2021-06-08

Wisdom v. Byfield

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2021 NY Slip Op 50526(U)
Decided on June 8, 2021
Civil Court Of The City Of New York, Kings County
Stoller, J.
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Decided on June 8, 2021

Civil Court of the City of New York, Kings County

Gavin Wisdom, Petitioner,

against

Joy Byfield and Joshua Popo, Respondents.

10083/2021

For Petitioner: Alana Glaubiger

For Respondent: Joy Byfield, pro se and Joshua Popo, pro se

Jack Stoller, J.

Gavin Wisdom, the petitioner in this proceeding ("Petitioner"), commenced this proceeding against Joy Byfield ("Respondent") and Joshua Popo ("Co-Respondent"), the respondents in this proceeding (collectively, "Respondents"), by a petition filed on May 17, 2021 seeking a judgment against Respondent on the allegation that Respondent illegally

locked him out of 1131 Bergen Street, Apt. 7, Brooklyn, New York ("the subject premises") on March 5, 2021, and seeking a judgment against Co-Respondent on the ground that Co-Respondent newly occupies the subject premises that Petitioner is entitled to occupy. Respondent interposed an answer with a general denial. The Court held a trial of this matter on June 4, 2021 and June 7, 2021.

The trial

Petitioner testified that he moved into the subject premises in August of 2020 with his son; that Respondent gave him possession of a room; that he paid rent to Respondent in a monthly amount of $800 that Respondent then reduced to $700; that he last paid rent on February 1; that Respondent changed the locks on multiple occasions, first on February 26, 2021; that he has had baby paraphernalia in the subject premises; that when he was locked out he was in a hotel and then a friend's house; and that it is not safe for him to go back to the subject premises.

Petitioner testified on cross-examination that his son lived in the subject premises shortly after he started living there; that Respondent did not ask him not to bring a child to the subject premises; that he did not move out shortly after moving in August of 2020; that he was doing a job in another state; that someone who works for the trucking company he works for came to pick up his property; that he did not seek a return of his deposit; that Respondent told him that she did not want problems and that she would give him his deposit back; that it is not true that he [*2]moved out and moved back in; that Respondent only gave him one key and the door has two locks; that police were called; that he did not get Respondent's permission to remove locks from her door; that he did not sign a lease; that he has mail coming to the subject premises; that he does not have a mailbox key; and that he knows about mail because someone drops mail on the floor.

Petitioner testified in response to the Court's questioning that his room was the first bedroom on the right when one enters the subject premises.

Respondent introduced into evidence a text she sent Petitioner on November 11 saying that she rented him a room and that she did not want him there anymore

Respondent testified that Petitioner moved into the subject premises; that Petitioner paid her a deposit of $1800; that she did not hear from him; that she sent him a text thinking that he moved out; that Petitioner called her and said that he works a trucking job; that she tried to give Respondent's deposit back to him; that she was told that his friend would pick up Respondent's property; that she had money problems; that she did not feel comfortable with Petitioner moving back in; that when Petitioner moved back in, Petitioner said he was divorcing his wife; that she felt uncomfortable when Petitioner's family was there because of COVID; that Petitioner does not have keys for the top lock; that Petitioner engaged in objectionable conduct that gave her problems with her landlord; that Petitioner changed the lock to her door; that she has not seen Petitioner for months; that April 20 was when she heard from him; and that she called police for harassment.

On the Court's questioning, Respondent testified that she has lived in the subject premises for ten years; that she has a lease; and that Co-Respondent moved into same room that Petitioner had been previously living in on April 19, 2021.

Respondent testified on cross-examination that she rented a room to Petitioner; that she collected rent from Petitioner; that she did not change the locks; that Petitioner changed the locks first and she changed the locks afterward; that Petitioner was told where the key was; and that she was willing to let him back in but Petitioner did not come for the key.

Discussion

In order to demonstrate the standing necessary to obtain a judgment in a lockout proceeding, Petitioner must prove that he was in possession of the subject premises. While the address on the petition is the entirety of an apartment, Petitioner did not have exclusive possession of the entire apartment, which is what distinguishes a tenancy from a license. *Layton v. A. I. Namm & Sons, Inc.*, 275 A.D. 246, 249 (1st Dept. 1949), *aff'd*, 302 NY 720, 722 (1951). *See Munro v. Godfrey Prescott & NYC Dept. of Hous. Preservation & Dev.*, 2002 NY Misc. LEXIS 851, 4-5 (Civ. Ct. Bronx Co. 2002), *citing Kaypar Corp. v. Fosterport Realty Corp.*, 1 Misc 2d 469, 470-471 (S. Ct. Bronx Co.), *aff'd*, 272 A.D. 878 (1st Dept. 1947)(a licensor does not surrender his or her right to occupy the premises). A licensee normally does not have the standing to obtain a judgment in a lockout proceeding. *World Evangelization Church v. Devoe St. Baptist Church*, 27 Misc 3d 141(A)(App. Term 2nd Dept.

