

Unpublished Disposition

(Cite as: 10 Misc.3d 133(A), 809 N.Y.S.2d 481, 2005 WL 3443057)

(The decision of the Court is referenced in a table in the New York Supplement.)

Supreme Court, Appellate Term, New York,
First Department.
465 WEA OWNER'S CORP., Petitioner-Landlord-
Respondent-Cross-Appellant,
v.
Andrea **STRONGWATER**, Respondent-Tenant-
Appellant-Cross-Respondent.
No. 570253/05.

Dec. 15, 2005.

Tenant appeals from a final judgment of the Civil Court, New York County ([Maria Milin, J.](#)), entered January 21, 2005 after a nonjury trial, which granted landlord possession and a recovery of rent arrears. Landlord cross appeals from so much of the aforesaid final judgment as denied it recovery of late fees.

Present: [McCOOE](#), J.P., DAVIS, [GANGEL-JACOB](#), JJ.

PER CURIAM.

***1 Final judgment ([Maria Milin, J.](#)), entered January 21, 2005, modified to award landlord late fees in the amount of \$1,129.61; as modified, final judgment affirmed, with \$25 costs.

The trial court's determination that tenant failed to meet her burden of proof with respect to her counterclaim for breach of the warranty of habitability is supported by a fair interpretation of the evidence (*see* [Kaniklidis v. 235 Lincoln Place Hous. Corp.](#), 305 A.D.2d 546 [2003]). Tenant's claim was premised on landlord's alleged failure to repair water damage to her apartment arising from a broken pipe supplying water to an ice-maker of her upstairs neighbor. The record reveals that the complained-of leak, affecting only a portion of tenant's living room, was promptly and appropriately attended to by building personnel. The leak was not

caused by any defect in the building's plumbing nor was the ice-maker pipe part of the building's structure. The slight delay in gaining access to the apartment was due to tenant's own failure to provide building personnel with a key to the apartment, not a lack of diligence on the part of the building staff.

The defense of constructive eviction was also properly rejected by the trial court, as there was no credible evidence that tenant was deprived of the beneficial use of the apartment premises ([Barash v. Pennsylvania Term. Real Estate Corp.](#), 26 N.Y.2d 77, 83 [1970]). The record supports the trial court's conclusion that tenant failed to establish that she was unable to occupy her apartment during the relevant time period, particularly where tenant insisted on having the repair work completed by her contractor and delayed commencement of those repairs until four months after the incident.

With respect to landlord's cross appeal, we find no basis to deny its request for late fees, which were authorized by the propriety lease and shown to due at trial.

This constitutes the decision and order of the court.

10 Misc.3d 133(A), 809 N.Y.S.2d 481 (Table), 2005 WL 3443057 (N.Y.Sup.App.Term), 2005 N.Y. Slip Op. 52050(U) Unpublished Disposition

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