

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART B

X



Petitioner,

-against-

204-206 W 106 ST LLC,

Respondent.

Index No.
L&T 1006/12

Present:
Hon. Cheryl J. Gonzales

DECISION/ORDER

X

RECITATION, AS REQUIRED BY CPLR 2219(A), OF THE PAPERS CONSIDERED IN THE REVIEW OF THIS MOTION BY RESPONDENT FOR ATTORNEY'S FEES

PAPERS	NUMBERED
Notice of Motion, Affidavits & Affirmation Annexed Answering Affidavits	1-3
Replying Affidavits & Affirmation Annexed Exhibits	4-13

UPON THE FOREGOING CITED PAPERS, THE DECISION/ORDER IN THIS MOTION IS AS FOLLOWS:

Petitioner, tenant of apartment 69A located at 206 West 106th Street, NY, commenced this harassment proceeding against the Respondent landlord, alleging that Respondent 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. Specifically, Petitioner alleged that the harassment began in August of 2004, and continued through the date of the petition. According to Petitioner, there was water coming from the walls, ceilings and floors, as well as floor vibrations throughout her apartment. Petitioner further alleged that Respondent threatened to evict her if she did not stop calling the office to make complaints and cursing at the superintendent. Respondent also alleged that she called Respondent informing Respondent that

she would no longer pay any rent until the harassment stopped, and that in response persons acting on behalf of Respondent informed her that they would “get her out”.

The proceeding first appeared on the Court’s calendar on July 17, 2012, and on that date it was adjourned to August 28, 2012 for trial. Prior to the return date, Respondent moved for summary judgment seeking dismissal of Petitioner’s harassment claim, arguing that Petitioner’s allegations did not amount to harassment. By decision and order dated August 28, 2012, the Court (Wendt, J.) granted Respondent’s request and dismissed the proceeding.

Respondent then moved for an order pursuant to the NYC Administrative Code § 27-2115 (m)(4) awarding it attorney’s fees. Respondent contends that around the date of Petitioner’s petition, the subject building had no open violations. In addition, Respondent contends that several letters were sent to Petitioner in an attempt to gain access to her apartment for inspection and repair of any conditions that might have existed. According to Respondent, a subsequent inspection in the companion HP case yielded one violation for a bedroom door knob which had fallen off. Further, Respondent contends that Petitioner continuously refused to grant access for repairs, and caused Respondent to file a late certification of correction. Respondent now contends that it has incurred a total of 13,256.65 in legal fees.

Pursuant to NYC Administrative 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.

Petitioner submitted no written opposition to Respondent’s request for attorney’s fees. However, at oral argument Petitioner argued that she had agreed to withdraw her harassment petition after discussion with the Court (Wendt, J.) and Respondent’s counsel on the initial return date.

A review of the transcript of the parties’ first court appearance reveals that even though Respondent now alleges that she agreed to withdraw her harassment petition against Petitioner, she in fact did not. This is what prompted the Court (Wendt J.) to set the matter down for trial. Specifically, the Court inquired about Petitioner’s harassment allegations and based on her responses, the Court (Wendt J.) advised Petitioner that her allegations did not amount to harassment. In addition, the Court (Wendt, J.) warned Petitioner that if she pursued her harassment claim and Respondent was ultimately successful, she could be liable to Respondent for attorney’s fees. The Court (Wendt, J.) urged Petitioner that her complaints regarding repairs could and would be addressed within the context of the companion HP case she brought against Respondent. Upon Petitioner’s insistence and the Court’s inability to facilitate a suitable compromise for the parties, the harassment petition was adjourned for trial and later dismissed.

It is well-settled 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 (*see Grossman v Homenny*, 22 Misc3d 139 (A), 881 NYS2d 363 [App Term, 1st Dept 2009]).

Based on the foregoing, Respondent is the prevailing party in this proceeding, and its motion for attorney's fees is granted. The matter is set down for a hearing to determine the amount of attorney's fees due Respondent on March 5, 2013 at 2:30 p.m. in Part B, Room 1166.

This constitutes the decision and order of the Court.

DATED: January 28, 2013

HON. CHERYL J. GONZALES

Hon. Cheryl J. Gonzales, J.H.C.