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Dunn v 583 Riverside Dr LP
2019 NY Slip Op 29399
Decided on December 30, 2019
Civil Court Of The City Of New York, New York County
Stoller, J.
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
This opinion is uncorrected and subject to revision before publication in the printed Official Reports.

Decided on December 30, 2019

Civil Court of the City of New York, New York County

<p>Denise Dunn, Petitioner,</p> <p>against</p> <p>583 Riverside Dr LP, Respondent.</p>

HP 1782/2019

Jack Stoller, J.

Denise Dunn, the petitioner in this proceeding ("Petitioner"), commenced this proceeding against 583 Riverside Dr LP, the respondent in this proceeding ("Respondent"), seeking relief on a claim of harassment. Respondent did not appear. Petitioner proved that she properly and timely served Respondent with the petition. The Court held an inquest on December 12, 2019.

Allegation that rent demand is harassment

At inquest, Petitioner introduced into evidence a demand for payment of rent that Respondent served on Petitioner pursuant to RPAPL §711(2). Petitioner took the position that

service of the rent demand constituted harassment and that she does not owe any rent to Respondent. The evidence that Petitioner introduced to support her position was a rent breakdown she had obtained from Respondent.

Normally, in order to ascertain the merits of a landlord's position that a tenant owes rent, the Court looks at the most recent zero balance on a rent breakdown, adds the rent liability that accrued after that, and then subtracts all the payments. In this matter, the evidence shows that Petitioner is a beneficiary of a federal housing subsidy pursuant to 42 U.S.C. §1437f known as "Section 8," according to which the amount of rent that Petitioner would be liable to pay tracks her income, 42 U.S.C. §1437a(a)(1)(A), 24 C.F.R. §5.628(a), which means that Petitioner's share as such would change as her income changed. While Petitioner proved her most recent share of her rent, she did not provide proof of what her share was going back to the most recent zero balance in her rent breakdown.

Be that as it may, Respondent's rent breakdown shows that Petitioner's share of the rent was \$855 00 from February of 2017, the month after the breakdown last shows a zero balance, through April of 2017, \$920 00 from May of 2017 through April of 2018, \$686 00 from May of 2018 through August of 2019, and \$171 00 from September of 2019 through November of 2019. Assuming *arguendo* that the rent breakdown accurately states Petitioner's share of the rent, Petitioner aggregate rent liability from February of 2017 through November of 2019 would be \$25,094 00. The rent breakdown shows that Petitioner also had a \$5 00 credit through January of 2017 and that Petitioner paid Respondent a total of \$21,139 50 in rent from February of 2017 [*2] through November of 2019. Crediting this credit and these payments against Petitioner's rent liability results in a balance of \$3,949 50. Given this balance, the Court does not find that Respondent's service of a rent demand on Petitioner is frivolous or conduct that constitutes harassment. The apparent fact (which evidence at inquest was insufficient to prove) that Respondent may not have sued Petitioner for nonpayment of rent from February of 2017 through November of 2019 potentially raises a laches defense, but such a defense does not render service of a rent demand to be frivolous, particularly as even the successful interposition of a laches defense would not prevent Respondent from obtaining a non-possessory money judgment. *1560 80 Pelham Pkwy Assocs v Errico*, 177 Misc 2d 947, 948 (App Term 1st Dept 1998), *Nunz Realty, LLC v McBride*, 40 Misc 3d 1229(A)(Civ Ct NY Co 2013).

Allegation that service of rent demand on minor child is harassment

While the demand seeks payment of rent from Petitioner, it also seeks payment of rent from Petitioner's minor child. Petitioner takes the position that demanding payment of rent from her minor child constitutes harassment.

N.Y.C. Admin. Code §27-2004(a)(48) defines "harassment" as, *inter alia*, any act by an owner of such significance as to substantially interfere with or disturb the comfort, repose, peace, or quiet of any tenant. Petitioner's evident care for her minor child shows that she regards Respondent's demand of payment of rent from him with alarm, which the Court finds indeed shows an act of Respondent that interferes with Petitioner's comfort and repose, particularly given that a demand for rent from anyone other than a tenant, much less a minor child, is unnecessary, as RPAPL §711(2) only requires a demand from the "tenant," not a non-tenant. *Grabino v. Howard Stores Corp.*, 111 Misc 2d 54, 60 (Civ. Ct. Kings Co. 1981).

Although Respondent did not appear in the proceeding, the only purpose of service of the rent demand would be to establish a predicate for a nonpayment proceeding against Petitioner. A recent change in the law has implications for any such summary proceeding. As a part of the Housing Stability and Tenant Protection Act of 2019 ("HSTPA"), the Legislature amended RPAPL §749(1) to authorize the Court to issue a warrant commanding a marshal to remove all persons "named in the proceeding," 2019 NY ALS 36, 2019 NY Laws 36, 2019 NY Ch. 36, 2019 NY SB 6458, an amendment that could be interpreted to preclude an eviction of anyone who is not named in the proceeding, including minor children. Minor children have not previously been necessary parties to summary proceedings, [Daley v. Billingshurst](#), 5 Misc 3d 138(A)(App. Term 2nd Dept. 2004), a proposition that raises the question as to whether the HSTPA now requires landlords to name minor children to summary proceedings.

The purpose of naming parties to summary proceedings is to afford occupants of real property an opportunity to defend against eviction. *See, e.g., Parkash 2125 LLC v. Galan*, 61 Misc 3d 502, 509-10 (Civ. Ct. Bronx Co. 2018), [G & L Holding Corp. v. Gonzalez](#), 43 Misc 3d 1206(A)(Civ. Ct. NY Co. 2014). If, in a summary proceeding, a landlord named a minor child of an occupant, the minor child would most likely appear by the occupant as a custodial parent, CPLR §1201, whose defense of the summary proceeding would have the same effect on the outcome whether the parent defended in their own name only or also on behalf of a child.

The only way that naming a minor child's parent would not suffice to afford the minor child an opportunity to defend against a summary proceeding is if the minor child's parent did not wish to defend against an eviction but the minor child wanted to live in the premises without the [*3]parent. While the law presumes that the residence of a child is the residence of the child's parents, *Catlin v. Sobol*, 77 NY2d 552, 559 (1991), an emancipated minor, in theory, could be sixteen years old and live separate from their family. *See, e.g.*, 9 N.Y.C.R.R. §349.5. In theory, then, an adult occupant could conceivably move out of a premises, leaving an emancipated minor, such that service on only the adult occupant without service on the emancipated minor could fail to give the emancipated minor an opportunity to defend the summary proceeding.

In these circumstances, if a landlord follows the dictates of the Legislature and errs on the side of naming more respondents than less respondents in a summary proceeding, the Court cannot find that compliance with the expressed desires of the Legislature also subjects a landlord to harassment liability. As the Appellate Term recently stated, "[i]f that is an undesirable result, the problem is one to be addressed by the legislature." [*Harris v. Israel*, 65 Misc 3d 155\(A\)](#) (App. Term 1st Dept. 2019).

Accordingly, the Court dismisses this proceeding after inquest, without prejudice to any position that either Petitioner, Respondent, or any other party wishes to take in any future litigation concerning the parties and/or the subject premises, including but not limited to a summary nonpayment proceeding between the parties or otherwise concerning the subject premises.

The parties are directed to pick up their exhibits within thirty days or they will either be sent to the parties or destroyed at the Court's discretion in compliance with DRP-185.

This constitutes the decision and order of this Court.

Dated: New York, New York

December 30, 2019

HON JACK STOLLER

J.H.C.

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