2020-03-05

Welllife Network Inc v. McDaniel

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART S

WELLLIFE NETWORK INC.,

Petitioner- Landlord,

L&T Index No.: 071998/19

-against-

DECISION/ORDER

JAMES McDANIEL

Respondent-Tenant

'JOHN DOE' AND 'JANE DOE'

Respondents-Undertenants,

Address: 337 GRAFTON STREET
APT. 5
BROOKLYN, NEW YORK 11212

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of Respondent's Motion.

PAPERS	NUMBERED
Respondent's Notice of Motion, Affirmation in Support, & Exhibits ("A" - "G")	1, 2
Respondent's Supplemental Affirmation in Support & Exhibit ("1") as per court request	3,
Petitioner's Affirmation in Opposition & Exhibits ("A"-"B")	4,
Respondent's Reply Affirmation & Exhibits ("1"-"2")	5,
Petitioner's Sur-Reply Affirmation on consent of respondent	6

Upon the foregoing cited papers, the Decision and Order is as follows:

Respondent characterizes this proceeding as a "no grounds" holdover. Petitioner characterizes this proceeding as a "month to month" holdover. In fact, this proceeding *attempts* to terminate respondent's subtenancy upon certain alleged violations of lease. The underlying termination notice, in pertinent part asserts:

> "The Overtenant elected to not renew the subtenancy on the grounds that you did not comply with the terms of a certain Sublease dated January 1, 2018 (the "Sublease") during its one year term, by failing to pay the monthly rent as it became due as required pursuant to paragraph 1 of the Sublease; by using or possessing illegal drugs or related paraphernalia in the Subject Premises in violation of paragraph 5 of the Sublease; by allowing other individuals to reside in the Subject premises in violation of Paragraphs 11 and 12 of the Sublease."

It is important to note at the outset that petitioner rents apartments such as the subject premises to meet the needs of individuals with intellectual/developmental disabilities and mental illness (see Exhibit "D" to the motion). In fact, the sublease agreement in pertinent parts states:

> "Eligibility. Undertenant has been approved for the Premises based on eligibility under the guideline issued either by the New York State Office of Mental Health ("OMH") or by the New York City Department of mental health and Hygiene ("DMHH"), pursuant to statutory authority, depending upon the program for which the Undertenant is qualified"
>
> "As the Premises are being sublet to you by the Overtenant as part of a specially funded *program* in conjunction with either OMH or DOHMH, and as part of a *program* which provides housing and residential service to other individuals, you, the Undertenant, agree to be bound by the following Rules and regulations", (emphasis supplied).
>
> "OMH and /or DMHH shall be permitted to periodically inspect this Apartment with the consent and in the presence of the Undertenant" (See paragraphs "3" and "26" of Exhibit "C" to the motion).

Moreover, within the confines of the contract between petitioner and the New York City Department Health and Mental Hygiene ("DOHMH), it states:

> "Provider [petitioner] will only seek termination of a tenant's tenancy as a last resort and after ample opportunity for corrective action with substantial direction and support from staff. Due process procedures and New York landlord/tenant law must be followed. Provider will assist in identifying alternate appropriate placement for tenants who lose their housing." (see page 8 of APPENDIX B annexed to Exhibit "1" of respondent's supplemental affirmation)

Respondent moves to dismiss this proceeding based upon the failure of the petition to state a cause of action in violation of CPLR §3211(a)(7) and RPAPL §741(1). One of the key grounds for respondent seeking dismissal is the failure of the petition to allege that respondent's subtenancy of the subject premises is governed by a contract between petitioner and DOHMH. In response petitioner argues that the contract with DOHMH is merely a financing agreement, and that even if a regulatory agreement, case precedent is not binding upon petitioner because it is not the "owner" of the premises. Petitioner also claims in citing RPAPL §741 that it has met all the elements of that section within its petition. This court disagrees.

First, it is clear from the provisions cited above that the contract between petitioner and DOHMH stretches far beyond a mere financing agreement. In fact, it includes various provisions from maintaining professional liability insurance to assisting in voter registrations. Respondent's occupancy is clearly intertwined with the petitioner's "program" and the governing terms of petitioner's contract with the government.Furthermore, by adopting such a narrow interpretation of RPAPL §741 consisting solely of tracking the statute, petitioner ignores the interpretation of those elements developed by case precedent stretching now in excess of a decade.

Foremost among those holdings is the case of *Matter of Volunteers of America-Greater N.Y., Inc. v Almonte,* 65 AD3d 1155 (2nd Dept., 2009). There, as in the instant proceeding, the building was not owned by the petitioner, but rather, by the City of New York. IN *Voluteers (supra),* similar to the case at bar, the government contracted with the petitioner to provide support services "to foster [each resident'] ability to live independently in permanent housing." The court held as follows:

> "We agree with the Appellate Term that, pursuant to RPAPL 741, in the petition the petitioner was required to allege the existence of the contract between the DHS and the petitioner, because without that allegation, the Civil Court and the tenant would be unaware that the City owned the building in which the subject premises were located, that the DHS operated the building as an SRO facility, and that DHS contracted with the petitioner to handle the buildings daily operations. The contract provided the tenant with certain potential defenses, and the Civil Court could not have properly adjudicated this proceeding without that contract (see *villas of Forest Hills v Lumberger,* 128 AD2d 701,702, 513 NYS2d 116 [1987]; see also *City of new York v Valera,* 216 AD2d 237, 237-238, 618 NYS2d 695 [1995]; *MSG Pomp Corp. v Doe,* 185 AD2d 798, 799-800, 586 NYS2d 965 [1992])."

