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South Conduit Avenue Realty Property LLC v. Humphrey

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State of New York
County of Queens
Civil Court of the City of New York, Part D

Index Number: **LT-300051-22/QU**
Motion Seq.: **01, 02**

South Conduit Avenue Realty Property LLC
Petitioner(s)
-against-

Drew Humphrey, Erick Strong, John Doe, Jane Doe
Respondent(s)

Recitation, as required by **CPLR 2219(A)**, of the papers considered in the review of petitioner's motion (Seq. 01) to declare respondent Drew Humphrey to be in default of the April 18, 2022 Stipulation of Settlement and entering a final judgment against respondent or extending the probationary period; and respondent's cross-motion (Seq. 2) seeking leave for discovery on petitioner's claims surrounding respondent's alleged breach of the settlement: **Court file, Contained on NYSCEF - Documents No. 1 through 32.**

Present: Hon. Maria Ressos

This holdover proceeding was commenced after respondents were served with a Seven (7) Day Notice of Termination to vacate the premises on or before December 23, 2021 after respondents allegedly failed to comply with the Ten (10) Day Notice to Cure dated November 4, 2021. The subject premises located at 177-50 South Conduit Avenue, Apt. 1-D, Jamaica, New York 11434, is rent stabilized and as such this case was brought pursuant to Section 2524.2(a), (b), and (c)(2) of the Rent Stabilization Code. The allegations are of objectionable/nuisance conduct. Specifically, that excessive smoke marijuana and cigarette odors emanate from the premises causing problems and complaints from neighboring units in this non-smoking building.

The matter was scheduled on February 8, 2022, where respondent, Drew Humphrey, was referred to The Legal Aid Society for legal representation. That day, the case was adjourned to March 1, 2022. On that return date, the Legal Aid Society formally appeared on behalf of respondent. After settlement negotiations, the parties reached an agreement, a copy of which was submitted to the Court electronically on April 18, 2022. The Stipulation, in relevant part, resolved the matter without admitting any of the allegations contained within the notices, whereby respondent consented to a six (6) month probationary period, commencing April 18, 2022 and terminating September 18, 2022. During which time, respondent agreed that "he will refrain from committing any of the alleged behavior set forth in the Ten (10) Day Notice of Termination, specifically smoking in the apartment." See, *NYSCEF Doc. 10*. The stipulation goes on to say that upon a breach petitioner may restore the matter back to the calendar, where the Court shall conduct a hearing to determine whether respondent failed to comply with the terms of the agreement.

Less than one month after executing the settlement agreement, petitioner filed the instant motion (Seq. 01) on May 10, 2022 alleging a breach has occurred. Petitioner's motion asks that the Court find respondent to be in default of the Stipulation and either enter a final judgment against respondent or extend the probation period for six (6) months. In support, petitioner submits one affidavit from a tenant in the neighboring apartment 1-C. Alicia Powell attests that after being informed that the case settled on April 18, 2022 by a probationary stipulation, she was disturbed by smoke from the subject premises, on one occasion recalling one specific incident at 3:43a.m. on April 25, 2022. See, *NYSCEF Doc. 13*. The managing agent's affidavit in support merely repeats Alicia Powell's complaint from April 25th. Respondent opposes the motion entirely arguing that the relief is not sufficiently supported by facts. Respondent correctly points out that the Powell affidavit contains one single specific allegation of smoke. The Powell affidavit did not state that respondent was seen smoking

first-hand nor was she able to discern what type of smoke she smelled. Powell stated that she “believes the smell was emanating [emphasis added]” from the subject premises but does not explain how she knew that to be true. Respondent maintains that the allegations are false and that he has smelled smoke from other neighboring apartments--not his own. See, *NYSCEF Doc. 26*.

After reviewing all the moving papers and for the reasons highlighted by respondent’s counsel above, the Court agrees that petitioner’s motion is supported by statements that are circumstantial and conclusory at best. See, *146 17th St. Assoc. LLC v Ruiz*, 61 Misc.3d 1223(A) (2nd Dep’t 2018). As to the affidavits annexed to the reply, CPLR 2214 requires that supporting affidavits in support of the relief requested are to be served prior to the return date of the motion, and not in reply. See, *Alto v. Firebaugh Realty Corp., N.V.*, 33 AD3d 738,739 (2d Dep’t 2006); *Jain v. New York City Tr. Auth.*, 27 AD3d 273, 273 (1st Dep’t 2006); *Hoyte v. Epstein*, 12 AD3d 487, 488 (2d Dep’t 2004). This requirement notwithstanding, the affidavits in reply also fail to provide support for the relief sought. Additionally, the allegations therein were sworn to after the probationary period had expired.

The single allegation contained in petitioner’s initial moving papers, one week into the probationary period, is easily rebutted and does not establish a substantial breach of the agreement to move this Court to enter a final judgment against respondent and evict him from his rent stabilized apartment. It is also not enough to warrant an extension of the six (6) month probationary stipulation. As such, petitioner’s motion is denied in its entirety and respondent’s cross-motion for discovery (Seq. 02) is denied as moot. Given that the probationary period in the stipulation has ended, the petition is dismissed. Respondent is cautioned that any conduct in violation of his lease may expose him to future litigation similar to the one at hand as this matter has ended without prejudice to a new cause of action based on new allegations.

This constitutes the Decision/Order of the Court. A copy of which will be uploaded to NYSCEF.

ENTERED: Civil Court of the City of New York, New York

DATED: October 28, 2022



Hon. Maria Ressos
Housing Court Judge
HON. MARIA RESSOS
JUDGE, HOUSING PART