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2020-10-30

1920 Walton LLC v. Bothwell

Recommended Citation

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX: HOUSING PART J
---X Index No. 044910/18
1920 Walton LLC

                                        Petitioner,

          -against-   **DECISION/ORDER**

Margarita Bothwell
John Doe and Jane Doe

                                        Respondent.
---X
HON. STEVEN WEISSMAN:

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

Papers	Numbered
Notice of motion and affidavits annexed . . . . :	1
Order to Show Cause and affidavits annexed. . . . . :	
Answering affidavits. . . . . :	2
Replying affidavits . . . . :	3
Exhibits. . . . . :	
Stipulations. . . . . :	
Other_____	
:	

Petitioner was represented by: Todd Rothenberg, Esq., Dominick Gianotto, Esq.

Respondent was represented by: The Legal Aid Society, Amanda J. Jennings, Esq.

        Petitioner moves for a judgement of possession for all rent due and owing alleging respondent has failed to comply with the terms of a stipulation dated March 11, 2020.   Respondent opposes said motion alleging that, under the terms of the NYS Tenant Safe Harbor Act (the Act), signed into law by Gov. Andrew Cuomo on June 30, 2020, no judgment of possession may be entered, and no warrant of eviction may be issued, as against respondent herein.   Respondent's argument is partially correct, thus the Court grant petitioner's motion as set forth below.

First a little history of the proceeding. This proceeding was initially instituted as a summary holdover action in July, 2018, and first appeared on calendar on September 5, 2018, alleging respondent was a mere licensee. Respondent failed to answer the petition or appear in court and, after an inquest before the Hon. Shorab Ibrahim on January 30, 2019, a judgment of possession was entered as against respondent in favor of petitioner and, a warrant of eviction was issued. Subsequently the parties settled the matter by a stipulation dated March 11, 2020 wherein petitioner recognized respondent's tenancy rights as the successor tenant, the proceeding was converted to one for nonpayment of rent, it was agreed that the rental arrears through March, 2020 were $17,286.90, and respondent was given until April 30, 2020 to pay that amount plus the April, 2020, rent. The stipulation did not vacate the prior default judgment or warrant of eviction, but by its terms, the Court finds that, that was implicit and treats that judgment and warrant as having been vacated by the March 11, 2020, stipulation. It is undisputed that respondent has failed to make that payment, or any payment, towards current or past due rent, and now would owe $25,585.12 through today, October 30, 2020. Monthly rent/use and occupancy is $1,185.46.

Respondent alleges that, under the Act, there is a prohibition against the entry of a judgment of possession and the issuance of a warrant of eviction, thus petitioner's motion should be denied. The Act, at section 2, paragraph 1 states: "No court shall issue a warrant of eviction or a judgment of possession against a tenant or other lawful occupant that has suffered a financial hardship ***during the COVID-19 covered period*** for the non-payment of rent ***that accrues or becomes due*** during the COVID-19 covered period."(emphasis added). The covered period is defined by section 1 of the Act as March 7, 2020 basically until the pandemic emergency is declared to be at an end. This Court reads and interprets this language as meaning rent covered by the Act's prohibition is rent that comes due or owing beginning March 7, 2020, but any rent that accrued or became due prior to that date is not covered by the Act and thus the prohibition contained in the Act does not apply to those sums.

Paragraph 3 of section 2 of the Act states: "This act shall not prohibit any court from awarding a judgment for the rent due and owing to a successful petitioner in a summary proceeding under article 7 of the real property actions and proceeding law." This court reads and interprets

that language of the Act as allowing the entry of a non-possessory judgment for the rent that becomes due during the covered period as defined by the Act.   The Court further determines that the amount that was agreed due and owing under the March 11, 2020, stipulation was rent that came due on or prior to March 1, 2020, since rent is typically due on the first of the month unless otherwise specified in the lease.   Since nothing has been presented to change that parameter, the $17,286.90 set forth in the March 11, 2020 stipulation, came due as of March 1, 2020, and is thus not covered by the Act's prohibition of entry of a possessory judgment, nor does the prohibition on the issuance of a warrant of eviction *for nonpayment of that sum* apply.

Accordingly, the Court awards petitioner a judgment of possession for the sum of $17,286.90, all rent due and owing prior to the effective date of the Act, and the issuance of a warrant of eviction based upon that judgment.   But, execution of the warrant is stayed through and including January 1, 2021.   The Court further awards a separate, non-possessory judgment against respondent for the rent that has come due since the effective date of the Act, which the Court calculates as totaling $8,298.22 (April, 2020 through October, 2020).   Upon default in payment of the possessory judgment only, the warrant may execute after service of a Notice of Eviction by a City Marshal or other authorized entity.

This is the decision and order of the Court.   Copies are being emailed to both sides and the respondent's Guardian ad Litem.

Dated: Bronx, New York
        October 30, 2020

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STEVEN WEISSMAN, JHC