

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

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465 WEA OWNERS CORP., :
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 : Petitioner, :
 : INDEX NO.: 64560/04
 :
 : -against- :
 : DECISION/ORDER
 : AFTER TRIAL
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 : ANDREA STRONGWATER, :
 :
 : Respondent. :
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HON. MARIA MILIN, J.H.C.:

Petitioner, 465 WEA Owners Corp., a cooperative corporation, commenced this proceeding against respondent, Andrea Strongwater, a tenant-shareholder in Apartment 7D (Apartment), located at 465 West End Avenue, New York City (Building). Petitioner seeks rent arrears from March 2004 to October 2004, at the monthly rate of \$1005.00, for a total amount of \$10,261.81, which includes late charges.

Respondent appears unrepresented by counsel. She has submitted a written answer which alleges, among other things, that petitioner has breached the warranty of habitability and that as a result of extensive water damage to the Apartment she was constructively evicted. She also seeks money damages.

Fred Rudd, the president of the company which manages the Building testified. He stated that respondent has not paid her monthly maintenance charges since March 2004. Rudd explained on the morning of September 11, 2003 he received a call from the Building's Superintendent, Waldemar Fedorowicz, that there was a water leak in the Building.

Mr. Fedorowicz testified that on September 11, 2003, he was notified by the tenant in Apartment 3C that water was leaking from his ceiling. Fedorowicz explained that the

first thing he did was to shut off the water supply to the "A" and "C" line apartments and he called the plumbing company used by the Building. Fedorowicz further testified that water was leaking into several apartments in the "C" line, and he went to each to investigate. He found the source of the leak in Apartment 8C where a plastic pipe which supplied water to an ice maker had broken.

Mr. Fedorowicz also tried to inspect respondent's Apartment, which is in the "C" line (although designated 7D) but he could not gain access because no one was home and the Building did not have the key. At approximately 11 a.m. that day he was able to get the Apartment key from a neighbor who had a copy. Fedorowicz explained that once inside he observed water leaking from the living room ceiling and that the paint in that area had begun to pucker and bubble. There was also water leaking down the walls and ceiling in the kitchen.

Fedorowicz stated that he called the Building's porter to come to the Apartment to assist with mopping the floors and to place plastic containers to catch the water in the areas where it was still dripping. Fedorowicz testified that he also put plastic coverings over the sofa and a bookshelf. He received a phone call from respondent that day, told her what had happened, and she asked him to open the windows to let air into the Apartment and to cover her possessions. Fedorowicz, returned to the Apartment over the next several days to make sure that the water had stopped leaking. He explained that he used a "moisture meter" to make sure the walls and ceiling were drying.

Andrea Strongwater testified that she was away on an overnight trip when she received a phone call to return to her Apartment because there had been a water leak. She explained that she found her Apartment in a "very large mess." She testified that a large section

of the foyer/entrance way was water damaged including ceilings, floor and walls. She explained that the walls, ceiling, and floor in a portion of her living room and kitchen were also damaged. Strongwater stated that because of this situation she did not live in the Apartment from September 2003 until February 2004. Beginning in January 2004, Strongwater had contractors begin work to repair the conditions in her Apartment.

In this case there was no evidence to contradict that respondent suffered water damage in a large part of her foyer, and in portions of her kitchen and livingroom. Next, it is undisputed that the damage was caused by a broken water pipe connected to an ice making appliance installed by the tenant-shareholders of Apartment 8C. Lastly, there is no dispute that the shareholders in apartment 8C paid respondent the amount of \$18,216.90, in December 2003, to resolve any claims regarding this incident and respondent also gave them a general release.

Respondent testified that the construction costs to restore her Apartment totalled \$15,397.59. She also testified that she incurred many other expenses because she was unable to live in the Apartment from September 2003 through February 2004. She explained that on several occasions she had to stay at hotels, although there were times when she was able to use friend's apartments in Florida and Paris.

It is well recognized that a cooperative corporation is responsible for complying with the warranty of habitability Frisch v. Bellmarc Mgmt. 190 AD 2d 383, (1st Dept 1993). However, in this case it is uncontradicted that the damages to respondent's Apartment were caused by a water leak from a broken pipe in Apartment 8C, a pipe which is not a part of the structure of the Building. Respondent received substantial compensation to reimburse her for the damages caused to her Apartment. In addition, the record demonstrates that the Building's

Management acted promptly and appropriately through the efforts of Mr. Federowicz to ameliorate the consequences of the leak. In fact, if the Building had had a copy of the Apartment key Mr. Federowicz could have acted even more quickly to prevent damage to respondent's Apartment.

Accordingly, there is no basis to conclude that the Building was in breach of the warranty of habitability. Respondent was adequately compensated and was able to restore her Apartment to its original condition. Respondent contends that the money she received was insufficient to compensate her for all the expenses she incurred. However, if this is so then she should not have agreed to accept the settlement amount.

Lastly, there has been no competent proof offered to support that respondent was constructively evicted from the Apartment. The trial record supports the conclusion that only a portion of the Apartment, to wit, part of the livingroom, part of the kitchen and the foyer were damaged. In addition, respondent admits that she choose not to commence any construction work inside the Apartment until January 2004. Respondent has failed to demonstrate that she was unable to occupy her Apartment during the relevant time period.

Accordingly, based on the foregoing petitioner is awarded a final judgment in the amount of \$10,261.82, with issuance of the warrant stayed five days

The foregoing constitutes the decision and order of the Court. The parties may collect their respective exhibits from Part A, Room 523, 111 Centre Street, on or before February 25, 2005, after which date the exhibits shall be returned to clerk's office for filing under this index number.

DATED: January 21, 2005



MARIA MILIN
JUDGE, HOUSING PART.