NEW YORK CITY CIVIL COURT
NEW YORK COUNTY: PART 90

SU JIN KWAK,

Plaintiff,

-against-

JUNG HEE SEO,

Defendant.

Index No: 22825/2014
DECISION/ORDER

Gerald Lebovits, J.

A trial was held in this plenary action on July 20, 2015, August 25, 2015, October 8, 2015, and November 2, 2015, on plaintiff's claim for rent and other matters and on defendant's counterclaims. This court find plaintiff's testimony credible but rejects defendant's testimony in part as not credible.

Based on the credible testimony, the court finds that defendant was not illegally locked out; that defendant, who is out-of-possession for four days in March 2014, may not recover damages even for those four days because plaintiff was not at fault for defendant's being out-of-possession; that defendant never paid the rent for the month for which she has no receipt; and that it was unreasonable for defendant to remain in possession waiting for plaintiff to renegotiate the lease until she was evicted in August 2014. Thus, defendant's counterclaims are dismissed. On the other hand, plaintiff's second cause of action seeking damages for changing a lock on her door — thus allegedly affecting her tax filings — has no merit. Similarly meritless is plaintiff's claim that plaintiff may keep defendant's security deposit; but defendant is entitled to an offset.

Plaintiff is entitled to rent through the lease term, and beyond the date of her eviction, given that the parties' lease at paragraph 18 contemplates that defendant is liable for rent after her eviction. (*See Holy Props. Ltd. v Kenneth Cole Prods.*, 87 NY2d 130, 134 [1995].)

Judgment for plaintiff for $10,200 for rent due from March 2014 through August 2014, plus $300 in late fees as authorized by the lease plus $6800, for rent following the eviction from September 2014 through December 2014 at the lease rate of $1700 a month, minus $2700 for the security deposit, for a total money judgment of $14,600, with interest from the mid-point of July 15, 2014.

This opinion is the court's decision and order.

Dated: December 21, 2015

J.C.C.

HON. GERALD LEBOVITS