

Sigsbee Holding Corp. v. Canavan

39 Misc. 2d 465, 240 N.Y.S.2d 900 (N.Y. Civ. Ct. 1963)

ARTHUR WACHTEL, J.

The landlord seeks a final order of eviction on the ground that the tenant replaced old, used cabinets, with new ones, and contends that this constitutes waste ***. The importance of this matter cannot of course be disregarded. Countless tenants would be affected by the decision in this case, for if this were a basis for eviction of tenants the door would be opened to evictions in almost every case where a landlord refuses to permit the tenant to improve the apartment, perhaps even to drive nails into the wall to hang shelves, pictures, curtains or medicine cabinets. The law obviously cannot permit such a *reductio ad absurdum*. Nor is this the law.

“It is the well settled rule that a tenant, in the absence of restrictions contained in a lease, may occupy and use the demised premises in any lawful way not materially different from the way in which they are usually employed, to which they are adapted, and for which they were constructed. The right to exclusive occupation granted to a tenant by a lease entitles him to use the premises in the same manner that the owner might have used them. However, the tenant must not do anything that injures the inheritance or which constitutes waste.” (1 Rasch, Landlord and Tenant, § 354, pp. 334-335 and cases therein cited.)

The landlord endeavors to distinguish the court's ruling in *Parker v. Johnson* (*supra*) on the ground that the latter case involved a refrigerator which was not permanently attached to the freehold, and this case involves "built-in-cabinets". However, there is no proof that the improvement made by the tenant in the course of the proper use and enjoyment of the premises involved an injury to the reversion. It in fact enhanced its value. Nor is there any proof that it constitutes a substantial and permanent change on the nature and character of the building premises. The tenant testified the old cabinets hung only on two nails and there was a hole in the ceiling above it with an exposed BX cable.

Accordingly, petition is dismissed on the merits.