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5th & 106th St. Assoc, L.P. v Hunt
2019 NY Slip Op 34058(U)
September 11, 2019
Civil Court of the City of New York, New York County
Docket Number: L&T 54735/19
Judge: Frances A. Ortiz
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This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK, HOUSING PART F

-----X
5TH AND 106TH STREET ASSOC, L.P.,

Index No. L&T 54735/19

Petitioner, Landlord,
-against-

DECISION AND ORDER

MARTHA HUNT,

Respondent-Tenant,

“JOHN” “DOE” & “JANE” “DOE”
Respondents-Undertenants

-----X
FRANCES A. ORTIZ, JUDGE

Recitation as required by CPLR 2219(a), of the papers considered in the review of the petitioner’s motion for summary judgment:

Papers	Numbered
Notice of Motion, Affirmation & Affidavit.....	1
“Response to Motion Judgment Summary”.....	2
Reply Affirmation.....	3

Upon the foregoing cited papers, the Decision/Order of this Court on this motion is as follows:

Petitioner 5th and 106th Street Associates, L.P. commenced this holdover proceeding against respondent Martha Hunt (“Ms. Hunt”) and non-appearing undertenants seeking possession of 1250 Fifth Avenue, Apartment 6M in New York, New York. Petitioner now moves for summary judgment on its claim that Ms. Hunt has not complied with a provision of her lease requiring her to supply the landlord with income and asset information. Respondent

opposes. For the reasons discussed below, the Court grants petitioner’s motion.

1250 Fifth Avenue, otherwise known as Lakeview Apartments, recently underwent a change in financing that resulted in a new regulatory scheme for the building. The positions taken by both parties with regard to the motion are founded in this regulatory change.

Before September 2018, the subject premises was regulated by New York State as a limited profit housing company under the Private Housing Finance Law (the “Mitchell Lama Law”) and Section 236 of the National Housing Act. (Coppe Aff. at ¶ 7.) In late 2016, the property’s Mitchell Lama regulations were set to expire and petitioners satisfied the Section 236 loan provided by the federal government. Normally, when Mitchell Lama regulations expire, the existing tenants are provided with enhanced Section 8 vouchers and the apartments would eventually return to market-rate rents as the tenants holding those vouchers left the premises and new tenants moved in. A team of interested parties, including the Lakeview Tenants Association, worked with the New York State and federal governments to preserve the affordable housing in Lakeview Apartments. As a result, in September 2018, Lakeview entered into HUD’s Rental Assistance Demonstration program (“RAD”) and, consequently, entered into a Housing Assistance Payments contract (“HAP contract”) with HUD. (Coppe Aff. at ¶ 8.) The result is that the building is no longer a Mitchell Lama Building and is now a Project-Based Section 8 Building, which will ensure that the apartments remain available for low-income tenants for at least the next forty years¹.

¹Eleven of the 446 tenants in the subject premises opted for enhanced Section 8 vouchers rather than allow their units to become HUD Project-Based Section 8 units. Neither petitioner nor respondent claim that respondent opted to obtain one of these vouchers and the subject apartment therefore falls under the purview of the HAP contract. (Pet. Ex. D.)

In order to remain compliant with its obligations under the HAP contract, petitioner must provide HUD with income and asset information for the tenants in the subject premises. Tenants are required by HUD to comply with all asset and income certification requirements of the Project Based Section 8 Program and to execute HUD leases. (Pet. Ex. C, Correspondence with HUD and the HAP contract at §2.7(c).) Petitioner seeks summary judgment on its claim that Ms. Hunt failed to provide it with income and asset information in violation of her lease. (See 2016 Lease, Pet. Ex. I)

To succeed on a motion for summary judgment, the movant must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. *Stonehill Capital Mgmt., LLC v. Bank of the W.*, 28 N.Y.3d 439, 448 (2016) (citing *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320 (1986)). “Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action.” *Id.* The drastic remedy of summary judgment may only be granted where, “viewing the facts in the light most favorable to the non-movant, the moving party has tendered sufficient evidence to demonstrate the absence of any material issues of fact, and the non-moving party has subsequently failed to establish the existence of material issues of fact which require a trial of the action.” *Dormitory Auth. v. Samson Constr. Co.*, 30 N.Y.3d 704, 717 (2018) (internal quotations omitted.)

