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2020-12-14

Watson v. NYCHA-Brevoort Houses

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"Watson v. NYCHA-Brevoort Houses" (2020). *All Decisions*. 226.
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[*1]

Watson v NYCHA-Brevoort Houses
2020 NY Slip Op 20335
Decided on December 14, 2020
Civil Court Of The City Of New York, Kings County
Stoller, J.
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
This opinion is uncorrected and subject to revision before publication in the printed Official Reports.

Decided on December 14, 2020

Civil Court of the City of New York, Kings County

<p>Darnell Watson, Petitioner,</p> <p>against</p> <p>NYCHA-Brevoort Houses, Respondents.</p>

11660/2020

For Petitioner: Darnell Watson, pro se

For Respondent: Stefanie Jones

Jack Stoller, J.

Darnell Watson, the petitioner in this proceeding ("Petitioner"), commenced this proceeding against the New York City Housing Authority ("NYCHA"), seeking possession of 291 Patchen Avenue, Apt. 5D, Brooklyn, New York ("the subject premises") pursuant to

RPAPL §713(10) on the basis of an illegal lockout. NYCHA interposed an answer with a defense of lack of standing and general denial. The Court held a trial of this matter on December 14, 2020.

Petitioner introduced into evidence a non-driver's identification card issued in 2017 showing the subject premises as his address. Petitioner testified that he has been living in the subject premises since 2006; that he had been living with his mother ("Petitioner's mother"); that Petitioner's mother passed in 2014; that there was a fire in November of 2020; that he was unable to return to the subject premises because the Fire Department put an additional latch on the door; and that he has been homeless since that time. Petitioner testified on cross-examination that Petitioner's mother made efforts to add him to the household composition but that Petitioner's mother got sick at that time and passed away.

NYCHA's property manager testified that she is familiar with the subject premises; that she is aware that there was a fire in the subject premises; that there is no vacate order; that the Fire Department did put a latch on the door to the subject premises; that NYCHA could still get access to the subject premises if necessary; that Petitioner's mother was the tenant of record; and that she learned at some point in 2020 that Petitioner's mother had been deceased

The share of the rent paid by tenants of federally assisted housing projects shall be thirty percent of the tenants' monthly income 42 U S C §1437a(a)(1)(A) In order to set the rent for the tenant, then, a public housing authority is required to annually examine the income of household composition of its tenants 24 CFR §960 257(a) Matter of Evans v New York City Hous Auth , 2010 NY Misc LEXIS 5354 (S Ct NY Co 2010) NYCHA also introduced into evidence a record showing that the last time that there was an examination of Petitioner's mother's income and household composition was in 2013, seven years prior to this writing The [*2]record shows Petitioner's mother as the only occupant of the subject premises NYCHA also introduced into evidence a record showing that Petitioner's mother was the tenant of record of the subject premises and what her monthly rent was as of July of 2014

An occupant of a NYCHA apartment who remains in the apartment after the vacatur of a tenant of record may request to be designated the new tenant of record of the apartment by a procedure known as a remaining family member grievance. [New York City Hous. Auth. Albany Houses v. Collins, 4 Misc 3d 135](#)(A)(App. Term 2nd Dept. 2004). At the Court's questioning, NYCHA produced a record of a remaining family member grievance filed in 2017 by an individual who Petitioner later testified on rebuttal was his brother. The

disposition of the grievance is dated July 21, 2017 and notes that Petitioner's mother has been deceased.

In order to have standing to commence an illegal lockout proceeding, a petitioner must be in peaceable possession of the premises. RPAPL §713(10). "Possession" can mean that only a tenant of record, rather than, say, a licensee, has standing to commence such a proceeding. *Andrews v. Acacia Network*, 59 Misc 3d 10, 12 (App. Term 2nd Dept. 2018), *Brown v. 165 Conover Assoc.*, 5 Misc 3d 128(A)(App. Term 2nd Dept. 2004). On a strict read of this authority, Petitioner does not have "possession" of the subject premises, as he did not prove that he has been a tenant of record of the subject premises.

