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2022-05-25

### Eccles v. Patterson

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

----- X  
SHAWNA ECCLES,

Petitioner,

Index No. 300197/2020

- against -

**DECISION/ORDER**

SHARITA PATTERSON,

Respondent.

----- X  
Present: Hon. Jack Stoller  
Judge, Housing Court

Shawna Eccles, the petitioner in this proceeding (“Petitioner”), commenced this proceeding against Sharita Patterson, the respondent in this proceeding (“Respondent”), seeking possession of 1444 East 91<sup>st</sup> Street, Apt. 2, Brooklyn, New York (“the subject premises”) on the basis of a termination of an unregulated tenancy. The petition, verified on August 12, 2020, pleads that Petitioner requires use of the subject premises for her own living purposes and that Petitioner intends to personally occupy the subject premises. Respondent interposed an answer. The Court held a trial of this case on May 17, 2022.

**The trial**

Petitioner submitted into evidence a deed dated February 27, 2019 showing that she is the owner of the house in which the subject premises is located (“the House”) and that the House is a two-family house; a one-year lease between the parties commencing on August 1, 2019 with a monthly rent of \$2,100; and a rent ledger showing arrears to date of \$14,700. The pleading shows that Petitioner served the appropriate predicate notice, dated May 14, 2020, prior to the commencement of this proceeding pursuant to RPL §226-c(2)(c). The predicate notice does not make an allegation with regard to Petitioner’s personal use of the subject premises.

Petitioner testified that she owns the subject premises; that there are two units in the House; that she accepted funds pursuant to the Emergency Rent Assistance Program (“ERAP”); that she has no place to live; that the units on the first floor of the House are rented out; that she has been bouncing around between family and friends and sleeping on couches; and that all of her finances have been going to the mortgage and the water bills.

Respondent testified that she is a special patrolman for the City of New York; that she signed a lease in July of 2019; that she has lived in the subject premises for three years; that she lives in the subject premises with three children; that Petitioner is the landlord; that Petitioner lives in the basement of the House; that Petitioner’s grandmother lives in the first floor; that Petitioner has lived in the basement since she signed the lease; that Petitioner moved in about two weeks after Respondent moved in; that she sees Petitioner every day leaving at around 7 a.m.; that she does not know Petitioner’s grandmother’s name; and that Petitioner’s grandmother says hello to her every day.

Respondent testified on cross-examination that she has not seen the basement unit.

Petitioner testified in rebuttal that she does not reside in the basement; that her stuff is there; that she goes to the House to take out the garbage and to check on the older tenant who is there; that she gets there at various times; and that no one lives in the basement.

Petitioner testified on cross-examination that she is employed and that her job is her source of income.

## **Discussion**

As Petitioner has shown that she is a proper party to commence this proceeding, that the subject premises is unregulated, that there is no lease in effect, and that she properly effectuated service of a predicate notice, Petitioner has proven her prima facie case.

Respondent argues that Petitioner's acceptance of ERAP benefits precludes Petitioner's cause of action. Acceptance of payment for rental arrears through ERAP shall constitute an agreement by a landlord, *inter alia*, not to evict for reason of expired lease or holdover tenancy for 12 months, unless the premises is located in a building with 4 or fewer units and if the landlord intends to immediately occupy the unit for the landlord's personal use as a primary residence. L. 2021, c. 56, Part BB, Subpart A, §9(2)(d)(iv), as amended by L. 2021, c. 417, Part A, §5. Respondent argues that the predicate notice did not allege that Petitioner was seeking possession of the subject premises for her personal use.

Functions of a predicate notice include ending a tenant's estate and informing a tenant of the consequence associated with remaining in the premises after the termination of the tenancy, Raffone v. Schreiber, 18 Misc.3d 925, 927 (Civ. Ct. N.Y. Co. 2008), Katz v. Grifa, 156 Misc.2d 203, 206 (Civ. Ct. N.Y. Co. 1992), which as a general matter means that a predicate notice should enable the recipient to evaluate the risks of an adverse outcome if the recipient does not abide by the notice. Compare 542 Holding Corp. v. Prince Fashions, Inc., 46 A.D.3d 309, 310 (1st Dept. 2007), 240 W. 37th LLC v. BOA Fashion, Inc., 24 Misc. 3d 145(A)(App. Term 1st Dept. 2009)(a notice to cure should apprise a tenant of the alleged defaults in the lease), Fanny Grunberg & Assocs., LLC v. Hyatt, N.Y.L.J. Dec. 9, 2002 at 21:5 (App. Term 1st Dept.)(a predicate notice's explicit factual premise for a landlord's cause of action overrides a potential defect arising from the notice's erroneous citation of an incorrect section of a statute).

