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New York City Hous. Auth. v. Jenkins

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[*1]

New York City Hous. Auth., Managed by Gun Hill Houses v Jenkins
2020 NY Slip Op 50061(U)
Decided on January 13, 2020
Civil Court Of The City Of New York, Bronx County
Sanchez, J.
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on January 13, 2020

Civil Court of the City of New York, Bronx County

**New York City Housing Authority, Managed by Gun Hill Houses,
Petitioner,**

against

Shante Jenkins, Respondent.

810037/18

For Petitioner: NYCHA Law Department

For Respondents: pro-se (no appearance)

Enedina Pilar Sanchez, J.

The Court, *sua sponte*, restored the matter for a hearing on whether the imposition of sanctions and/or costs is appropriate under these circumstances. All parties were given notice. On October 15, 2019, a hearing was held. Respondent did not appear.

Evonne Parker, the manager for Gun Hill Houses, was sworn in and testified. She stated that Shante Jenkins is a tenant in Gun Hill Houses. Human Resource Administration (HRA) pays a portion of respondent's rent. The remaining portion is supposed to be paid by the respondent. Respondent did not pay her portion of the rent.

Ms. Parker described the process of commencing non-payment cases. Management relies on the Rent Delinquency Report. This report is "ran" daily/monthly and calculates a total amount of arrears owed and the number of months that the tenant is delinquent. Ms. Parker testified that the Rent Delinquency Report applies HRA payments to the old balance.

Ms. Parker testified that the legal actions are usually commenced by the Housing Assistants. The Housing Assistants generate the Petition and Notice of Petition around the 20th of the month. Those petitions are reviewed by the Housing Assistants and then the manager signs off on the paperwork after comparing it to the "legal log report." The "legal log report" lists [*2] every petition and notice of petition for each tenant. The managers and the Housing Assistants have access to the legal log report.

Ms. Parker testified that the first step in commencing a legal action is that someone makes an oral rent demand. [FN1] After the oral rent demand, a petition is generated. The petition is supposed to credit HRA payments to the months for which they are earmarked. Ms. Parker testified that the policy is to apply HRA payments to the corresponding months.

On or about October 12, 2018, petitioner commenced a first summary non-payment proceeding under *L & T Index No. 810037/18* seeking rents from June 2017 through August 2018. Respondent did not appear. Petitioner took no action on the first case.

On or about January 28, 2019, petitioner commenced a second summary non-payment proceeding under *L & T Index No. 800645/19* seeking rents from June 2017 through December 2018. Petitioner sought a default warrant. On or about February 22, 2019, the application for a default warrant was declined due to an error in the affidavit of merit.

On or about June 10, 2019, petitioner commenced a third summary non-payment proceeding under *L & T Index No. 805433/19* seeking rents from June 2017 through April 2019. Petitioner sought a default warrant.

The Court took notice of the two default warrants sought against the same respondent for the same rents due. A search of the court database revealed that there were three non-payment cases

pending that sought arrears from June 2017. None of the three cases were discontinued.

Ms. Parker's testimony was not clear as to why multiple cases were commenced for overlapping rents. She testified that she was not sure why the Housing Assistant started a new case without discontinuing the previous one. There are two Housing Assistants working at Gun Hill Houses but it was not clear who commenced these cases. [\[FN2\]](#)

The issue of non-payment petitions seeking overlapping rents has been addressed by this Court several times. [See, *New York City Hous. Auth. v. Various Tenants*, 60 Misc 3d 1210\(A\)](#) (Civ. Ct. Bronx Co. 2018) and [New York City Hous. Auth. v. Marrero](#), 64 Misc 3d 1228(A) (Civ. Ct. Bronx Co. 2019) and [New York City Hous. Auth., Various Houses v Various Tenants, No. II](#), 65 Misc 3d 1216(A) (Civ. Ct. Bronx Co. 2019) and [New York City Hous. Auth., Sedgwick Houses v. Scott](#), 65 Misc 3d 1229(A) (Civ. Ct. Bronx Co. 2019). During the numerous hearings, the witnesses were unable to explain why the overlapping cases continue to be filed.

This Court previously determined that filing multiple cases seeking overlapping rents lacks a reasonable inquiry. *See Rules of the Chief Administrator Part 130*. 22 NYCRR 130-1.1a(b) "By signing a paper, an attorney or party certifies that, to the best of that person's knowledge, information and belief, formed [*3] after an inquiry reasonable under the circumstances (1) the presentation of the paper or the contentions therein are not frivolous as defined in section 130-1.1(c) of this Subpart."

