2019-08-27

HUDSONVIEW COMPANY I, LP v. Marquette

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART D

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HUDSONVIEW COMPANY I, LP, **INDEX #: 58246/19**

Petitioner-Landlord,

DECISION/ORDER
MOTION SEQ. #1

-against-

DOROTHY MARQUETTE, **HON. KIMON C. THERMOS**

Respondent-Tenant,

-and-

"JOHN DOE" and 'JANE DOE'',

Respondents-Undertenants.

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Recitation, as required by CPLR §2219(a), of the papers considered in review of the instant moving papers.

Papers	**Numbered**
Notice of Motion, Affirmation, Affidavit and Annexed (Index and Ex. A-D)	1
Affirmation in Opposition and Annexed (Ex. A)	2
Affirmation in Reply	3

Appearing for Petitioner: Green & Cohen, P.C., By: Michael R. Cohen, Esq.
Appearing for Respondent-Tenant Dorothy Marquette: Housing Conservation Coordinators, Inc., By: Maria Amor, Esq.

Upon the foregoing cited papers, the Decision/Order on this motion is as follows:

Petitioner commenced this holdover proceeding in April 2019, seeking possession of the subject rent stabilized apartment on the grounds that Respondent-Tenant Dorothy Marquette ("Respondent-Tenant") committed or permitted a nuisance at the subject premises, pursuant to Rent Stabilization Code ("RSC") §2524.3(b) and in violation of the lease between the parties. Petitioner served a Notice of Termination upon Respondents on or about March 19, 2019. The notice of petition and petition were subsequently served upon Respondents on or about April 15, 2019. On May 21, 2019, Housing Conservation Coordinators, Inc. filed a notice of appearance on behalf of Respondent-Tenant.

Respondent-Tenant, by counsel, now moves for an Order, pursuant to CPLR §3211(a)(7), dismissing the petition for failure to state a cause of action on the grounds that the termination

notice is vague and conclusory and, thus, fails to comply with RSC §2524.2(b); and further fails to state sufficient facts to rise to the level of a nuisance under RSC §2524.3(b). Alternatively, Respondent-Tenant seeks leave to conduct discovery pursuant CPLR §408 and §3101 and leave to file an amended answer pursuant to CPLR §3025(b).

In opposition, Petitioner argues that the termination notice contains sufficient allegations to enable Respondent-Tenant to formulate a defense as required by RSC §2524.2(b) and §2524.3(b). Petitioner further argues that Respondent-Tenant has not demonstrated ample need for discovery.

When considering a motion to dismiss pursuant to CPLR §3211, the court must determine whether the pleadings state a cognizable cause of action. In doing so, the court must "afford the pleadings a liberal construction, take the allegations in the [pleadings] as true and afford the [pleadings] the benefit of every possible inference." *EBC I, Inc. v. Goldman, Sachs & Co., 5 N.Y.3d 11, 19 (2005).* "The motion must be denied if, from the pleadings' four corners, factual allegations are discerned which taken together manifest any cause of action cognizable at law." *511 West 232nd Owners Corp. v. Jennifer Realty Co., 98 N.Y.2d 144, 152 (2002),* quoting *Polonetsky v. Better Homes Depot, 97 N.Y.2d 46 (2001).*

In the context of a landlord-tenant proceeding, RPAPL §741 requires that the petition state the facts upon which the proceeding is based. The adequacy of the pleadings in a holdover proceeding depends upon the facial sufficiency of the predicate notice, which terminates the tenancy and serves as the basis of the holdover. *Chinatown Apts. v. Chu Cho Lam, 51 N.Y.2d 786 (1980).* See also, *RSC §2524.2(b)*. This is particularly true when, as here, the petition incorporates the allegations of the predicate notice. A petition predicated on a defective notice must be dismissed for failure to state a cause of action. *Chinatown Apts. v. Chu Cho Lam, supra.; Golub v. Frank, 65 N.Y.2d 900 (1985); 520 East 81 St. Associates v. Lenox Hill Hospital, 77 N.Y.2d 944 (1991); Ansonia Associates v. Consiglio, 163 A.D.2d 98 (1st Dept. 1990).*