2010), *Brown v. 165 Conover Assoc.*, 5 Misc 3d 128(A)(App. Term 2nd Dept. 2004), *Korelis v. Fass*, 26 Misc 3d 133(A)(App. Term 1st Dept. 2010). *See Jimenez v. 1171 Wash. Ave, LLC*, 2020 NY Slip Op. 50615(U)(Civ. Ct. Bronx Co.)(the enactment of RPAPL §768 does not confer upon licensees the standing to obtain a judgment in a lockout proceeding). *But See Salazar v. Core Servs. Grp., Inc.*, 2020 NY Slip Op. 50424(U), ¶ 3 (Civ. Ct. Bronx Co.)(the enactment of RPAPL §768 *does* [*3]confer upon licensees the standing to obtain a judgment in a lockout proceeding).[FN1] Petitioner cannot obtain possession of the subject premises, when defined by the petition as the entire apartment.

Be that as it may, the record does show that Respondent rented a bedroom to Petitioner, which could arguably confer exclusive possession of at least that room to Petitioner. Petitioner did not move to amend the petition to conform to the proof at trial, but the Court retains the discretion to *sua sponte* amend the pleadings to conform to the proof in the absence of prejudice to the party who would oppose the amendment. *Murray v. New York*, 43 NY2d 400, 405 (1977), *Matter of Jada W. (Ketanya B.)*, 104 AD3d 861 (2nd Dept.), *leave to appeal denied*, 21 NY3d 862 (2013), *Groves v. State Univ. of NY*, 265 AD2d 141, 145 (3rd Dept. 2000). Assuming *arguendo* that the Court were to so amend the pleadings, Petitioner's possession of his room, together with the proof that Respondent changed the locks and withheld a key to one of the two locks to the subject premises can comprise proof of the elements of a lockout cause of action. *Compare West Broadway Glass Co. v. Namaskaar of Soho, Inc.*, 11 Misc 3d 144(A)(App. Term 1st Dept. 2006).

When a tenant otherwise proves the elements of a lockout cause of action, restoration may not be appropriate under circumstances where it would be futile because an eventual eviction of the tenant would be inevitable. *Soukouna v. 365 Canal Corp.*, 48 AD3d 359 (1st Dept. 2008), *Bernstein v. Rozenbaum*, 20 Misc 3d 138(A)(App. Term 2nd Dept. 2008). Assuming *arguendo* that the Court would deem Petitioner to have possession of the bedroom in the subject premises pursuant to a subtenancy of Respondent, which is tantamount to a tenancy for these purposes, *IBM v. Joseph Stevens & Co., L.P.*, 300 AD2d 222, 223 (1st Dept. 2002), Respondent is still the tenant of record of the subject premises with no written sublease with Petitioner. As Petitioner has occupied the subject premises for less than a year, Respondent could terminate a subtenancy for no reason on thirty days' notice. RPL §§226-c(2)(b), 232-a.

However, as of this writing, New York and the world are enduring the effects of the COVID-19 pandemic. Finding that evictions and homelessness hinder the advancement of public health, the Legislature has effectuated stays of evictions by the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2019. Excusing eviction by self-help on the ground that restoration would be futile would contravene this policy. *Tangiyev v. Telt*, 2021 NY Slip Op. 50373(U)(Civ. Ct. Kings Co.).

Unlike the petitioner in *Tangiyev*, *supra*, however, Petitioner does not seek restoration to an apartment that he possesses exclusively, but an apartment that he would be sharing with Respondent. To the extent that COVID-19 can be spread in indoor settings, the concern that Respondent expressed about living with Petitioner is legitimate; Respondent would have no say about whatever Petitioner may do that may give rise to risk factors to her. Moreover, the extent that Respondent can only be restored to the subject premises if the Court grants Respondent's application for a judgment and warrant against Co-Respondent would nullify any public health benefit of preventing an eviction.

Accordingly, for the above stated reasons, the Court dismisses this proceeding after trial

This constitutes the decision and order of this Court.

Dated: June 8, 2021

New York, New York

HON JACK STOLLER

J.H.C.

Footnotes

Footnote 1:*Qian "Llily" Zhu v. Xiao "Joy" Hong Li*, 70 Misc 3d 139(A)(App. Term 2nd Dept.), decided after the enactment of RPAPL §768, holds that a licensee cannot maintain a lockout proceeding.

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