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SALAZAR v. CORE SERVICES GROUP, INC.

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

SEBASTIAN SALAZAR,
Petitioner,
against
CORE SERVICES GROUP, INC.
CORE SERVICES GROUP NY, INC.
CORE SERVICES GROUP BK, INC.,
Respondents.

L&T Index No.801154/20
Decision and Order

HON. ENEDINA PILAR SANCHEZ

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

<u>Papers</u>	<u>Numbered</u>
Order to Show Cause, Affirmation and Affidavits Annexed	___1,2,3___
Answering Affirmation and Affidavits	___4,5___

Procedural History and Summary of Undisputed Facts:

Petitioner commenced this proceeding by Order to Show Cause in Lieu of Petition and Notice of Petition seeking to be restored to possession of the premises located at 1075 Washington Avenue, Apartment 5R, Bronx, New York 10456. The proceeding was adjourned for respondents to file opposition papers.

On April 2, 2020, the respective parties appeared by counsel via Skype. Skype technology has allowed the Housing Court to hear emergency cases during the quarantine due to the current Coronavirus pandemic. The parties appearing through Skype may present testimonial, photographic and documentary evidence to support their claims before the court.

Petitioner's counsel argued petitioner was removed from the premises without the benefit of legal process and as such he must be restored to possession pursuant to RPAPL Sec 768. Respondent argued that petitioner was given enough warnings to allow removal from the premises and that RPAPL Sec 711 does not apply because petitioner was not a rent paying tenant but rather a participant in a program.

The subject premises are provided as part of a "Lighthouse" program. (Affirmation of Attorney Weingart at ¶3.) The program is designed to provide housing and services to youth and young adults up to the age of 21. Petitioner was found eligible for the services and entered the program in October 2019. Thereafter, various incidents occurred, which incidents are disputed by the petitioner. Those incidents led to petitioner being placed on "probation" and later culminating in the removal of the petitioner from the premises.

Neither party presented actual testimony. They based their arguments only upon the affidavits submitted. The Court was not asked to hear testimony and no witnesses were present to be sworn in. The Court, however, makes this decision based upon the affidavits presented and the undisputed facts. A plain reading of the applicable statute calls for a finding that petitioner was a lawful occupant and removed from the premises without the benefit of legal process.

Discussion:

On June 24, 2019, *The Housing Stability and Tenant Protection Act of 2019* (HSTPA) was passed.

Among the many changes was *RPAPL Section 768* – a section regarding unlawful evictions. The relevant section states that a person who has occupied a dwelling for thirty consecutive days cannot be removed without legal process. An eviction may be a result of “*engaging in any behavior which prevents or is intended to prevent such occupant from the lawful occupancy of such dwelling unit or to induce the occupant to vacate the dwelling unit including but not limited to, removing the occupant’s possessions from the dwelling unit, removing the door at the entrance of the unit; removing, plugging or otherwise rendering the lock on such entrance door inoperable, or changing the lock on such entrance door without supplying the occupant with a key.*” *RPAPL Section 768(a)(iii)* An illegal lockout case may be found where the petitioner was in actual or constructive possession of the premises and the respondent’s entry was either forcible or unlawful. *Romanello v. Hirschfield*, 98 A.D.2d 657, (1st Dept., 1983), aff’d as modified 63 N.Y.2d 613 (1984); *Mondrow v. Days Inns Worldwide, Inc.*, 53 Misc.3d 85 (App. Term, 1st Dept. 2016); *Truglio v. VNO 11 East 68th Street, LLC.*, 35 Misc.3d 1227(A) (N.Y. Civ Ct., New York County 2012).

RPAPL Section 711, also amended in June 2019 via the HSTPA provides: *A tenant shall include an occupant of one or more rooms in a rooming house or a resident, not including a transient occupant, of one or more rooms in a hotel who has been in possession for thirty consecutive days or longer. No tenant or lawful occupant of a dwelling or housing accommodation shall be removed from possession except in a special proceeding. A special proceeding may be maintained under this article*

The basic facts are not in dispute. Parties agree that petitioner has lived in the subject premises for at least 30 days, and that he was removed from the premises without a court order. The dispute between the parties is whether petitioner is an occupant (and as such entitled to legal process before removal) or a participant in a program (where legal process is not necessary).

Upon the plain reading of the statute applicable to this case, this Court finds that petitioner was an occupant of the subject premises. *RPAPL Sec 711* guides the Court here - petitioner was an occupant of one or more rooms in a rooming house or a resident who was in possession for thirty consecutive days or longer. As such, he was entitled to the benefit of legal process.

Respondent’s argument that petitioner is merely a licensee and not entitled to legal process are not persuasive since the passage of the HSTPA. The legislature did not carve out any exceptions in *RPAPL Sec 711* to differentiate between the different types of occupancy.

It is ORDERED that petitioner be restored to possession of subject premises forthwith. To the extent that was discussed between the parties during the Skype hearing, if another, equal place is identified as suitable for petitioner and is available forthwith, petitioner is to be placed in possession of such a unit instead.

IT is ORDERED due to the facts and circumstances of this case; this Court finds that petitioner is not entitled to treble damages.

This Decision and Order is emailed to both sides.

This constitutes the Decision and Order of this Court.

Dated: April 3, 2020
Bronx, New York

So ordered,
/s/ eps
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