

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK SS.

HOUSING COURT DEPARTMENT
CITY OF BOSTON DIVISION
SUMMARY PROCESS
NO. 10H84SP001296

713 DUDLEY STREET ASSOCIATES
c/o ABRAMS MANAGEMENT COMPANY,
Plaintiff

VS

SABRIYA WILSON,
Defendant

FINDINGS OF FACT, RULINGS OF LAW AND ORDER FOR JUDGMENT

This matter was before the Court for trial on April 22, 2010. The Plaintiff is seeking to recover possession of Unit 28 at 713 Dudley Street in the Dorchester neighborhood of Boston (the "Premises") and damages for non-payment of rent. The Defendant did not file a timely answer, but, on the day of trial, filed a motion to allow her to file an answer late. The motion was allowed with respect to defenses, but all counterclaims are transferred to the regular civil docket. The answer filed by the Defendant asserts the defenses of retaliation, breach of warranty of habitability and interference with quiet enjoyment. The case was continued to April 22 for trial.

Based upon the testimony and other evidence presented at trial and the reasonable inferences drawn therefrom, in light of the governing law, the Court finds as follows.

The Defendant occupies the Premises pursuant to the terms of a written lease, which is signed by the Defendant and a representative of Abrams Management Company (Exhibit "1").

The lease took effect and the tenancy began in March 2008. The Premises are part of a larger residential complex which receives low income tax credits pursuant to both federal and state programs. (Exhibit "1").

Kimberly Parker, the property manager, testified that the rents are determined by MassHousing at thirty percent of the tenant's total adjusted gross income. The household income and composition of all tenants are re-certified by MassHousing on an annual basis. The Court credits Ms. Parker's testimony.

The occupancy agreement between the Plaintiff and Defendant provides that the Defendant is required to provide information to the management for re-certification on an annual basis. The Defendant is also required to pay any resulting re-adjustment in the rent based on the re-certification. (Exhibit "1," paragraph H(1)(a)). If the Defendant fails to re-certify, management can implement the increase without providing any further written notice to the tenant. (Exhibit "1," paragraph H(1)(a)). In addition, management can terminate the Defendant's participation in the subsidy. In such an instance, the tenant must be given notice and an opportunity to discuss the termination. (Exhibit "1," paragraph I(2)).

In 2009, the Defendant's rent was \$79.00 per month. (Exhibit "8"). In October and November 2009 the Plaintiff sent the Defendant reminder notices regarding the annual re-certification and requested that she contact management in this regard before January 10, 2010. (Exhibits "2" and "3"). A third notice was sent to the Defendant on December 1, 2010, informing her that if she did not respond before March 1, 2010, the Plaintiff had the right to terminate her subsidy and collect the market rent, without any further notice. (Exhibit "4").

The Defendant appeared at the management office on February 5, 2010 and submitted information regarding re-certification. As a result, the Defendant's rent was established at \$303.00 per month.

As of February 1, 2010, the Defendant owed \$112.00 in past due rent. On February 19, the Plaintiff caused the Defendant to receive a notice to quit for non-payment of rent dated February 17, 2010. (Exhibit "5"). Although the notice to quit informs the Defendant that she had the right to discuss the issue of non-payment with the Plaintiff, Cassandra Phillip, the assistant property manager, testified that she had no communication from the Defendant in response. The Court finds that the notice to quit was received by the Defendant and was legally sufficient to terminate her tenancy.

The Defendant did not complete the paperwork for re-certification before March 1, 2010 and on March 9, 2010, the Plaintiff sent the Defendant a notice requesting that she come in and do so. (Exhibit "6"). The notice also informed the Defendant that her subsidy had been terminated as of March 1, 2010 and her rent increased. (Exhibit "6").

On March 12, 2010, the Defendant still had not responded to the March 9 notice and the Plaintiff sent her a notice stating that, as a result of her failure to complete re-certification, rent had been established at the market rate of \$1,457.00. (Exhibit "7"). This notice further stated that, in accordance with the provisions of the rental agreement, the market rate rent would be charged for the month of March 2010 and that the Defendant's failure to contact the Plaintiff by March 16, 2010 would result in legal action. (Exhibit "7").

The Court finds that if the Defendant had completed her re-certification in a timely manner, her rent would have been established at \$303.00 per month.

