567 W. 184th LLC v. Martinez, L&T 60719/16

April 19, 2017

- Civil Court, New York County, Part D
- L&T 60719/16
- Judge John Henry Stanley
- For Plaintiff: For Landlord: Matthew Gordon, Esq., Novick, Edelstein, Lubell, Reisman, Wasserman & Leventhal PC.
- For Defendant: For Tenant: Andrew Goodman, Esq., Northern Manhattan Improvement Corporation Legal Services.

Cite as: 567 W. 184th LLC v. Martinez, L&T 60719/16, NYLJ 1202783907033, at *1 (Civ., NY, Decided April 4, 2017)

ADDITIONAL INDEX NUMBER

L&T 60720/16; L&T 60721/16; L&T 60722/16.

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Based upon the foregoing cited papers, the Decision/Order of this motion is as follows:

Petitioner, 567 W. 184th LLC, (petitioner) commenced these four holdover proceedings seeking to recover possession of four apartments, Apts. 1, 2, 3 and 4 located at 567 W. 184th Street, New York, New York after terminating the month to month tenancies of Reynaldo Martinez, Patria Dominguez, Raysa Martinez and Jeannette Villaverde (respondents) by service of a notice of termination. Respondents move for partial summary judgment pursuant to CPLR 3212 dismissing the petitions and allowing respondents to proceed on their counterclaims of breach of warranty of habitability in their respective apartments.

Respondents contend that the building, as a matter of law, is subject to the Rent Stabilization Law because at one time there existed six separate dwelling spaces in the premises. It is undisputed that there are at least five living spaces. Respondent states that a sixth dwelling unit was added after issuance of a certificate of occupancy in 1955. This certificate of occupancy lists five Class A apartments. For support, respondents cite to the fact that on March 3, 2016, the City of New York Department of Buildings (DOB) inspected the building and found that the storage area near the boiler room was converted into a living space. The DOB found that this added living space was an illegal use of the premises and either should be discontinued or the certificate of occupancy must

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be amended. For additional support, respondents rely on affidavits from each of the four respondents. In particular, the affidavit of Jannette Villarverde, who resides in Apartment 1, states that she was invited to the apartment "a few years ago." Ms. Villaverde states that the dwelling space contained a front room with a sofa set, television, stereo and table, another room contained a bed and nightstand with a lamp on it and another door led to a boiler room that contained a toilet. There was also a room with a shower, a small refrigerator, a stove, and another small table. There were also curtains on a window in the living space.

In opposition to partial summary judgment, petitioner argues that both the certificate of occupancy issued by the Dept. of Housing and Buildings in 1955 and the building summary registration submitted by the new landlord to the City in February of 2016 state that the building contains five living units and therefore these facts establish a dispute that can only be resolved by trial. Petitioner includes in its opposition an affidavit of Michel Perle, the managing agent of the building. Mr. Perle states that the prior owner held out that there were five units in the premises when the building was purchased on January 29, 2016. Mr. Perle also states that within 5 days of the finding of an illegal use, petitioner cured the violation by removing the partition, the bed and other items in the storage room.

DISCUSSION

To obtain summary judgment, the movant must make a prima facie showing of entitlement to judgment as a matter of law, through admissible evidence eliminating all material issues of fact. Voss v. Netherlands Ins. Co., 22 N.Y.3d 728, 734 (2014); Vega v. Restani Constr. Corp., 18 N.Y.3d 499, 503 (2012); Smalls v. AJI Indus., Inc., 10 N.Y.3d 733, 735 (2008); JMD Holding Corp. v. Congress Fin. Corp., 4 N.Y.3d 373, 384 (2005). Only when the movant satisfies this standard, does the burden shift to the opposing party to rebut that prima facie showing, by producing evidence, in admissible form, sufficient to require a trial of material factual issues. Morales v. D & A Food Serv, 10 N.Y.3d 911, 913 (2008); Hyman v. Queens County Bancorp, Inc., 3 N.Y.3d 743, 744 (2004). In evaluating the evidence for purposes of movant's motion, the court construes the evidence in the light most favorable to the other side. Vega v. Restani Constr. Corp., 18 N.Y.3d at 503; Cahill v. Triborough Bridge & Tunnel Auth., 4 N.Y.3d 35, 37 (2004). If the movant fail to meet the initial burden, the court must deny them summary judgment despite any insufficiency in the opposition. Voss v. Netherlands Ins. Co., 22 N.Y.3d at 734; Vega v. Restani Constr. Corp., 18 N.Y.3d at 503; Smalls v. AJI Indus., Inc., 10 N.Y.3d at 735; JMD Holding Corp. v. Congress Fin. Corp., 4 N.Y.3d at 384.

