2019-11-13

# Polyclinic Owner LLC v. Maria

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

----------X Index No. 50815/19

POLYCLINIC OWNER LLC,

Petitioner,

-against- DECISION/ORDER

RAMONA MARIA,

Respondent.

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SCHNEIDER, J.

This summary holdover proceeding was submitted to the court by counsel for both sides on an agreed statement of facts and memoranda of law. Briefly, the uncontested facts are as follows.

The apartment at issue is located in a project-based Section 8 building covered by 24 CFR §880 et seq., 24 CFR §8.2 et seq., and HUD Handbook 4350.3, rev. 1. Respondent Ramona Maria has lived in Apartment 1Y on the first floor of the building since March 2011. She signed a one year lease when she moved in. The lease, by its terms, renews for successive terms of one year unless specifically terminated.

In the spring on 2018, petitioner received a request for a reasonable accommodation from a disabled tenant living on an upper floor of the building. The request stated that this tenant had cerebral palsy and other conditions, and that she needed a motorized wheelchair, a hospital bed, and special bathroom equipment. Her condition was deteriorating. She requested a handicapped accessible apartment on the ground floor of the building.

As a result of this request, petitioner notified respondent, for the first time, that it considered her apartment to be handicapped accessible, and that she would have to move to a different apartment to accommodate the other tenant. She was offered an apartment on the tenth floor. After initially

agreeing to move, respondent retained counsel, refused to move to the tenth floor, and requested her own accommodation. Respondent documented that she suffered from severe psychiatric illness, including a fear of heights and a fear of enclosed spaces including elevators. She asked to be accommodated with a first floor apartment. The parties have stipulated that the respondent had not previously told petitioner of her disability, but that the accommodation she requested was reasonable. In late June 2018 petitioner offered respondent an unspecified apartment on the ground floor.

In October 2018 petitioner served respondent with a Notice to Cure. The notice states that respondent has breached Paragraph 19 of her lease and 24 CFR §880 et seq. by refusing to relocate to a comparable first floor apartment. It demanded that she cure the violation, presumably by agreeing to relocate to a first floor apartment, by November 5, 2019 or face termination of her tenancy. A Notice of Termination followed later in November 2018 and this holdover proceeding began in January 2019.

For its claim that respondent has breached her lease, petitioner relies exclusively on Paragraph 19 of the lease, which reads, in its entirety, as follows: "19. Size of dwelling: The tenant understands that HUD requires landlord to assign units accordance with the landlord's written occupancy standards. These standards include consideration of the unit relationship of family members, age and sex of family members, and family preference. If the tenant is or becomes eligible for a different size unit, and the required size unit becomes available, the tenant agrees to: (a) Move within 30 days after the landlord notifies him/her that a unit of the required size is available within the project; or (b) remain in the same unit and pay the HUD-approved market rent."

This provision says nothing at all about involuntary transfers for any reason other than the size of the unit. It also authorizes only termination of the subsidy upon failure to comply, not termination of the tenancy and eviction.

Petitioner also relies on 24 CFR §880.605, which once again refers only to the need to relocate families to an appropriately sized apartment if the family composition changes. Finally, petitioner relies

on Chapter 7 of the HUD Handbook 4350.3 rev. 1. The chapter is titled "Recertification, Unit Transfers, and Gross Rent Changes." The introduction states, "This chapter describes the requirements for determining when transfers are needed based on changes in family composition and the availability of suitable units." Nothing in the chapter suggests applicability to an involuntary transfer to accommodate a different handicapped tenant. The chapter does address transfers that are requested by a tenant who needs a reasonable accommodation, and says that those transfers should be given priority over other requests that do not involve disability. It also says the owner must be responsible for the costs of such a transfer. But nothing in this chapter is relevant to the circumstances presented here.

There are federal regulations relevant to this case, but they do not support petitioner's theory of the case. For example, 24 CFR §8.27 says that a vacant accessible unit must be offered first to a current tenant who needs it, second to an applicant on the waiting list who needs it, and third, and only if no one in the first two categories can be found, to someone who does not need it. The regulation states, "When offering an accessible unit to an applicant not having handicaps requiring the accessibility features of the unit, the owner or manager may require the applicant to agree (and may incorporate this agreement in the lease) to move to a non-accessible unit when available." The HUD Handbook section applying this provision, §2-32 (c)(2)(a), states that when an accessible unit is rented to a tenant who does not need it, the owner "should incorporate into the lease an agreement that the tenant will move to a non-accessible unit of the proper size within the same property when one becomes available. The lease should state whether the tenant or the owner will pay for the cost of such a move."

Here, petitioner did not inform respondent when she rented the subject apartment that it was an accessible apartment or that she might be compelled to move, nor did it include any such clause in her lease. Respondent argues that this is because the apartment is not in fact accessible, or at least that petitioner did not consider it so in 2011. The court need not reach that issue. Suffice it to say that

having failed to include in respondent's lease the permitted language, petitioner has no right, either under the lease or under any applicable law, to require respondent to relocate.

The court has not reached any of the other issues raised by the parties.

Although not strictly relevant here, the court notes that federal law and regulations do not require petitioner to provide the other tenant at issue here with an accessible apartment until such an apartment becomes vacant, although it may be required to make appropriate alterations to her existing apartment.

For all the foregoing reasons, the proceeding is dismissed on the merits.

Dated: 11/13/19

J. H. C.
JEANT SCHNEIDER
JUDGE, HOUSING PART