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2021-03-02

### 2857 Sedgwick Ave. LLC v. Drummond

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#### Recommended Citation

"2857 Sedgwick Ave. LLC v. Drummond" (2021). *All Decisions*. 256.  
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[\*1]

<b>2857 Sedgwick Ave. LLC v Drummond</b>
2021 NY Slip Op 21056
Decided on March 2, 2021
Civil Court Of The City Of New York, Bronx County
Tovar, J.
Published by <a href="#">New York State Law Reporting Bureau</a> pursuant to Judiciary Law § 431.
This opinion is uncorrected and subject to revision before publication in the printed Official Reports.

Decided on March 2, 2021

Civil Court of the City of New York, Bronx County

<p><b>2857 Sedgwick Avenue LLC, Petitioner,</b></p> <p><b>against</b></p> <p><b>Gregory Drummond; Joel "Doe"; "John" "Smith"; "John" "Doe"; "Jane" "Doe", Respondents.</b></p>
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037188/19

For Petitioner:

Borah Goldstein Alshuler Nahins & Goidel PC

377 Broadway, 6th Floor

New York, NY 10013

Bryant Tovar, J.

Recitation, as required by C.P.L.R. § 2219(a), of the papers considered in review of this motion.

Papers **Numbered**

Notice of Motion and Affidavits Annexed

Order to Show Cause and Affidavits Annexed 1-2

Answering Affidavits

Replying Affidavits

Exhibits

Other 3-8

Upon the foregoing cited papers, the Decision/ Order on the motion is granted for the following reason(s):

Petitioner obtained a judgment after inquest on October 22, 2019. Respondent obtained an Order to Show Cause returnable March 2, 2020 which stayed execution of the warrant to April 1, 2020 by stipulation executed on March 2, 2020. Pursuant to DRP-213(1)(B) and

Administrative Order 160/20 the Petitioner's motion to execute the warrant of eviction during the COVID-19 pandemic was granted on November 19, 2020. Petitioner has since been stayed from executing the warrant in accordance with the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020 ("CEEFFPA"). Petitioner restored the matter to the Court's calendar by emergency Order to Show Cause returnable February 10, 2021. Respondent failed to appear. The Court sent postcards and a Microsoft Teams invite for March 2, 2021 and again Respondent failed to appear.

CEEFFPA Part A, Section 9 allows for the execution of a warrant where "the court has awarded a judgment against the respondent prior to the effective date ( December 28, 2020) of [\*2]this act on the basis of objectionable or nuisance behavior, the court shall hold a hearing to determine whether the tenant is persistently and unreasonable engaging in behavior that substantially infringes on the use and enjoyment of the other tenants or occupants or causes a substantial safety hazard to others."

As a preliminary matter, no hardship declaration has been filed and sixty (60) days have elapsed since the effective date (December 28,2020) of CEEFFPA. For the purposes of this status conference, the court shall interpret Part A, Section 9 "persistently engaging in unreasonable behavior "as behavior that occurs after the effective date of the Act.

The results of the hearing/ status conference are as follows:

Petitioner first called Edgar Ramirez to testify. He is a tenant who has resided in the apartment directly below the subject premises for the past 13 years. Mr. Ramirez testified that 2 weeks ago, the week of February 15,2021, two leaks occurred in his apartment resulting in the collapse of his bathroom and kitchen ceiling. Mr. Ramirez testified that the leaks ran for two day straight. Mr. Ramirez states that the Fire Department attempted to gain access during the two days but was unsuccessful. Mr. Ramirez stated that the leaks have been on an ongoing issue for the past 4-5 years. These leaks have caused his ceiling to collapse on several occasions. Mr. Ramirez also testified that for the past two weeks he has continuously heard loud music, running and loud noise emanating from the subject premises at all hours of the day. Mr. Ramirez describes his building as a quiet building with the subject premises being the exception.