The Court further finds that the Plaintiff was justified in implementing the proposed increased rent of \$303.00 per month effective March 1, 2010 and that, while the Plaintiff may have been permitted to terminate the Defendant's subsidy under the lease (Exhibit "1"), the lease requires the Plaintiff to give the Defendant notice of the proposed termination and an opportunity to discuss same. The Plaintiff failed to comply with the provisions of paragraph I(2) and offer the Defendant an opportunity to discuss the proposed termination. Accordingly, the Court finds that the Plaintiff has established a *prima facie* case for possession and damages in the amount of \$718.00, subject to the Defendant's defenses of retaliation, breach of warranty of habitability and interference with quiet enjoyment.

The Defendant testified that there were conditions at the Premises that breached the warranty of habitability and that the Plaintiff was aware of those conditions and failed to undertake repairs.

The Defendant testified that there was mildew in her bathroom, that the bedroom window was not weather tight and that there were water stains on the ceiling. She testified that these conditions were resolved last week, but that the Plaintiff had known about them since the inception of her tenancy because she spoke to Steve, Mike, Cassandra and Kim constantly about them. The Court does not credit this testimony and notes that since the inception of her tenancy in 2008, there have been three other Summary Process actions against the Defendant for non-payment of rent and the Defendant did not raise the issue of conditions in any of the prior actions.¹

¹See 08H84SP003787 commenced in September 2008, 09H84SP001267 commenced in March 2009 and 09H84SP003001 commenced in August 2009.

The Defendant testified that she contacted the City of Boston Inspectional Services Department (“ISD”) in late March 2010 and that they issued an abatement order to the Plaintiff. The Court credits the Defendant’s testimony that she contacted ISD in March but does not credit her testimony that an abatement order was issued. The Court finds that the earliest time that the Plaintiff could have been aware of the conditions at the Premises was late March 2010, after the service of the notice to quit, but prior to the commencement of this action.

Finally, the Defendant testified that her failure to execute the re-certification documents and to pay use and occupancy for March and April had nothing to do with the subsidy, it was simply because she wanted a three bedroom unit. The Defendant acknowledged she had been informed that there were no three bedroom units available at the development. The Court credits this testimony.

To defend against a claim for possession based upon a claim of breach of warranty of habitability, the Defendant, must prove that there was a material breach of the implied warranty of habitability.

The Court finds that the conditions identified by the Defendant do not constitute a material breach of the warranty of habitability and, even if they did, the Plaintiff was not aware of the conditions until after the Defendant was behind in her rent payment

Except in a case where the eviction is based on non-payment of rent, a tenant, asserting a defense of retaliation is entitled to a rebuttable presumption that the landlord retaliated against the tenant if the landlord served the tenant with either a written notice to quit or a notice increasing the tenant’s rent within six months of the tenant having engaged in a protected activity. This case is based on the Defendant’s non-payment of rent. The Defendant is not

entitled to a presumption of retaliation and must support her claim with some evidence of the Plaintiff's motives. The Defendant has failed to present any evidence of retaliation.

The statutory covenant of quiet enjoyment protects a tenant's right to freedom from "serious interferences" with their tenancy -- that is, acts or omissions which substantially impair the character and value of the leased premises. Violation of the statutory covenant of quiet enjoyment requires some degree of fault or foreseeability on the part of the landlord. The Defendant has not presented any credible evidence to support her claim that the Plaintiff interfered with her quiet enjoyment at the Premises.

The Court finds that the Defendant has not established a legal defense to the Plaintiff's claim.

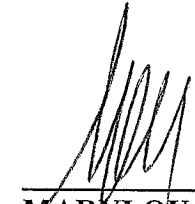
At various points during the trial, the Defendant asserted a Motion to Dismiss the Plaintiff's claim based upon the fact that the notice to quit failed to state the grounds for eviction with sufficient specificity to allow the Defendant to prepare a defense. The Court took the matter under advisement. For the reasons set forth above-the motion is **DENIED**.

ORDER FOR JUDGMENT

Based upon all the credible testimony and evidence presented at trial in light of the governing law, it is **ORDERED** that

1. Judgment enter for the Plaintiff for possession and damages in the amount of \$718.00.
2. Execution shall issue in the usual course.

SO ORDERED.



MARYLOU MUIRHEAD
ASSOCIATE JUSTICE

May 3, 2010

cc: Robert D. Russo, Esquire
Christopher Saccardi, Esquire