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Landlord-Tenant—Tenant's Harassment Claims Dismissed—Legal Fees Awarded to Landlord—Tenant Had Denied Landlord Access for Inspection and Repair

The petitioner tenant had commenced a harassment proceeding against the landlord, alleging that the landlord "either used force, threatened the use of force or implied the use of force; repeatedly brought court cases against her for no good reason; and repeatedly caused or permitted acts or omissions that substantially interfered with or disturbed her comfort, peace or quiet." The harassment allegedly began in August, 2004 and continued through the date of the petition. The tenant also alleged that there were numerous water leaks and floor vibrations, that the landlord "threatened to evict her if she did not stop making complaints and cursing at the superintendent," that she had advised the landlord that she would no longer pay rent until the harassment stopped and that the landlord's agents had advised the tenant that "they would 'get her out.'"

The landlord had previously moved for summary judgment, seeking dismissal of the harassment claim, arguing that the allegations did not amount to harassment. A trial court had granted such motion and dismissed the proceeding.

The landlord then moved for an order pursuant to NYC Admin. Code §27-2115(m)(4) awarding it attorney fees. The landlord asserted that "around the date of [tenant's] petition, the...building had no open violations" and that several letters had been sent to the tenant "in an attempt to gain access to her apartment for inspection and repair of any conditions that may have existed." The landlord alleged that "a subsequent inspection in a companion HP case yielded one violation for a bedroom door knob which had fallen off." The landlord asserted that the tenant had "continuously refused to grant access for repairs, and caused [the landlord] to file a late certification of correction." The landlord further alleged that it has incurred \$13,256.65 in legal fees.

Pursuant to NYC Admin. Code §27-2115(m)(4), "where the court determines that a claim of harassment by a tenant against an owner is so lacking in merit as to be frivolous, the court may award attorneys' fees to such owner in an amount to be determined by the court."

The tenant had not submitted written opposition to the landlord's request for attorney fees. The tenant argued that she had agreed to withdraw her harassment petition after discussion with the court and the landlord's counsel on the initial return date. The transcript revealed that the tenant had not offered to withdraw her harassment petition. The court had advised the tenant that her allegations did not amount to harassment and warned the tenant that if she pursued her harassment claim and the landlord was successful, the tenant could be liable for the landlord's attorney fees. Additionally, the landlord had advised the tenant that her complaints could and would be addressed within a companion HP case. However, upon the tenant's "insistence and the Court's inability to facilitate a suitable compromise..., the harassment petition was adjourned for trial and later dismissed."

The court explained that "attorney's fees may be awarded based on a determination that the ultimate outcome in a proceeding is reached, whether or not the ultimate outcome is on the merits...." The court then deemed the landlord to be the prevailing party and entitled to recover attorneys fees and set the matter down for a legal fee hearing.

Comment: This is one of those unusual cases where a tenant refused to provide access to a landlord for inspection and repair and the building was essentially violation free.

Adam Leitman Bailey, counsel to the owner, opined that "this is a case of first impression under NYC Administrative Code 27-215(m)(4), wherein the court decided that it may award attorneys fees to an owner."

***White-Johnson Adeline v. 204-206 W 106 St LLC*, Civ. Ct., N.Y. Co., L&T Pt., Index No. L&T 1006/12, decided Jan. 28, 2013, Gonzales, J.**