2020-01-26

Mia v. Lyons

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

----------X Index No. 022275/19

AMINUL MIA Motion Seq. No. 1

Petitioner,

-against- **DECISION/ORDER**

FAITH LYONS, YUSUF GINEM, BRANDON KELLY, JOHN DOE AND JANE DOE

Respondent.

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HON. STEVEN WEISSMAN:

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

Papers	Numbered
Notice of motion and affidavits annexed . . . . . :	1
Order to Show Cause and affidavits annexed. . . . . :	
Answering affidavits. . . . . :	2
Replying affidavits . . . . . :	3
Exhibits. . . . . :	
Stipulations. . . . . :	
Other :	

Petitioner was represented by: Borah, Goldstein, Altschuler, Nahins & Goidel, PC
Zachary Cohen, Esq.

Respondent was represented by: Urban Justice Center, Safety Net Project
Mayya Baker, Esq.

In this holdover summary proceeding petitioner alleges that it terminated respondent's month-to-month tenancy in this allegedly market rate apartment. The petition states that the building contains less than six residential apartments and thus is not rent stabilized. Respondent moves for an order dismissing the within proceeding as a matter of law under CPLR 3212, claiming that there are, in fact, at least six residential units in the premises, or there has been six or more residential units in the premises at some point in the past, thus the predicate notice is defective as not

in compliance with the Rent Stabilization Code and Law (RSC/RSL), and the premises should be determined to be subject to the RSC/RSL and respondent's apartment a rent stabilized apartment. In support thereof, respondent present evidence that petitioner has, in prior court proceedings, designated an apartment on the first floor of the premises as "1R", and respondent's apartment in a prior proceeding as "2F" (the Court notes that in the within proceeding petitioner designated respondent's apartment in the termination notice as "2F", but in the petition/notice of petition it is designated as "Apartment #2nd Floor"). Respondent postulates that there is no reason for the apartments to have been designated as "R" or "F" unless there was at least one other apartment on each floor (logic would have one presume that the designations of "R" and "F" would be used to designate the apartments in question as either the front [F] or rear [R] apartments on their respective floors, otherwise why bother with the F and R designations?). Respondent also presents evidence that, in the relatively recent past, the NYC Dept. of Buildings (DOB) has placed violations on the subject building for illegal alterations having been done which resulted in the premises having been "altered for occupancy by more than legally approved num[ber]", "subdivided 2nd floors apt-2 created 2 apts kitchens and bathrooms erected partition at 1st floor to subdivide apt to create 2 apts-kits and baths-erected partition at cellar to create 2 apts", "Dep records state premises is a 2 family now converted to 7 families 2 apts in cellar 2 apts at 1st floor 3 apts", "there are 2 apts on the 1st floor and 1 apt on the second" (each quote is from a different violation placed by the DOB). Petitioner opposes the motion and refers to exhibits A through E attached to its papers, but, except for an "A" exhibit tab, there are no attachments to petitioner's papers in opposition. Neither party has attached a copy of the most recent lease between respondent and petitioner (though petitioner states it is attached, as already stated, there are no exhibits actually attached to petitioner's papers).

There is an issue not raised by either side but which the Court finds necessary to raise on its own, that being whether the predicate notice, even if a valid notice, can support the proceeding instituted by petitioner. The predicate notice is designated as a "30 Day Notice To Terminate", and in the body of that notice it states "YOU HAVE NO CURRENT WRITTEN LEASE IN EFFECT." (caps used in the termination notice). By its own terms that notice is for the termination of a holdover tenancy, not a lease tenancy. A holdover tenancy is created when, after a written lease has expired by its own terms, the tenant remains in possession, thus holding over beyond the term of the written lease, pays rent for at least a period of time after the lease expiration, which rent is accepted

by the landlord, and thus a holdover tenancy is created, after the expired written leasehold term. In fact, in the petition herein, at paragraph 3, petitioner alleges:

"Respondent, FAITH LYONS, is the tenant of the premises, who entered into possession under a written rental agreement, dated on or about February 9, 2009, made between the Respondents and Petitioner for a period of One (1) year, which ended and said agreement was extended by written renewal, ***the most recent which ended on March 31, 2019, and continued thereafter on a month-to-month basis***." (emphasis added, caps in original document).

The petition further states, in paragraph 6: "At least Thirty (30) days before the expiration of the said term the Respondents-tenants were served ... with a notice ... a copy of which ... is annexed hereto and made a part of this petition. ***Each of the aforesaid paragraphs of said Notice of Termination shall constitute a subparagraph of this petition***." (emphasis added).

Thus it is clear to this Court that petitioner instituted a proceeding to cancel a month-to-month holdover tenancy when no such tenancy existed. There was in effect at the time the termination notice was served a written lease, that both sides refer to as being in existence, and which both sides state that by its terms ended on March 31, 2019. The termination notice alleged that it too was effective on March 31, 2019. Thus, the termination notice was for the purpose of terminating a month-to-month tenancy that did not exist at the time it was served or effective. The holdover tenancy couldn't start until after March 31, 2019, to wit: on April 1, 2019. But the petition does not state that the written lease had expired by its own terms and the proceeding was instituted on that basis, it is quite definite that it is based upon the termination of a month-to-month tenancy that didn't exist at the time, allegedly terminated by service of a 30 day notice to terminate a holdover tenancy, not a tenancy based upon a written lease then in full force and effect. As such, the termination notice is ineffective in terminating a nonexistent holdover tenancy, cannot be read to have terminated a written leasehold tenancy, and the petition is defective in that it misstates the basis for the proceeding.

Accordingly, since the predicate notice cannot sustain the within action as it was served, and it was made effective, prior to the existence of the holdover tenancy it purported to terminate, and the petition is based upon that termination notice, the pleadings are defective on their face and the proceeding is dismissed as they are ineffective in creating jurisdiction in the Court. Were this proceeding to go forward, based upon these pleadings, petitioner could never obtain a judgment at

trial, nor could the Court enter a judgment nor issue a warrant of eviction based upon these pleadings.

Said dismissal is without prejudice to the institution of a proceeding upon proper papers. Respondent's motion is denied as the proceeding is dismissed upon the Court's own motion and finding that, based upon the pleadings, the Court lacks jurisdiction over the within proceeding.

This is the decision and order of the Court. Copies are being mailed to both sides.

Dated: Bronx, New York
January 26, 2020

STEVEN WEISSMAN, JHC