

Proper Documentation Saves Landlord \$5,950! **by C.D. Publications**

New York: Mounting a defense against baseless claims requires good documentation. A tenant cannot prevail on a breach of the warranty of habitability claim with nothing more than unsubstantiated claims about hazardous conditions in her apartment.

The tenant appealed a trial court's decision to award her landlord possession and \$5,950 in unpaid rent in a nonpayment case.

The lower court's decision was affirmed by the appellate court. The appellate court reduces the award by one month's rent because it was double billed to the tenant, but upheld the remainder of the lower court's decision in favor of the landlord.

Landlords must document all complaints and repairs and be ready to defend against baseless claims.

The appellate court agrees the tenant failed to establish and prove her landlord breached the warranty of habitability. Since the tenant admitted she refused to pay rent because she believed the landlord breached the habitability warranty, the tenant owed all of the rent she had withheld.

In order to prevail in a breach of the warranty of habitability lawsuit, the tenant must allege and prove more than just general claims and allegations as to the condition of her apartment, and must prove that she gave the landlord a proper notice of the alleged condition. The court says general claims about conditions "do not suffice" to meet the tenant's burden as to habitability claims.

Since the tenant failed to allege and prove any specific claims regarding the alleged breach of the warranty of habitability for conditions in her apartment, she lost her case.

She also failed to establish there were defects in her apartment between the first trial date and the date when the appeal was heard, which would have constituted a continuing breach. The landlord is entitled to possession and a judgment for the unpaid rent against the tenant.

Lesson: The landlord prevailed but the appeal took eighteen months before being heard. Hopefully, the court conditioned her appeal on her continued payment of rent to the landlord or at least to the court. If the rent was paid to the court, the landlord will eventually get it, but he 18 month delay may have caused a hardship. Landlords must document all complaints and repairs and be ready to defend against baseless claims.

1180 50th St. Assoc., Inc., Respondent v. Topolenko, Appellant. 2005 NY Misc. LEXIS 1364. Unpublished opinion rules applies.

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