The policy for such an allegation in the petition also serving to place the court on notice of the "program" under which a respondent occupies, was eloquently stated by Judge Kimon Thermos in *PCMH Crotona, L.P. v Taylor,* 57 Misc.3d 1212[A], (Civ. Ct., Bronx Co., 2017). In dismissing that proceeding for failure of the petition to allege the existence of a contract between the petitioner and OMH, Judge Thermos stated in pertinent part:

> "Had the Petition alleged the existence of the contract between OMH and the petitioner, the court would have been aware of the tenant's mental disability and his need for a GAL. Furthermore, Respondent may have defenses arising from the relevant contract.[1]

Even if the proper allegation had been included in the petition, it would still not withstand a motion to dismiss for two additional reasons. First, paragraph "22" of the sublease agreement specifically provides as follows:

> "22. MATERIAL BREACH OF LEASE. In the event of any material breach of this Sublease other than non-payment of rent, Overtenant shall give Undertenant a written notice of default, giving the Undertenant ten (10) days to cure. A material breach of the Sublease shall include a continuing violation of the covenants or conditions of this Sublease. Overtenant shall not commence an action to evict Undertenant based upon any reason other than non-payment of rent until ten (10) days after Overtenant has notified Undertenant, unless Undertenant's conduct is causing an immediate risk or danger to the Premises, the Building or other resident(s) of the Premises or Building, in which event, eviction proceedings may be initiated without notice."

In the court's opinion a notice to cure was required for the allegations of drug possession and illegal occupancy.

Furthermore, the court notes that while respondent's occupancy is delineated as a "sublease", the underlying Overtenancy is alleged to be subject to rent stabilization. Absent a *ground* to evict, so long as the Overtenancy continues, respondent would have a right to occupy and would not be subject to a "month-month" holdover based on simply termination of the subtenancy. The so-called sublease is akin to an outright tenancy. As noted in the sublease (paragraph "6" of Exhibit "C" to the motion):

> "...The Undertenant may be entitled to renew this Sublease, subject to renewal of Overlease and subject to his/her compliance with the terms of this Sublease, including, but not limited to, those enumerated in Section 6 herein, and his/her compliance with the Rules and Regulations promulgated by the Overtenant, and provided that the Undertenant has not and/or does not pose a danger to self, other occumpants (sic) of the premises or any of the residents of the building"

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[1] Petitioner's counsel objects to the court's consideration of this decision and the other lower level decisions submitted as part of respondent's reply. To that end the court notes that it is not the only precedent or basis upon which this decision relies as evidenced by the plethora of case precedent presented by respondent. Moreover, this holding by Judge Thermos was cited in paragraph "35" of the original affirmation in support. Additionally, petitioner presents no authority supportive of its position that additional case law may be cited in reply to opposition papers. Finally, petitioner was given the opportunity to present sur-reply in response to the citing of the additional cases.

Nowhere is this true nature of the occupancy of respondent better recognized than in the recent enactment of the Housing Stability Tenant Protection Act ("HSTPA"). In Part "J" of that act, dealing with issues of primary residence, it was amended in pertinent part as follows:

> For the purpose of this paragraph, where a housing accommodation is rented to a not-for-profit for providing, as of and after the effective date of the chapter of the laws of two thousand nineteen that amended this paragraph, permanent housing to individuals who are or were homeless or at risk of homelessness, affiliated subtenants authorized to use such accommodations by such not-for-profit *shall be deemed to be tenants.* (emphasis supplied)"

Finally, the bare bones allegations concerning the alleged violations of sublease fail to meet the minimal "facts" requirement for either a termination notice or petition. Just as a one sentence legal conclusion is insufficient to create a defense, [see *Dahl v Prince Holdings 2012 LLC,* 2016 NY Misc LEXIS 5331 (Sup. Ct., NY County 2016) citing *Robbins v Growney,* 229 AD2d 356, 358 (1st Dept. 1996)], it cannot form a cause of action as basis for eviction. As to respondent's alleged failure to pay rent the notice does not indicate what months, for what period, whether or not proceedings were commenced etc. Similarly, the allegations regarding alleged drug use do not indicate on what dates this was observed or how it was observed. Lastly, the allegations regarding alleged occupants fail to set forth a description or name of such individuals nor a basis for petitioner's allegation that such individuals are residing in the premises rather than just visiting.

In conclusion, the court notes that it rejects the argument that the petition must allege compliance with the discharge procedures as respondent suggests. To the extent that the termination procedures address a right for corrective action this court has already noted respondent's right to a cure notice. As to identifying alternative shelter it is clear that this part of the provision only applies once the undertenant loses his or her housing..

For all of the reasons set forth above respondent's motion is granted dismissing this proceeding without prejudice for failure to state a cause of action. This constitutes the Decision and Order of the Court.

SO- ORDERED

DATED
March 5, 2020

KENNETH T. BARANY
J.H.C