon-Tov testified that she never restored a 2015 nonpayment case in which petitioner agreed to repair all the violations in the apartment.[2] She also acknowledged that the floor became discolored after she placed a carpet pad and carpet on it while it was sticky. On re-direct she averred that the fumes from the floor made her sick and that she called the Department of Housing Preservation and Development ("HPD") instead of restoring the earlier case.

Almonte testified on rebuttal that any delay in repairing the floor was caused by respondent who initially refused to move her furniture. When she complained about the smell, petitioner sent an environmental specialist to inspect the apartment. She also explained that petitioner broke the lock out of concern for respondent who had not been heard from for some time. The lock was repaired however the door frame was not. She further asserted that the kitchen wire is not exposed and that the saddle is not defective. Almonte also introduced two unclaimed letters from petitioner seeking access from respondent to make repairs. The first, dated January 11, 2016, was regarding the bathtub faucets. The second, dated May 16, 2016, sought access for the same repair plus painting, the water leak and door lock.

Discussion

It is implied in every residential lease, be it written or oral, that the landlord warrants that the property: 1) is free from conditions that are dangerous to life, health or safety; 2) has been maintained in a habitable and usable fashion; and 3) has been maintained in accordance with the uses reasonably intended by the parties. RPAPL § 235-b, *Park West Management Corp. v. Mitchell*, 47 NY2d 316 [Ct App 1979]. While the landlord is not required to ensure that the premises are perfect or even aesthetically pleasing, it does have to warrant that there are no conditions that materially affect the health and safety of the tenants. *Park West Management Corp., supra.* In determining whether a breach occurred, the court must weigh the severity of the violation and duration of the conditions giving rise to the breach, as well as the effectiveness of the steps taken by the landlord to abate those conditions. *N. Town Roosevelt Assoc. v. Muller*, 1980 NY Misc LEXIS 2989 [App Term 1st Dept].

Here, the Court finds that respondent attempted to timely address the past conditions in the apartment. Respondent failed to refute petitioner's claim that she was, at least in part, responsible for the delay in making repairs. As for the current alleged conditions, a review of the HPD website indicates that there are no open violations in respondent's apartment. Moreover, the conditions respondent complained about do not rise to the level of a breach of the warranty of habitability. The discoloration on the floor was caused by respondent, the door saddle, while not aesthetically pleasing, is not defective and the electrical wire in the kitchen is encased in

---

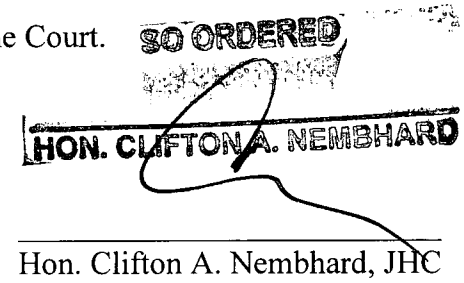
[2]The October 15, 2015 stipulation settling Index No. 67849/15 provided that all repairs were to be completed by November 14, 2015.

protective plastic. Petitioner also repaired the front door lock however, by its own admission, it has not repaired the frame. The Court will therefore award respondent a $250.00 award for the door frame.

Conclusion

Based on the foregoing, petitioner is awarded a final judgment of $6,379.00. Said amount credits respondent with the aforementioned abatement through February 2017. Issuance of the warrant is stayed five (5) days from the date of this decision/order.

This constitutes the decision and order of the Court.



Date: February 27, 2017
Queens, New York

Hon. Clifton A. Nembhard, JHC