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5th and 106th Street Associates v. Hunt

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SUPREME COURT, APPELLATE TERM, FIRST DEPARTMENT

October 2020 Term

Edmead, P.J., Higgitt, McShan, JJ.

5th and 106th Street Associates, NY County Clerk's No.
L.P., 570641/19
Petitioner-Landlord-
Respondent,

-against-

Martha Hunt, Calendar No. 20-141
Respondent-Tenant-Appellant,

-and-

"John Doe" and "Jane Doe,"
Respondents-Undertenants.

Tenant appeals from an order of the Civil Court of the City of New York, New York County (Frances A. Ortiz, J.), entered September 11, 2019, which granted landlord's motion for summary judgment of possession in a holdover summary proceeding.

Per Curiam.

Appeal from order (Frances A. Ortiz, J.), entered September 11, 2019, deemed an appeal from the final judgment (same court and Judge), entered on the same date, and so considered (see CPLR 5520[c]), final judgment affirmed, without costs.

Summary judgment of possession was properly awarded to landlord on its holdover petition. The evidentiary proof

submitted by landlord conclusively established that tenant was in "material noncompliance" with Paragraph 38(3)(d) of her lease because she persistently refused to supply the "information on the composition, or eligibility factors" of her household, as required by the Project-Based Section 8 program (see *DD 11th Ave., LLC v Sans*, 63 Misc 3d 158[A], 2019 NY Slip Op 50860[U] [App Term, 1st Dept 2019]; *501 W. 41st St. Assoc. v Annunziata*, 41 Misc 3d 138[A], 2013 NY Slip Op 51922[U] [App Term, 1st Dept 2013]; *2 Macon St. Assoc., L.P. v Sealy*, 32 Misc 3d 52 [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2011]).

In opposition, tenant failed to raise any triable issues of fact. Tenant's contention that she is a rent-stabilized tenant and, therefore, cannot be evicted for noncompliance with income and household certification requirements was properly rejected by Civil Court.

Although Section 4(B)(1) of the landlord's Regulatory Agreement with New York City's Department of Housing Preservation and Development (HPD) required it to register each unit in the premises in accordance with the Rent Stabilization Code, Section 4(F) expressly provides that the U.S. Department of Housing and Urban Development (HUD) "has

preempted the entire field of rent regulation ... as it affects the Project under 24 C.F.R. § 246.20 and that, for so long as the [Housing Assistance Payments] HAP Contract shall be in effect, the dwelling units covered by the HAP Contract shall be exempt from the Rent Stabilization Code [under RSC § 2520.11(t)]" (emphasis added).

Where, as here, the property is subject to a mortgage insured or held by HUD and the landlord receives section 8 housing assistance for the apartment, the regulations provide that HUD has preempted "the entire field of rent regulation by local rent control boards" in order to "minimize defaults by the mortgagor" in its financial obligations with regard to its projects (24 CFR 246.21; see *Matter of Mott v New York State Div. of Hous. & Community Renewal*, 211 AD2d 147, 152 [1995], *appeal dismissed* 86 NY2d 836 [1995]; *accord* 435 *Cent. Park W. Tenant Assn. v Park Front Apts., LLC*, 164 AD3d 411, 412 [2018] ["As long as the building was subject to the HUD mortgage, the Rent Stabilization Law of 1969 (RSL) (Administrative Code of City of NY § 26-501 *et seq.*) was expressly preempted, pursuant to HUD regulations (see 24 CFR 246.21)"]; *Axelrod v Various Tenants of Delano Vil.*, 123 Misc 2d 922, 924 [Civ Ct, NY County 1984]] [David B. Saxe, J.]

[HUD federal preemption to subsidized insured housing project held to be "automatic and absolute"]).

In short, although the Division of Housing and Community Renewal (DHCR) registration and filing requirements were binding on landlord, and were met here, federal regulations expressly preempted the Rent Stabilization Law. The building itself was not subject to the Rent Stabilization Law or rent stabilization coverage, notwithstanding any individual apartment filings with DHCR.

Similarly, the DHCR itself, in two postjudgment orders dated January 22, 2020, concerning tenant's complaints to that agency, effectively reached the same conclusion, expressly determining that "the subject building/apartment is not subject to [the] Rent Stabilization Code because the building is a project-based Section 8 housing subject to the regulations of HUD" (emphasis added). Accordingly, landlord was not required to plead and prove that tenant's apartment was subject to and in compliance with rent stabilization laws in the instant holdover proceeding.

Nor is "[s]uch an exemption [from rent stabilization coverage] ... subject to waiver or equitable estoppel" (546 *W. 156th St. HDFC v Smalls*, 43 AD3d 7, 11 [2007], quoting 512

E. 11th St. HDFC v Grimmet, 181 AD2d 488, 489 [1992], *appeal dismissed* 80 NY2d 892 [1992]; *see Matter of 322 W. 47th St. HDFC v Loo*, 153 AD3d 1143, 1144 [2017], *lv dismissed* 30 NY3d 1084 [2018]; *Gregory v Colonial DPC Corp. III*, 234 AD2d 419 [1996]).

We have considered tenant's remaining arguments and find them unpreserved and unavailing.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

I concur

I concur

I concur