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Lawrence v. Stiles

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Lawrence v Stiles

2022 NY Slip Op 32739(U)

July 12, 2022

Civil Court of the City of New York, Kings County

Docket Number: L&T Index No. 309815/21

Judge: Kimberley Slade

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This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART G

-----X
Winston Lawrence,

Petitioner,

L&T Index No. 309815/21

-against-

DECISION/ORDER

Jene Stiles,
"JOHN DOE" / "JANE DOE," 1-3

Respondents.

-----X
Present: Hon. KIMBERLEY SLADE
Judge, Housing Court

Recitation, as required by C.P.L.R. § 2219(a), of the papers considered in the review of Respondent’s motion pursuant to CPLR 3211(a)(1) and (a)(8) to dismiss this proceeding.

The papers considered in these motions are contained on NYSCEF and are numbered: 13-32 and various documents and exhibits as may be referenced herein.

This is a holdover proceeding seeking possession of an unregulated unit where the respondent has been in possession since July of 2018. Initially pursuant to a written lease and thereafter as a monthly tenant. On August 23, 2021 petitioner served upon respondent a termination notice seeking to sever her tenancy effective September 6, 2021 alleging nuisance behavior. A petition was served echoing the allegations, the matter appeared on the court’s calendar and upon retaining counsel respondent moved to dismiss the proceeding alleging that as a tenant for more than two years she is entitled to the service of a ninety day notice and that the “Notice Terminating Tenancy” served in this matter provides only 13 days and thus, fails to provide sufficient time in the notice and the proceeding must be dismissed.

The notice is dated August 2, 2021 and was served August 23, 2021. It requires respondent to surrender possession on September 6, 2021 which is a period of thirteen days.

RPL 232-a provides: “[n]o monthly tenant, or tenant from month to month, shall hereafter be removed from any lands or building in the City of New York on the grounds of holding over the tenant’s term unless pursuant to the notice period required by...Section 226-c of this article...at least thirty days before the expiration of the term, the landlord or the landlord’s agent serve upon the tenant, in the same manner in which a notice of petition in summary proceedings is no allowed to be served by law, a notice in writing to the effect that the landlord elects to terminate the tenancy and that unless the tenant removes from such premises on the day designated in the notice, the landlord will commence summary proceedings under the statute to remove such tenant therefrom.”

RPL 226-c provides as relevant: “[w]henever a landlord...does not intend to renew the tenancy, the landlord shall provide written notice as required in subdivision two of this section...” At section (2)(a) For the purposes of this section, the required notice shall be based upon the cumulative amount of time the tenant has occupied the residence or the length of the tenancy in each lease, whichever is longer. And at subsection (d) the statute provides “if the tenant has occupied the unit for more than two years ...the landlord shall provide at least ninety days’ notice.”

Respondent opposes the motion arguing that the proceeding is not predicated upon either of the above cited statutes and is instead predicated upon a nuisance theory. While not specifically revealing upon which statute he bases his case, petitioner argues that there is a “...greater need for immediacy that precedes the filing of a nuisance proceeding. It is the same need for immediacy and likely dispute of objectionable conduct that has allowed even the Rent Stabilization code to allow for a seven-day notice of termination based on nuisance allegations (RSC Section 2524.2).” (NYSCEF 31 pars. 8, 9) Petitioner argues, in effect, that there is nothing

specific that prevents him from proceeding in this manner and observes that the legislature manifested its intent to permit the expeditious resolution of nuisance proceedings by various actions it has and has not taken (pars. 8-11) and that this proceeding falls into the category of matters that are allowed to proceed. Noteworthy though, petitioner fails to point to a statutory basis for the service of the notice served in this proceeding although implicitly petitioner accepted the need for the service of *some* notice. (To the extent that petitioner argues that paragraph 15 of the parties expired lease permits termination following the service of a 3 day notice it is observed that that provision also requires the prior service of a notice to cure or correct, which is not alleged in this proceeding). Assuming the proper notices were served the matter would, as nuisance is alleged, be allowed to proceed.

Petitioner is correct that the legislature has generally provided for abbreviated notice periods and eliminated stays where nuisance is alleged. For instance, RPAPL 751 provides for a greatly expedited proceeding but bears a higher burden of proof and, as noted, the lease between the parties to this proceeding provided for an five day termination period following service of a notice to correct but petitioner did not proceed on either theory and, as the respondent is not a rent stabilized tenant, RSC 2524.2 is inapplicable. Thus, all that remains as a predicate to terminating the respondent's tenancy is RPL 226-c and, as there is no argument that predicate notices were served under this statute the proceeding is dismissed without prejudice as neither respondent's longevity nor status within the unit are undisputed.



Kimberly Slade
Judge, Housing Court