2021-06-15

The George Units v. Diaz

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

----------X Index No. 53738/20

THE GEORGE UNITS,

Petitioner,

-against- DECISION/ORDER

JOANNIE DIAZ, FELIX SOLANO, et al.,

Respondents.

----------X

SCHNEIDER, J.

This is a summary holdover proceeding. The tenants of record, Joannie Diaz and Felix Solano, are represented by counsel. Their two adult children are separately represented. The petitioner is also represented by counsel.

The Notice to Cure attached to the petition, and incorporated by reference, alleges that respondents have violated their lease agreement by installing a partition in the apartment and by using a washing machine in the apartment. The Notice to Cure demands that these lease violations be cured by July 30, 2019. A Notice of Termination dated January 17, 2020 alleges that the two alleged lease violations were not cured before September 20, 2019 when the apartment was damaged by fire. The Notice of Termination appears to concede, however, that the two alleged lease violations had been cured before the Notice of Termination was served. Further, petitioner's counsel, in her affirmation in opposition to the current motion, at Paragraph 8, that "This proceeding is not predicated on a Breach of Lease claim."

Rather, petitioner claims that the case is based upon a claim of nuisance, stated in the Notice of Termination dated January 17, 2020, and that the allegations in that notice with respect to the partition and the washing machine are included just to show that they are part of a continuing nuisance course of

conduct. The Notice of Termination is focused, rather, on a fire that occurred in the apartment in September 2019. Petitioner alleges that respondent stored belongings on their fire escape, that they were given two notices, one in July 2018 and one in August 2019, to remove the items because they were "unsightly, as well as a fire hazard." The two notices also said that the storage of items on the balcony violated respondents' lease and that management would inspect to make sure they were removed promptly. There is no indication in the pleadings about whether the belongings were removed between the two notices. The September 2020 fire started on the balcony, apparently when a cigarette ignited the items stored there. Respondent says the cigarette was tossed from upstairs.

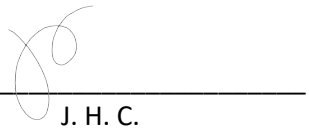
There are several problems with petitioner's nuisance claim. First, it is clear as a matter of law, that a single fire does not constitute a nuisance. See *James v. New York City Housing Authority,* 186 AD 2d 498 (1st Dept. 1992). To make out a case of nuisance, a petitioner must show that there has been a "[attern of continuity or recurrence" of the behavior that is alleged. *Domen Holding Co. v. Aranovich*, 1 NY 3d 117, 124 (2003), quoting *Frank v. Park Summit Realty Corp*, 175 AD 2d 33 (1991). Here, the only potentially recurring behavior mentioned in the Notice of Termination is the storage of belongings on the balcony, and this was clearly a curable condition. Even petitioner's notices about the balcony say that it is a breach of the lease and demand that it be cured. It is notable, as well, that petitioner waited a year before any follow-up after its first notice about the balcony.

Even assuming that all of the facts alleged by the petitioner in its notices, and in the papers submitted on this motion, are true, petitioner has not made out a case of nuisance. At best, petitioner has identified three separate breaches of the lease – the partition, the washing machine, and the storage of items on the balcony – all of which were cured by the respondents before the issuance of the Notice of Termination. For this reason, the proceeding is dismissed.

Even were the court not convinced that the case had to be dismissed for failure to make out a case of nuisance, the case would have to be dismissed because there is another action pending,

commenced before this one, based upon the same claim. Petitioner has filed, and continues to pursue, an ejectment action in the Supreme Court, seeking the same relief sought here – removal of the respondents from the premises – and based upon the same factual allegations – the fire that started on their balcony.

Dated: 6/15/21



J. H. C.