Petitioner here has made its prima facie showing that it is entitled to a summary judgment. Petitioner shows correspondence with HUD and its mortgage with HUD detailing its requirements for income and asset reporting as well as a regulatory agreement with HPD wherein

the same is required. (Pet. Ex. C.) Petitioner also annexes respondent's last executed lease to its motion. (Pet. Ex. I.) Pursuant to paragraph 32 of this lease, petitioner is entitled to request income documents from respondent and respondent agrees to provide accurate statements regarding this information and to do so by the date specified in petitioner's request. Paragraph 38(d)(3) of the lease indicates that "failure of the Tenant to timely supply all required information on the income and composition, or eligibility factors, of the Tenants's household" is a reason that petitioner may terminate the tenancy. Petitioner annexes letters sent to respondent requesting that she provide it with the necessary income and asset information at a meeting scheduled for June 20, 2018. (Pet. Ex. F, G, H.) Finally, petitioner includes an affidavit from its agent, Christopher Doucette, stating that Ms. Hunt has refused to provide said information.

Respondent, in her opposition, does not state that she complied with the income reporting requirements demanded by her lease and the relevant regulatory agreements. Instead, respondent argues that she does not have to comply with these requirements because she believes she is a rent-stabilized tenant entitled to a rent-stabilized lease. There is no basis in law for respondent's argument. The subject premises was not covered by rent stabilization under either the Mitchell Lama Law or the HAP contract and there is no evidence presented that it was considered rent stabilized at any point in the past.

It appears that respondent is basing her assertion on a DHCR Rent Registration for the subject unit dated March 26, 2019 and annexed to her opposition. According to this Rent Registration, petitioner registered the unit as rent stabilized on February 1, 2019. Filing this registration statement does not automatically confer rent-stabilized status upon the apartment in question. This is especially true when, as here, there is a good reason for a landlord to file this

registration statement that does pertain to the unit’s rent-stabilized status. Pursuant to Section B its regulatory agreement with HPD, petitioner is required to register each unit in the premises in accordance with the Rent Stabilization Code. (Pet. Ex. D) However, that same regulatory agreement at Section F acknowledges that “HUD has pre-empted the entire field of rent regulation . . . as it affects the Project under 24 C.F.R § 246.20 and that, for so long as the HAP Contract shall be in effect, the dwelling units covered by the HAP Contract shall be exempt from the Rent Stabilization Code.” (Pet. Ex. D, § E.) Petitioner was therefore required by HPD to register the unit with DHCR even though the unit is not covered by the Rent Stabilization Code.

As part of entering into a regulatory agreement with HPD, the petitioner could have agreed to opt into rent stabilization as a consequence of obtaining funding from New York City. Indeed, HPD and landlords frequently enter into such agreements. However, HPD explicitly acknowledged that the subject unit was exempt from rent stabilization because of federal law pre-emption. Absent an explicit agreement by petitioner to create rent-stabilized tenancies in the subject premises, there is no basis in fact or law to deem the subject unit covered by rent stabilization. Respondent has therefore failed to establish the existence of material issues of fact which require a trial of the action and cannot defeat petitioner’s summary judgment motion.

The Court finds in favor of the petitioner and awards petitioner a final judgment of possession against Martha Hunt. Pursuant to the newly enacted Section 753(4) of the RPAPL, the Court stays issuance of the warrant of eviction for thirty days for respondent to correct the breach of lease here. If, during this thirty-day period, respondent successfully confers the necessary information petitioner requires in order to comply with its obligations under the HAP contract and executes a HUD lease with the petitioner, the judgment will be deemed vacated and

the warrant cannot issue. If the respondent fails to cure the breach, the warrant may issue thirty days from the date of this decision and execute after service of a notice fo eviction as required by law.

This is the decision and order of the Court, copies of which have been delivered to the parties in open court.

ORDERED: Petitioner's motion for a summary judgment is granted. Final judgment of possession as against Martha Hunt, issuance stayed thirty days.

Dated: New York, NY

September 11, 2019

So Ordered
Frances Ortiz
Judge Housing Court

Frances A. Ortiz, JHC