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Drax Realty Corp. v. Johnson

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Drax Realty Corp. v Johnson
2022 NY Slip Op 31622(U)
June 3, 2022
Civil Court of the City of New York, New York County
Docket Number: Index No. 063847/19
Judge: Anne Katz
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**CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: TRIAL PART R**

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**Index No: 063847/19
DECISION/ORDER****DRAX REALTY CORP.,****Petitioner-Landlord,****-against-****TRACY JOHNSON,****Respondent-Tenant.**

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Hon. A. Katz:**Procedural and Factual History**

Petitioner moves this court for an Order permitting the execution of the warrant in the above referenced proceeding and respondent cross-moves to vacate the Judgment of Possession and the warrant of eviction, reinstate her tenancy and dismiss the proceeding.

This is a summary holdover proceeding predicated upon allegations that the respondent's behavior constitutes a "nuisance". Petitioner commenced this proceeding pursuant to a 7 Day Notice of Termination dated April 12, 2019. A trial commenced on October 29, 2019 and lasted several days. After trial, this Court issued a Decision and Order, dated January 16, 2020, which held that petitioner had proved that respondent's conduct rose to the level of nuisance. The Court granted petitioner a Judgment of Possession with issuance of the warrant forthwith and execution stayed sixty days. On February 10, 2020, the warrant was issued to Marshal Bia. However, due to the onset of the Covid-19 pandemic, petitioner alleges that it was unable to proceed on the warrant of eviction and evict respondent. Therefore, it now moves this current to permit execution of the warrant of eviction.

In opposition to petitioner's motion and in support of its cross-motion, respondent argues that the judgment of possession must be vacated and her tenancy reinstated. Respondent argues that she is entitled to a reinstatement of her tenancy because, after the conclusion of the trial, in or about November 19, 2019, petitioner offered her a two year renewal lease which was fully executed. Moreover, in November 2021, after issuance of the warrant of eviction to Marshall Bia on February 10, 2020, petitioner offered her another renewal lease which was signed in or about November, 2021. After respondent signed the second renewal lease, petitioner applied to NYCHA, as the administrator of the Section 8 voucher program, for an increase in respondent's rent subsidy. The request for the increase in respondent's rent subsidy was based upon the last renewal lease offered to respondent. Petitioner's request for a subsidy increase was granted by NYCHA effective March 1, 2022. According to the terms of the NYCHA Administrative Plan, prior to an approval of an increase in subsidy under Section 8, it is incumbent upon the landlord to provide NYCHA with a copy of the valid renewal lease.

To counter respondent's argument in its cross-motion, petitioner argues that it was obligated to offer respondent her renewal leases pursuant to *NY Rent Stabilization Law §2523.5*. Petitioner also argues that it was required to offer the renewal leases because a warrant of eviction had not issued. Had the warrant of eviction issued, petitioner conceded it would have cancelled the landlord-tenant relationship between the parties and created an exception to its obligation to offer a renewal lease. Petitioner also attached affidavits of complaining tenants to its motion which alleged the respondents nuisance behavior has continued and they fear for their safety.

Law Applied to the Facts

Although petitioner alleged that a warrant of eviction had not issued and therefore they were obligated to offer respondent a renewal lease as required by *NY Rent Stabilization Law §2523.5*, this is incorrect. At the time that respondent signed the second renewal lease, in or about November 2021, a warrant of eviction had been issued to Marshal Bia on February 10, 2020 and a landlord-tenant relationship between the parties no longer existed. Therefore, it is clear that once the landlord-tenant relationship was terminated, petitioner was not required to offer respondent the second renewal lease. Although petitioner did not return the second renewal lease to respondent, it is clear such lease existed and was valid as evidenced by its request to NYCHA to increase the rent subsidy, which was granted.

The issuance of the warrant of eviction on February 10, 2020 annulled the landlord-tenant relationship. See *RPAPL 749[3]*. This case is similar to that of *Related Broadway Development v. Malo*, 58 Misc3d 154 (A), 97 NYS3d 57 (2018), where the Appellate Term, First Department held that once petitioner offered a renewal lease after the warrant of eviction issued, it reinstated the tenancy and any termination of the tenancy was vitiated. Additionally, as in *Malo, supra.*, in the renewal lease, petitioner failed to reserve its rights under the final judgment. *Everett D. Jennings Apts. L.P. v. Hinds*, 12 Misc.3d, 139(A) (App. Term 2nd Dept 2006). Respondent averred that she signed the renewal lease and it is clear that petitioner accepted the lease as it submitted the renewal lease to the NYCHA in order to be granted the subsidy increase. Accordingly, under the facts herein, respondent's current right of possession flows from the binding renewal lease and she cannot be dispossessed pursuant to the prior final judgment. See *Malo, supra. Matter of Stepping Stones Assoc. v. Seymour*, 48 AD3d 581(2008) lv dismissed 10 NY3d 953 (2008) and the petition must be dismissed.¹

Accordingly, petitioner's motion to execute on the warrant is denied and the cross motion to dismiss the proceeding is granted.

This constitutes the decision and order of this Court.

¹ Although this Court has reached the determination that the landlord tenant relationship has been reinstated between petitioner and respondent, it will briefly address respondents request to permanently stay the eviction pursuant to CPLR §2201, conditioned upon respondent's good behavior and ongoing supportive services. Although this Court has the broad authority and ample discretion to stay the proceeding, this Court would not use its authority to issue a stay under the circumstances herein. Despite respondent's allegations that she has received mental help and is no longer a nuisance, the Affidavits attached to Petitioner's motion tell a different story. It has been alleged that respondent's nuisance behavior continues and has even escalated. As such, a stay would not be appropriate.

Dated: June 3, 2022
New York, New York



Hon. Anne Katz, J.H.C.

**ANNE KATZ
JUDGE, HOUSING COURT**