RSC §2524.2(b) states that

> "[e]very notice to a tenant to vacate or surrender possession of a housing accommodation shall state the ground under section 2524.3 or 2524.4 of this Part, upon which the owner relies for removal or eviction of the tenant, the facts necessary to establish the existence of such ground, and the date when the tenant is required to surrender possession." *9 NYCRR §2524.2(b).*

RSC §2524.3(b), commonly referred to as the "nuisance section", permits a landlord to terminate a tenancy without prior service of a notice to cure the offensive conduct, where

> "(b) The tenant is committing or permitting a nuisance in such housing accommodation or the building containing such housing accommodation; or is maliciously, or by reason of gross negligence, substantially damaging the housing accommodation; or the tenant engages in a persistent and continuing course of conduct evidencing an unwarrantable, unreasonable or unlawful use of the property to the annoyance, inconvenience, discomfort or damage of others, the primary purpose of which is intended to harass the owner or other tenants or occupants of the same or an adjacent building or structure by interfering substantially with their comfort or safety. The lawful exercise by a tenant of any rights pursuant to any law or regulation relating to occupancy of a housing accommodation, including the RSL or this Code, shall not be deemed an act of harassment or other ground for eviction pursuant to this subdivision."

9 NYCRR §2524.3(b).

In interpreting this statute, courts have held that, to constitute a nuisance, the tenant's use of the property must impede upon the owner's, or other tenants', interest in the use and enjoyment of the property. "However, not every annoyance will constitute a nuisance [; rather, a n]uisance imports a continuous invasion of rights…" *Domen Holding Co. v. Aranovich, supra. at 124*, quoting *Frank v Park Summit Realty Corp., 175 A.D.2d 33, 35 (1st Dept. 1991)".* The objectionable conduct must be recurring, frequent, continuous or extremely dangerous and must substantially interfere with the comfort or safety of the owner or other tenants. *Domen Holding Co. v. Aranovich, supra.; West Side 95 Manor Associates v. Braxton, 11 Misc.3d 1069A (Civ. NY 2006)*; *Black Veterans for Social Justice, Inc. v. Killeen, supra.; Cruz v. Davis, supra.* "No strict quantitative test exists establishing how many incidents warrant a finding of nuisance. Rather, the court must weigh both the quantitative and qualitative aspects of the particular set of facts in evaluating whether the high threshold of proof required for eviction based on nuisance has been met." *Beuhler 1992 Family Trust v Longo, 2019 NY Misc. Lexis 757 (Civ. Kings 2019).* See also, *Domen Holding Co. v. Aranovich, supra.; West Side 95 Manor Associates v. Braxton, 11 Misc.3d 1069A (Civ. NY 2006); Black Veterans for Social Justice, Inc. v. Killeen, supra.; Cruz v. Davis, supra.; 160 West 118th Street Corp. v Gray, 7 Misc.3d 1016A (Civ. Kings 2004).*

The standard of review utilized by the courts, upon determining the sufficiency of the factual allegations in a termination notice, is "reasonableness in view of all attendant circumstances." *Cruz v. Davis, 20 Misc.3d 1135A (Civ. NY 2008); 297 Lenox Realty Co. v. Babel, 19 Misc.3d. 1145A (Civ. Kings 2008); Black Veterans for Social Justice, Inc. v. Killeen, 2007 N.Y. Misc. Lexis 982 (Civ. NY 2007).* The court will uphold a termination notice as long as

it sufficiently advises the tenant of the claimed allegations to enable the tenant to prepare a defense. *Black Veterans for Social Justice, Inc. v. Killeen, supra.; Domen Holding Co. v. Aranovich, 1 N.Y.3d 117 (2003); 297 Lenox Realty Co. v. Babel, supra.* However, if the court finds that the predicate notice is insufficient, the proceeding must be dismissed. *Chinatown Apts. Inc. v Chu Cho Lam, 51 N.Y.2d 786 (1980).*

