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HUNTS POINT HOUSING DEV. FUND CORP. v. PADILLA

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

-----X
HUNTS POINT HOUSING DEVELOPMENT
FUND CORPORATION,

Petitioner-Landlord,

Index No. L&T 056994/18

-against-

DECISION/ORDER

MAGDALENA PADILLA,

Respondent-Tenant,

-and-

EDNA ROSA, CHRISTOPHER RIVERA,
LUIS D. SANTIAGO,
“JOHN DOE” and “JANE DOE”

Respondents-Occupants.

-----X
Bernadette G. Black, J.:

BACKGROUND

Petitioner Hunts Point Housing Development Fund Corporation commenced this summary holdover proceeding at the direction of the Bronx District Attorney’s Office, based upon alleged drug-related criminal activity, following the arrest of Respondent Luis Santiago at the subject premises, 1150 Garrison Avenue, Bronx, New York. Petitioner seeks possession of the rent-stabilized premises from tenant of record Magdalena Padilla, her daughter Edna Rosa, grandson Christopher Ramirez, Mr. Santiago, “John Doe”, and “Jane Doe” upon the allegation that Respondents knowingly used or permitted the use of the premises for sale and distribution of illegal narcotics, specifically cocaine.

Respondent Magdalena Padilla receives Section 8 benefits through the Department of Housing and Urban Development (“HUD”) Voucher Program, administered by the New York City Housing Authority (“NYCHA”). Petitioner asserts that based upon Respondents’ objectionable conduct at the premises, the lease and Section 8 Housing Assistance Payment (“HAP”) contract were terminated pursuant to paragraph 42 of the parties’ lease and paragraphs 8(c)(1)(a), 8(c)(1)(b), 8(c)(1)(d), and 8(c)(3) of Part C of the HAP contract Tenancy Addendum. In addition, the proceeding was commenced pursuant Real Property Actions and Proceedings Law (“RPAPL”) sections 711(5) and 715(1), and section 2524.3(d) of the Rent Stabilization Code (“RSC”).

The petition was filed on October 26, 2018 and initially calendared in a Resolution Part on November 13, 2018. Ms. Padilla appeared first unrepresented, stipulated to the court’s jurisdiction and sought an adjournment to retain counsel. On the return date, Respondent appeared with counsel and subsequently sought dismissal of the proceeding, based upon Petitioner’s failure to state properly a cause of action. Following the denial of that motion, Respondent sought leave to interpose a late answer. The proposed answer contained a general denial, an objection in point of law and a warranty of habitability counterclaim. After striking the counterclaim, the Resolution Part granted the motion, deemed the answer served and filed and determined the matter trial ready. Respondent next filed and then withdrew a demand for a jury trial. Mr. Ramirez, Ms. Padilla’s grandson, appeared for the first time on the second day of trial, in late December 2019. Ms. Padilla’s attorneys then filed a Notice of Appearance to represent Mr. Ramirez as well. Mr. Ramirez’ answer was deemed a general denial. Mr. Santiago and Ms. Rosa neither answered nor appeared. Following trial, for the reasons stated below, the petition is dismissed with prejudice.

FACT FINDING AND ANALYSIS

Petitioner's managing agent Jaime Diaz testified in support of its prima facie case, including submission into evidence of certified copies of the deed for the subject building, as proof of Petitioner's ownership, the multiple dwelling registration and the 2019 New York State Division of Housing and Community Renewal ("DHCR") Rent Registration Roll for the subject building. Petitioner also submitted Respondent's initial rent-stabilized lease, dated July 31, 2003; the most recent renewal lease and the Section 8 HAP contract, dated August 2017, listing Magdalena Padilla and Christopher Ramirez as the only members of the household; certified copies of the search warrant authorizing the police to search the subject premises for cocaine and related unlawful drug distribution and sale paraphernalia; the certified criminal court complaint against Mr. Santiago; the New York City Police Department ("NYPD") property vouchers for the evidence collected from the premises at the time of Mr. Santiago's arrest; the NYPD lab results indicating that the vouchered substance collected from the premises was in fact cocaine; a certified copy of the list of charges against Mr. Santiago; and his guilty pleas to misdemeanor possession of a controlled substance and felony possession of cocaine with intent to sell it.

