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Johnson v. NYCHA-Boulevard Houses

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART O

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MCGARY JOHNSON,

Petitioner,

Index No. L&T 11665/20

- against-

**DECISION/ORDER
AFTER TRIAL**

NYCHA - BOULEVARD HOUSES,

Respondent.

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Present: Hon. HEELA D. CAPELL
Judge, Housing Court

Petitioner commenced this “illegal lockout” proceeding pursuant to RPAPL 713(10), to be restored to possession of the premises located at 908 Ashford Street, Apartment 5C, Brooklyn NY (“Premises”) against the New York City Housing Authority - Boulevard Houses (“NYCHA” or “Respondent”). The court could not locate NYCHA’s answer in the file or on NYSCEF and therefore deems the answer a general denial. The court held a trial today. Most of the facts are not in dispute:

McGary Johnson (“Petitioner”) introduced into evidence a New York State issued learner’s permit issued May 5, 2016 listing the Premises as his address (Pet Ex. 1). Petitioner testified he has been residing at the Premises since 1998, that he has never been added to the lease, nor to an annual recertification. He maintained that his parents were the tenants of record until his mother, Loretta Johnson, passed away. Mr. Johnson testified that he requested to be added to the lease but was denied permission. Neither party submitted evidence of same.

The parties agree that Petitioner was removed from possession of the Premises by NYPD on December 10, or 11, 2020, pursuant to a police raid. Both Petitioner and Johnson Varughese, NYCHA’s manager, explained that after the raid, the door to the Premises was damaged. Mr.

Varughese testified that NYCHA changed the door to the Premises and installed a padlock to the door as a safety measure. Mr. Varughese asserted that NYCHA did not issue Petitioner a key because he is not a tenant.

Petitioner also introduced into evidence a 10 Day Notice to Quit dated June 18, 2019 which was addressed to Petitioner and “Jor Johnson” at the Premises (Pet Ex. 2). It is undisputed that Respondent never pursued a holdover proceeding against Petitioner thereafter.

Respondent’s witness testified that NYCHA was waiting to obtain certain documents prior to commencing a proceeding against Petitioner. Respondent’s witness explained NYCHA learned of the passing of the tenant of record, Loretta Johnson, (“tenant”) in 2018 after commencing a nonpayment proceeding against her, and learned that the tenant died on September 17, 2018. Mr. Varughese explained that NYCHA did not know of Petitioner but issued the 10 Day Notice to him because he had accompanied Jor Johnson to the office at a certain point after the tenant of record passed away.

Ordinarily, a licensee cannot be restored to possession where restoration would be futile. *Andrews v Acacia Network*, (59 Misc3d 10 [App Term 2d Dept 2018]); *Viglietta v Lavoie*, (33 Misc3d 36 [App Term 2d Dept 2011]). However, here, Petitioner was not permitted entry to the Premises to collect his documents and prove entitlement to possession. He testified that he was the son of the tenant of record and accordingly, may in fact have rights to the apartment, despite NYCHA’s manager’s testimony that he was not listed on the appropriate paperwork.

Furthemore, the court takes notice that we are in the midst of a global pandemic during which time it is appropriate to weigh the equities in this proceeding. Here, Petitioner credibly testified that he has resided at the Premises, his family home, since 1998 and was locked out of his home without due process of law. He asserted that he is living and sleeping in an abandoned

car in the cold. Furthermore, it is clear that NYCHA was aware that the tenant of record had died since 2018 and indeed began, but never pursued, eviction proceedings against Petitioner. As aptly stated by Judge Jack Stoller in *Watson v NYCHA-Brevoort Houses*, (2020 NY Slip Op 20335 [Civ Ct Kings County, 2020]), “To lose one’s home of that duration with no notice or opportunity to plan for an orderly relocation in the midst of a pandemic weighs against holding any futility of restoration against Petitioner.”

Accordingly, Petitioner is awarded a final judgment of possession against the Respondent. Respondent is ordered to restore Petitioner to possession of the Premises forthwith. This decision and order is without prejudice to any causes of action NYCHA and Petitioner may have against each other for possession of the Premises, including an eviction proceeding or remaining family grievance, and their respective defenses thereto.

This constitutes the decision and order of the court.

Dated: Brooklyn, New York
January 11, 2021



HON. HEELA D. CAPELL
J.H.C.