In stating the facts upon which the claimed nuisance is based, the subject termination notice alleges the following:

> "...(1) You and/or you (sic) guests are causing a nuisance by interfering with the comfort and rights of the other tenants in the subject building by smoking cigarettes in your apartment and in the common areas;
> (2) Neighbors have filed numerous complaints with the management office regarding the smoking issue including but not limited to on February 18, 2018, February 1, 2019 and February 10, 2019;
> (3) You are causing a nuisance by interfering with the comfort and rights of the other tenants in the subject building by constantly playing music excessively loud;
> (4) On February 28, 2019 you disposed of a lit cigarette out of your window causing significant fire damage to the management office and school below your apartment;..."

Upon applying the "reasonableness in view of all attendant circumstances" standard of review, this Court finds that the subject termination notice does not give reasonable notice of Petitioner's claims to Respondent-Tenant to enable her to prepare a defense. Instead, the subject termination notice primarily consists of ambiguous and conclusory allegations, which do not rise to the level of a nuisance. More specifically, it is unclear whether paragraphs "(1)" and "(3)" of the notice is referring to one incident or several incidents, as no dates, times or specific instances are included. Next, even though paragraph "(2)" of the notice includes dates, there are no times or specific instances or complaints are stated. Although there is no strict requirement that a termination notice contain dates and times of the alleged incidents, failure to include such specifics is a relevant consideration in determining the reasonableness of the notice. *Nilou & Assocs. Realty v Patton, 2019 NYLJ Lexis 429 (Civ. NY 2019)* and *297 Lenox Realty Co. v. Babel, 19 Misc.3d. 1145A (Civ Kings 2008).*

As to paragraph "(4)" of the notice, this Court finds that the alleged conduct does not rise to the level of a nuisance. As stated by the court, in *Leopold v Eckles, 2007 NY Misc. Lexis 6818 (Civ. NY 2007),*

"[t]here are a long line of cases in which courts have found tenants could not be evicted

> on the basis of an isolated instance of objectionable conduct, even though the consequences of that conduct could be substantial. For example, a single incident of setting fire to an apartment (James v. New York City Housing Authority, 186 A.D.2d 498 (1st Dept. 1992)… [was] insufficient to warrant the tenant's eviction."

See also, *Pamac Realty Corp. v Bush, 101 Misc.2d 101 (Civ. NY 1979)*, a single incident in which the tenant negligently caused a fire by dropping a lit cigarette on his mattress did not rise to the level of a nuisance; *Vukovic v Wilson, 245 A.D.2d 1 (1st Dept. 1997)*, a single incident of an accidental fire does not constitute a nuisance; *Mex. Leasing LLC v Dabo, 2018 NYLJ Lexis 2694 (Civ. Queens 2018),* where the court recognized that nuisance proceedings based upon single isolated incidents are routinely dismissed, even where a tenant causes a fire; and *Leopold v Eckles, Loreto Pres. LLC v Plair, 2017 NYLJ Lexis 2601 (Civ. Kings 2017),* where the court held that a landlord must provide specific facts to establish aggravating circumstances or a pattern of conduct to show that a single incident rises to the level of a nuisance.

In light of the foregoing, this Court finds that the subject termination notice is insufficient to maintain this proceeding. Therefore, dismissal of the petition is warranted. *Black Veterans for Social Justice, Inc. v. Killeen, supra.; Domen Holding Co. v. Aranovich, supra.; 297 Lenox Realty Co. v. Babel, supra. Chinatown Apts. Inc. v Chu Cho Lam, supra.*

Accordingly, those branches of Respondent-Tenant's motion seeking dismissal of the petition, pursuant to CPLR §3211(a)(7), is granted. As such, the petition is hereby dismissed, without prejudice. The remaining branches of Respondent-Tenant's motion are denied, as moot.

This constitutes the Decision and Order of the Court.

Dated: August 27, 2019
New York, New York

Kimon C. Thermos, J.H.C.