Petitioner's witness, Detective Henry Adames, testified that he has been employed by NYPD for over thirteen years and has been an investigator with the Narcotics Unit for approximately nine years. Detective Adames further testified that he sent an individual to the subject premises to buy drugs; that on an unspecified date he stood somewhere within the staircase between the fourth and fifth floors and witnessed his informant and Mr. Santiago exchange something outside the door of the subject premises; and that after the exchange or transaction Mr. Santiago and the informant walked away from the apartment and down the stairs of the building. Thereafter, Detective Adames obtained a search warrant and executed a search of the premises

sometime around 7AM on March 22, 2018. The search was executed by a team of approxi

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resided at the subject premises. According to Ms. Padilla, on March 21, 2018, there was a birthday

party for her grandson at the apartment. The party was attended by family members and friends including Mr. Santiago, who slept at the apartment that night. Early the next morning the police broke down the door of the apartment, and a team of officers conducted a search of the premises. Ms. Padilla further testified that since his arrest, she met with Mr. Santiago only once, about a week later, when she ended their relationship.

Christopher Ramirez testified that he awoke the morning after his birthday party, opened his bedroom door and found a gun pointed at his face. He and the other occupants were handcuffed while the officers searched the apartment. Mr. Ramirez introduced two photographs which were admitted into evidence: Respondent's Exhibit A depicts the apartment door and Exhibit B represents the fourth-floor apartment hallway and staircase. The photographs show that Respondents' apartment sits inside an alcove and that the apartment door is not visible from the stairs between the fourth and fifth floors. Given the detective's stated vantage point when he witnessed the drug sale, the photographs called into question the location of the alleged drug transaction between Mr. Santiago and Detective Adames' informant. On cross-examination, Detective Adames clarified that he heard rather than saw Respondent's door open at the time of the alleged drug sale, and that the sale took place at the edge of the alcove, outside of but near the entrance door to the subject premises.

Petitioner called Diana Olaya-Perez to testify as a rebuttal witness. Ms. Olaya-Perez testified that at time of Mr. Santiago's arrest she was employed as the Bronx Borough Coordinator for the New York City Criminal Justice Agency, which conducts interviews of the arrestees when they are first brought in for processing. A report entered by a member of her department's staff who interviewed Mr. Santiago on the day he was arrested indicated that Mr. Santiago listed the subject address as his residence and stated that Ms. Padilla was his wife. This information was

allegedly verified by telephone conversation with Ms. Padilla. Ms. Olaya-Perez did not conduct the interview or enter the information. Ms. Padilla acknowledged that the telephone number apparently provided by Mr. Santiago to contact her was her own but denied having had such a telephone conversation.

During trial, Respondents' counsel sought dismissal of the proceeding based upon Petitioner's failure to serve a Notice to Cure upon Respondents. Petitioner commenced this proceeding on several alternative grounds, including RPAPL §§ 711(5) and 715(1), and RSC § 2524.3(d) based upon allegations that Respondents were using or permitting the use of the premises for illegal activity. While service of a termination notice may be required prior to commencement of a proceeding based upon illegal use, none of the above-stated grounds require service of a predicate Notice to Cure. See Sherer, Residential Landlord-Tenant Law in New York § 8:109; Murphy v Relaxation Plus Commodore, Ltd., 83 Misc. 2d 838 (App Term, 1st Dept 1975); Clinton Manor Associates LP v Santiago, 9 Misc. 3d 1106(A) (Civ Ct, New York County 2005); Boulevard Gardens Owners Corp. v 51-34 Boulevard Gardens Co., LP, 170 Misc. 2d 755 (Civ Ct, Queens County 1996); see also Aurora Associates LLC v Hennen 157 A.D.3d 608 (1st Dept 2018) (profiteering). Therefore, although Petitioner also based this proceeding on breach of lease and the HAP contract, Petitioner's failure to serve a Notice to Cure upon Respondents does not require dismissal of the petition.

