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Macbain Development LLC v. Quintero

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

-----X
MACBAIN DEVELOPMENT LLC

Petitioner

Index No. LT # 71569/19

- against -

DECISION/ORDER

ELIZABETH QUINTERO &
ROBERTO RODRIGUEZ
530 Bainbridge Street
Apt. 1st Floor
Brooklyn, New York 11233

Respondent

-----X

HON. HANNAH COHEN:

Recitation, as required by CPLR 2219(a), of the papers considered in the review of respondent's motion to dismiss pursuant to CPLR 3211(a)(5) and (a)(7) and petitioner's opposition and ensuing reply.

Papers

Notice of Motion
Opposition
Reply

Numbered

1
2
3

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

Petitioner commenced a holdover case against the respondent after notice of a ten day notice to cure and a ten day notice of termination. The premises are subject to rent stabilization.

Petitioner in its ten day notice to cure alleges that respondent had violated paragraph "20" of the lease which states as follows "Tenant must comply with these Rules...(6)Dogs, cats or other pets are not allowed in the Apartment or Building..." and that respondents has violated the

pet policy allegedly signed by the respondent which states "... the tenant will be allowed to have a pet which meet the following mandatory provisions...2. Size and weight of the four legged warm bloodied animals should not exceed 3 FEET LONG 50LBS. AND IS LIMITED TO ONE PER UNIT...9. All pets must be registered before being brought on premises".

Petitioner argues that respondent is violating the lease terms by harboring two dogs at the subject premises, and that at least one of the dogs is over 50 pounds. Petitioner also alleges that respondent has installed illegal fastening on his door resulting in an HPD violation. The ten day termination terminated respondents tenancy on June 28, 2019 and alleges that respondent continues to harbor two dogs and at least one of the dogs is over 50 pounds and has failed to register said dogs or remove the slide bolt locks.

Respondent by motion, seeks dismissal of the proceedings by summary judgment pursuant to CPLR 3211(a)(5) and (a)(7) in that petitioner waived its rights to enforce the "no pet" provision of the lease by waiting more than three months to commence this proceeding and cites to the "Pet Law" NYC Administrative Code section 27-2009.1(b). Respondent also contends that petitioner has failed to provide the requisite notice to the Public Housing Authority, in this case HPD under Title 24, Section 982.310(e)(2)(ii) of the Code of Federal Regulations.

In support of its motion, respondent argues that the notice to cure was dated March 19, 2019 and required a cure by April 5, 2019 and the ten day notice of termination, terminated the respondent's tenancy by June 28, 2019. The instant petition was commenced and filed on July 17, 2019, beyond the 90 days required by the "Pet Law."

Petitioner opposes the motion and argues that despite any time limitations imposed by the "Pet Law", respondent is violating the terms of the lease by harboring two dogs and that one of

the dogs is over 50 pounds in violation of the pet policy. Petitioner further argues that the “Pet Law” does not apply herein, as the building permits animals, just limits the size and number of pets.

Courts have held that summary judgment will be granted “if upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party” (CPLR 3212[b]). The proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact” (*Weinegrad v New York Univ Med Ctr*, 64 NY2d 851 [1985]; *Zuckerman v City of New York*, 49 NY2d 557 [1980]). In considering a summary judgment motion, the courts function is to determine whether a material issue of fact exists, not to determine said issues (*Esteve v Abad*, 271 AD 725 [1st Dept 1947]).

Here, regardless of the buildings pet policy which now permits one dog with a size and weight restriction, respondent herein is alleged to have violated his lease by harboring a second dog who is above the weight limit. As such, petitioner was required to commence a proceeding within 90 days of notice of the lease violation regarding the second dog. Petitioner failed to commence this proceeding within 90 days of the notice to cure, thereby waiving its right to object to the second dog prohibition in the lease (New York City Pet Law, NYC Administrative Code section 27-2009.1). The purpose of the “Pet Law” was to protect tenants from retaliatory eviction and to safeguard the health, safety and well being of tenants who do harbor pets with the landlords knowledge for at least three months from unanticipated litigation in the future. The court notes that the “Pet Law” does not provide an exception to its strict time frame for commencement of a

holdover proceeding grounded in a violation of the no pet clause in a tenant's lease. (See *Riverdale Park Corp., v McDermott*, NYLJ May 8, 2002, page 22, col. 1 [2002], 2229-13 *Apt. Corp. v Portnov.*, 26 Misc.3d 1209(A) [Civil Ct., New York Co. 2010](court found no tolling of 90 days period where coop failed to act within 90 days of the notice to cure).

As petitioner failed to timely commence this proceeding regarding the second dog in violation of the requirements of the NYC Administrative Code Section 27-2009.1, respondent's motion to dismiss is granted on procedural grounds and the petition is dismissed. Based upon the above, the court need not address respondent's remaining arguments.

This constitutes the decision and order of this court.

Dated: September 1, 2020
Brooklyn, NY

Hannah Cohen, J.H.C.