The process of commencing legal actions was described by petitioner's witness. The process should have prevented the filing of three cases seeking overlapping rents. There was no testimony as to why the process failed. Petitioner's witness simply did not know why the process failed and the Court must infer that the process described by the witness was not followed.

In determining whether to award sanctions, the court must consider whether the attorney adhered to the standards of a reasonable attorney. By signing the certification on court papers an attorney certifies that it is not frivolous but rather is based on knowledge, information and belief, formed after an inquiry reasonable under the circumstances. [DeRosa v. Chase Manhattan Mortgage Corp.](#), 15 AD3d 249 (App. Div. 1st Dep't., 2005).

Each petition is verified and signed by an attorney. The attorney has a duty to ensure that the Petition and Notice of Petition comply with the current laws and are not frivolous. Frivolous conduct is defined in §130-1.1(c)(1) as conduct *completely without merit in law or fact and cannot be*

supported by a reasonable argument for an extension, modification or reversal of existing law. It cannot be said that petitioner's conduct had "merit in law or fact" as it is undisputed that there were multiple cases filed for overlapping rents. Based on the above, the court finds that petitioner's conduct was frivolous.

Petitioner's counsel did not make an "inquiry reasonable under the circumstances" as required by 22 NYCRR 130-1.1a(b). A simple search of the court database, or of petitioner's records, would have revealed that there were cases commenced for overlapping rents.

Filing of multiple cases seeking overlapping rents creates an undue burden on the Courts and on the respondent. The Court must create multiple files, review multiple default warrant requests, and potentially schedule multiple court appearances regarding the same rents. Housing Court is already one of the busiest courts in the New York State Unified Court System. Adding frivolous cases to the calendar causes undue delays for other cases that must be heard.

The potential harm to the respondent is even greater. When multiple cases are filed, respondent is at a greater risk of eviction. Respondent may appear in court on one case and then not appear on the following cases because respondent may think that the issue was already addressed. When there are multiple cases filed and default warrants are granted, respondent may have to appear on multiple cases in order to vacate each of the warrants or risk being evicted. Respondent may have to miss days of work or school or be otherwise encumbered. The risk of illegal eviction is high when there are multiple cases pending for the same months.

The appropriate remedy depends upon the facts and circumstances. Respondent did not answer any of the petitions and did not appear for this hearing. The Court, however, finds that petitioner and their attorneys have failed to follow the rules of the Court.

Costs and sanctions may be appropriate for frivolous litigation. Costs and sanctions are authorized under the Uniform Rules (22 NYCRR 130-1) for trial courts in any civil action or proceedings. A court "in its discretion may impose financial sanctions upon any party or attorney in a civil action or proceeding who engages in frivolous conduct as defined in this Part." [*Boye v Rubin & Bailin, LLP*, 152 AD3d 1](#) [1st Dep't 2017] The goals of sanctioning the offending party include preventing the waste of judicial resources, and deterring vexatious litigation and dilatory or malicious litigation tactics. *Boye v. [*4]Rubin*

This Court has held numerous hearings on the issue of overlapping cases filed by this petitioner.

Petitioner did not proffer a reasonable excuse for its frivolous conduct. Therefore, it is appropriate under these circumstances, to sanction the petitioner for their repeated frivolous conduct and to prevent the waste of judicial resources in the form of filing numerous cases seeking overlapping rents.

It is ORDERED that pursuant to 22 *NYCRR* § 130, sanctions are imposed on New York City Housing Authority Gun Hill Houses in the amount of \$250.00, payable to the Lawyers' Fund for Client Protection. A judgment shall be entered in accordance with 22 *NYCRR* 130.1.2 against New York City Housing Authority Gun Hill Houses in that amount.

It is Ordered that the above cases are dismissed with prejudice.

This constitutes the Decision/Order of this Court.

This Decision/Order is being mailed to all the parties.

Dated: January 13, 2020

Bronx, New York

So ordered,

ENEDINA PILAR SANCHEZ

Judge, Housing Court

Footnotes

Footnote 1: The Court notes that these cases were commenced before the passage of the *Housing Stability and Tenant Protection Act of 2019*. The Court shall not address the validity of the oral rent demands here.

Footnote 2: The Court notes that the witness did not bring the tenant's file to court and was not able to provide any information about the respondent. Petitioner did not have a "zero rent breakdown."

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