Next the Petitioner called Sindy Martinez, an agent for the Petitioner for the past two years. Mrs. Martinez's testimony corroborated the previous testimony regarding the leaks that occurred within the last two weeks. Mrs. Martinez testified that another leak began yesterday, March 1, 2021, in Mr. Ramirez bedroom. Mrs. Martinez testified that the Fire Department has been called to the subject premises on several occasions to address these leaks. Mrs. Martinez testified that the Fire Department and the superintendent have consistently found the source of the leak, including the most recent one, to be open faucets in the kitchen and bathtub of the subject premises.

Mrs. Martinez testified that on January 24, 2021 at approximately 3:00am, occupants of the subject premises broke glass in the lobby door in order to gain access to the subject building. Mrs. Martinez testified that she was able to determine the culprits of this incident through the indoor surveillance system. Prior to damaging the lobby door, Mrs. Martinez states that occupants of the subject premises were attempting to gain access by ringing every tenants intercom button in order to gain access. She testified that has 27 affidavits from tenants of the subject building complaining about the leaks, noise and behavior of the occupants of the subject building. Mrs. Martinez testified that out of the 27 tenants only Mr. Ramirez was willing to testify for fear of retaliation from the Respondent. Mrs. Martinez testified that the occupants of the subject premises have consistently opened the mailboxes of the tenants in buildings. She states it most recently occurred on March 1, 2021. She states that while several tenants have complained about the mailboxes none are willing to press charges.

Petitioner called Leandro Lopez, the superintendent of the subject building to testify Mr Lopez testified that he has been the superintendent of the subject building for two years and is familiar with the Respondent He stated that he has not seen the Respondent in the subject building for several months and that he does not know who the occupants of the subject premises are He states that different unknown individuals have been seen entering and exiting the subject premises Mr Lopez testified that for that past few months and ongoing, occupants of the subject [\*3]premises have been observed stealing packages from the tenants of the building Mr Lopez stated that he gained access to address the most recent leak and discovered the source to be an open kitchen faucet pouring water into a sink full of refuse Mr Lopez states the occupants of the subject premises have since 2020 and ongoing left refuse in the public areas

The COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020 Part A, Section 8 sub section b states " in any eviction proceeding in which a warrant has been issued including eviction proceedings filed on or before March 7, 2020, any warrant shall not be effective as against the occupants, unless, in addition to the requirements under section 749 of the RPAPL for warrants, such warrant states : (ii) the tenant is ineligible for a stay under this act because the court has found that the tenant is persistently and unreasonably engaging in behavior that substantially infringes on the use and enjoyment of other tenants or occupants or causes a substantial safety hazard to others, with a specific description of the behavior."

Based on the aforementioned testimony, this court finds Respondent continues to engage in behavior that infringes on the use and enjoyment of other tenants and occupants in the building. Specifically, the damaging of the front door of the building creates a safety hazard for the tenants of the subject building. This court finds that Respondent has purposely caused severe leaks resulting damage to several other apartments. Leaks from the subject premises have been consistent with a recent leak occurring the week of February 15, 2021.

In accordance with the COVID 19 Emergency Eviction and Foreclosure Prevention Act of 2020, Petitioner shall submit for a new warrant that shall issue forthwith The warrant shall state the following

Gregory Drummond, Joel "Doe", "John Smith" John Doe and Jane Doe are ineligible for a stay under the COVID 19 Emergency Eviction and Foreclosure Prevention Act of 2020 because the court has found that the tenant is persistently and unreasonably engaging in behavior that substantially infringes on the use and enjoyment of other tenants or occupants or causes a substantial safety hazard to others, specifically (Destruction of the front door and purposely causing leaks resulting in damage to other apartments)

The Petitioner may execute the warrant of eviction upon service of a marshal's notice and upon notice to APS prior to the eviction. The execution of the warrant shall be in compliance with all laws, legislative and administrative orders in effect.

This constitutes the Decision and Order of the Court.

Dated: March 2, 2021

Hon Bryant Tovar

Judge, Housing Part C

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