Respondents make a prima facie showing that the building contains six units. The DOB violation establishes beyond a doubt that the storage area was being used as a sixth living unit. Petitioner does not dispute the fact that the dwelling space existed. As DOB stated in its finding of a violation, petitioner was given the option of amending the certificate of occupancy or removing the dwelling space. Petitioner chose to remove the dwelling space. The fact that there existed a sixth living area is buttressed by the affidavit of Jeannette Villaverde who visited the storage room after it was converted into a dwelling space years ago confirmed the fact that a sixth dwelling unit existed in the building. In addition, a photo attached as an exhibit shows a mailbox for a sixth apartment labelled "basement." The superintendent's contact information posted in the entrance area to the
*3 building indicates that the superintendent's apartment is in the basement. Also, the four documents memorialized on the ACRIS website and attached as exhibits to respondents' motion show that when the building was being sold to petitioner, the prior landlord admitted on all four documents that the building contained six units.

Once the movant has established that the building contains six apartments, the burden shifts to the opposing party to rebut the prima facie showing by producing evidence that there is some doubt as to whether there is a sixth apartment. In its opposition papers, petitioner admits that it knew of the DOB violation and cured it within five days. Michel Perle, the managing agent for the building, merely states that at the time of purchase, the prior owner informed petitioner that the building contained five residential units. It is not clear from the

affidavit whether this statement is based on personal knowledge or whether it was told to Mr. Perle by someone other than the prior landlord. Mr. Perle also states that that two records filed with New York City demonstrate that there are 5 units. One of those documents is the certificate of occupancy issued sixty years ago by the City and unreliable given that much can change in sixty years. The other document is the building summary which contains information provided by this petitioner to the City and is not reliable because it is self-serving. The opposition papers are conclusory and do not state evidentiary facts to rebut the fact that six living units existed. Petitioner has not rebutted respondents' proof in evidentiary form that there was a sixth dwelling unit. See Hanson v. Ontario Milk Producers Coop., Inc., 58 Misc.2d 138 (Sup.Ct., Oswego County, 1968). Giving all favorable inferences to the petitioner that the sixth unit was removed immediately after the DOB found a sixth living space does not exempt the building from rent stabilization. Mater of Schubet v. DHCR, 162 A.D.2d 598 (App Div, 1st Dept, 1999).

"The Rent Stabilization Code defines a housing accommodation as that "part" of any building or structure, which is occupied, or intended to be occupied as, inter alia, a home, residence or dwelling unit." Graecor Realty Co v. Hargrove, 90 N.Y.2d 350, 356 (NY, 1997) The fact that there are six living units in a building built before 1974 is enough to subject the building to rent stabilization. See Robrish v. Watson, 48 Misc3d 143(A) (App Term, 2nd Dept, 2015), Rashid v. Cancel, 9 Misc3d 130(A) (App Term, 2nd Dept, 2005), Joe Lebnan, LLC v. Oliva 39 Misc3d 31 (2nd Dept, 2013), Avevedo v. Piano Bldg. LLC, 70 AD3d 124 (App Div 1st Dept, 2009), Brown v. Roldan, 307 AD2d 208 (App Div, 1st Dept. 2003).

Accordingly, the court finds as a material fact that the subject building which was built before 1974 contained six dwelling units thereby rendering the building subject to rent stabilization. Partial summary judgment is awarded to respondents the petition is dismissed for failure to state that the premises are rent regulated. Respondent may proceed on the counterclaim of breach of warranty of habitability and the proceeding is restored to the calendar on May 5, 2017 at 9:30 for settlement or a hearing on the counterclaim.

This constitutes the decision and order of the court.
Dated: April 4, 2017
New York, New York