Given that Petitioner's cause of action in this matter is a termination of an unregulated tenancy, and that ERAP had not existed at the time of the service of the predicate notice and the commencement of this proceeding, a representation in the predicate notice that Petitioner intended to occupy the subject premises herself could not have had an effect on Respondent's

calculation on the risks of remaining in the subject premises. Petitioner was not required to allege an exception to a protection against an eviction that had not existed at the time of the service of the predicate notice. What remains for the Court to decide is whether Petitioner intends to immediately occupy the unit for the landlord's personal use as a primary residence.

Courts are not normally called upon to make a fact determination about a party's intent to do something in the future. So-called "owner's use" cases are an exception. As of the enactment of the Housing Stability and Tenant Protection Act ("HSTPA") on June 24, 2019, the Rent Stabilization Law conferred upon owners a cause of action for possession against rent-stabilized tenants on the ground that the owners had an "immediate and compelling necessity" for their personal use of the premises. N.Y.C. Admin. Code §26-511(c)(9)(b). Before June 24, 2019, the Rent Stabilization Code conferred upon owners a cause of action for possession against rent-stabilized tenants for personal use without having to show an "immediate and compelling necessity," 9 N.Y.C.R.R. §2524.2(a)(1), although case law required a showing of a "good faith intent." Hirsch v. Stewart, 63 A.D.3d 74, 79-80 (1st Dept. 2009). A Court could potentially render a finding of "good faith intent" on testimonial evidence alone if the Court found the testimony credible. Horsford v. Bacott, 32 A.D.3d 310, 312 (1st Dept. 2006), *aff'd*, 8 N.Y.3d 874, 875 (2007), Moy v. Karki, 49 Misc.3d 138(A)(App. Term 2nd Dept. 2015).

An important factor in the Court's evaluation of a rent-stabilized landlord's credibility in this regard had been the financial advantage a vacancy conferred upon owners of rent-stabilized apartments before the passage of HSTPA. N.Y.C. Admin. Code §26-504.2(a), 9 N.Y.C.R.R. §2522.8(a)(1). See Bourdouris v. Caravella, N.Y.L.J. Aug. 8, 2001 at 19:5 (Civ. Ct. Kings Co.), *citing* Sobel v. Mauri, N.Y.L.J. Dec. 12, 1984 at 10:4 (App. Term 1st Dept.) (the intent to recover the premises for personal use must not be a subterfuge for removal of tenants), Samra v.

Messeca, 47 Misc.3d 150(A)(App. Term 1<sup>st</sup> Dept.)(rental of an apartment at a market rate that a landlord previously obtained possession of on the ground of personal use is a factor in finding a lack of good faith on a subsequent cause of action for personal use). An owner of an unregulated two-family house has no such incentive structure, as such an owner can legally ask for any amount of rent that the market can bear upon the expiration of a tenant's lease. Logically, then, an owner of a rent-stabilized apartment bears a greater burden of proving an intent to occupy an apartment than an owner of an unregulated apartment.

The parties in this case, both interested witnesses, offered testimony disputing Petitioner's intent to move into the subject premises. Given the inherently speculative nature of the fact determination that statute calls upon the Court to make, a determination of credibility presents a different issue than a Court's fact-finding concerning something that has already occurred before the trial. Significantly, in this matter, Petitioner pleaded that she wished to occupy the subject premises even though she did not have to plead as such and even though ERAP did not exist at the time of the pleading, causing the Court to conclude that Petitioner's pleading as such was not pretextual. Petitioner's pleading is consistent with her testimony. The Court sees no reason to otherwise doubt Petitioner's intent to move into this two-family house that she owns.

Accordingly, it is ordered that the Court awards Petitioner a final judgment of possession against Respondent. Issuance of the warrant of eviction permitted forthwith with execution stayed through June 30, 2022 for Respondent to vacate possession thereof. On default, the warrant may execute after service of a marshal's notice.

It is further ordered that the Court awards Petitioner a judgment in unpaid use and occupancy in the amount of \$14,700.00.

The parties are directed to pick up their exhibits within thirty days or they will either be sent to the parties or destroyed at the Court's discretion in compliance with DRP-185.

This constitutes the decision and order of this Court.

Dated: Brooklyn, New York  
May 25, 2022

*Jack Stoller*

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HON. JACK STOLLER  
J.H.C.