To prevail at trial Petitioner must establish that the tenant of record customarily or habitually used or permitted others to use the subject premises for drug-related criminal or illegal activity. "[T]he landlord has the burden to prove by a preponderance of the credible evidence that the subject premises were used to facilitate trade in drugs and that the tenant knew or should have known of the activities and acquiesced in the illegal drug activity in the apartment." 855-79 LLC

v Salas, 40 A.D.3d 553, 554 (1st Dept 2007); 551 West 172nd Street LLC v Tavares, 58 Misc. 3d 151(A) (App Term, 1st Dept 2018); WHGA Renaissance Apts. LP v Jackson, 53 Misc. 3d 11 (App Term, 1st Dept 2016); 518 West 184th Street LLC v Guzman, 47 Misc. 3d 59 (App Term, 1st Dept 2015); Second Farms Neighborhood HDFC v Lessington, 31 Misc. 3d 144(A) (App Term, 1st Dept 2011); cf., Matter of 88-09 Realty v Hill, 305 A.D.2d 409 (2nd Dept 2003) and Maxwell Dev. LP v Newkirk, 65 Misc. 3d 154(A) (App Term, 1st Dept 2019).

Petitioner's case rests primarily on the testimony of the arresting officer and the evidence collected at the subject premises on the morning of March 22, 2018. Detective Adames testified that he witnessed one transaction between Mr. Santiago and an informant in the hallway outside the alcove near the subject apartment and that afterwards Mr. Santiago and the informant walked away from the apartment and down the public hallway staircase. Apparently, based upon that event the detective obtained a search warrant and he, along with at least eight other police officers, with assistance of a drug-sniffing dog, executed a thorough search of the premises. As a result of the search, Detective Adames recovered from inside a closet of a bedroom approximately one-eighth of an ounce of cocaine inside the pocket of a pair of pants, a small hand-held scale with cocaine residue - unconfirmed by the lab report, and one Ziploc bag containing 18 small, empty Ziploc bags. The detectives also collected one piece of mail addressed to Mr. Santiago at the subject apartment, and two cellphones. The search revealed no other evidence of illegal drug trade or use at the premises. Petitioner provided no other evidence to indicate drug trade activity was conducted inside the subject premises. Only Mr. Santiago was arrested. Although he pled guilty to the drug charges against him and the trial evidence indicated that Mr. Santiago had more than a passing connection to the apartment, the evidence was insufficient to establish that at the time of the arrest Mr. Santiago resided at the subject premises. In addition, Petitioner presented no

evidence that Mr. Santiago himself customarily or habitually used the premises for drug sale activity. Further, Petitioner presented no evidence that the tenant of record or her grandson were in any way involved in or benefited from Mr. Santiago's illegal activity.

The evidence presented does not support a finding that the premises were customarily or habitually used for illegal drug trade and Petitioner has not established by a preponderance of the credible evidence, that Ms. Padilla knew or should have known of and acquiesced in the regular use of the premises for the sale of illegal drugs. (Cf., Maxwell Dev. LP v Newkirk, id., where "police recovered drug and paraphernalia from various locations throughout, including 139 twists of crack/cocaine from a bag on a bed, 29 bags of marijuana on a coffee table, a scale containing marijuana residue on window sill as well as a razor blade containing cocaine residue and 209 small bags"). As the court in Salas noted, the amount of contraband recovered, and the single transaction associated with the subject premises "does not give rise to an inference of either actual or constructive knowledge by this tenant." Supra., 40 A.D.3d at 555. Based upon the evidence adduced at trial the court finds that Petitioner has not sustained its burden of proof and dismisses the petition with prejudice.

This constitutes the decision and order of the court.

Dated: Bronx, New York
May 26, 2020



BERNADETTE G. BLACK, J.H.C.