As of June 14, 2019, the Legislature enacted RPAPL §768, which codified that an owner of a dwelling faces civil and criminal penalties if the owner does not restore to possession an occupant — who is not necessarily a tenant — who has been dispossessed by, *inter alia*, changing the lock to the dwelling. One interpretation of this statute is that licensees now have standing to maintain a lockout proceeding, *Salazar v. Core Servs. Grp., Inc.*, 2020 NY Slip Op. 50424(U), ¶ 3 (Civ. Ct. Bronx Co.), while another interpretation is that it does not. *Jimenez v 1171 Wash. Ave, LLC*, 2020 NY Slip Op. 50615(U)(Civ. Ct. Bronx Co.). The Legislature did not amend RPAPL §713(10), an omission that supports the proposition that licensees still do not have standing to maintain lockout proceedings, as the Court may infer a failure to amend as such to reflect the intent of the Legislature. *Orens v. Novello*, 99 NY2d 180, 187 (2002). However, Courts must avoid a construction rendering statutory language to be superfluous. *Matter of NY Cty. Lawyers' Ass'n v. Bloomberg*, 95 AD3d 92, 101 (1st Dept. 2012). Statutes enacted before RPAPL §768 had already criminalized self-help, N.Y.C. Admin. Code §26-521, and provided for civil penalties for victims of self-help. RPAPL §853. If RPAPL §768 must be read to mean something different from RPAPL §853 and N.Y.C. Admin. Code §26-521, then a reasonable read of the statute could be to expand standing to commence an illegal lockout proceeding.

The equities of this matter in particular also weigh in favor of granting a judgment for Petitioner. The Court takes judicial notice that NYCHA has a long waiting list and that occupants of apartments who have not complied with remaining family member grievance procedures can effectively and inequitably jump the line. Be that as it may, NYCHA in this instance did not take any action when it did not receive any income affidavits for the seven years that have passed since 2013 and did not take any action to recover possession of the

subject premises since they had notice of the passing of Petitioner's mother, the prior tenant of record, at least by 2017 when NYCHA denied Petitioner's brother's remaining family member grievance. Any prejudice that would accrue to NYCHA by the delay incurred by the commencement of a licensee holdover proceeding against Petitioner pales compared with the unexplained delays NYCHA has already incurred on its own.

Balanced against the delays that NYCHA has incurred, Petitioner testified that he is homeless. [*3]The Court moreover takes judicial notice that, as of this writing, New York City and the world remain in the grip of a deadly pandemic. Petitioner's continued homelessness puts him at greater risk. [FN1] While there is law standing for the proposition that restoration is not an appropriate remedy even when there has been a wrongful eviction where restoration would only forestall the inevitable eviction, [Soukouna v. 365 Canal Corp.](#), 48 AD3d 359 (1st Dept. 2008), [Pied-A-Terre Networks Corp. v. Porto Resources, LLC](#), 33 Misc 3d 126(A)(App. Term 1st Dept. 2011), [Friends of Yelverton, Inc. v. 163rd Street Improv. Council, Inc.](#), 135 Misc 2d 275, 281-282 (Civ. Ct. Bronx Co. 1986), in this instance the Court finds credible Petitioner's testimony, corroborated by his state identification card, that he has been living in the subject premises for more than a decade. To lose one's home of that duration with no notice or opportunity to plan for an orderly relocation in the midst of a pandemic weighs against holding any futility of restoration against Petitioner.

On these specific facts, the Court finds that equity favors restoring Petitioner to possession. The Court accordingly awards Petitioner a final judgment of possession. Issuance of the warrant is permitted forthwith with no stay. The Court also directs NYCHA to restore Petitioner to possession of the subject premises forthwith, or as soon as is possible according to the guidance of the Fire Department. This order is without prejudice to any cause of action NYCHA may have against Petitioner for possession of the subject premises, and without prejudice to any of Petitioner's defenses, and it is without prejudice to any remaining family member grievance that Petitioner may commence against NYCHA, and without prejudice to NYCHA's position in such a proceeding.

This constitutes an order of this Court.

Dated: December 14, 2020

Brooklyn, New York

HON. JACK STOLLER

J.H.C.

Footnotes

Footnote 1: The Court takes judicial notice that, earlier this year, the Centers for Disease Control promulgated an order directing an eviction moratorium, in part because homelessness puts individuals at a greater risk of contracting COVID-19 insofar as they are forced into housing settings that are not conducive to social distancing. The order can be found here <https://www.federalregister.gov/documents/2020/09/04/2020-19654/temporary-halt-in-residential-evictions-to-prevent-the-further-spread-of-covid-19>

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