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Fiallos v. Ralenders Inc.

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[*1]

Fiallos v Ralenders Inc.
2022 NY Slip Op 51210(U) [77 Misc 3d 1214(A)]
Decided on September 9, 2022
Civil Court Of The City Of New York, Queens County
Sanchez, J.
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on September 9, 2022

Civil Court of the City of New York, Queens County

<p>Marjorie Fiallos, Petitioner,</p> <p>against</p> <p>Ralenders Inc., Respondent.</p>

L&T Index No. 6187-22/QU

For Petitioners: pro-se

For Respondents: no appearance

Enedina Pilar Sanchez, J.

Procedural History and Testimony:

This is an alleged illegal lockout proceeding. Petitioner alleges she was locked out from her parking space in the driveway, appurtenance to, and part of the rental agreement for the subject premises. The premises are known as 65-01 Booth Street, 2nd Fl., Rego Park, New York 11374.

Petitioner seeks to be restored to the parking space in the driveway.

On August 10, 2022, petitioner appeared in court. Respondent did not appear. Petitioner

presented proof of service. Service was proper.

Petitioner was sworn in. She testified that she has been residing at the subject premises since August 2010 pursuant to terms of a lease. The rented premises are the upstairs apartment and parking space in the driveway. Petitioner presented the lease and a "notice of termination." The termination notice describes the subject premises as the "*upstairs Apartment plus one parking space in the driveway.*" The termination notice was signed Ralenders Inc., by Bobby Bepary.

Petitioner testified that she has been subjected to repeated demands to move her car from the driveway. Petitioner found a chain and lock placed on the driveway's gate effectively preventing petitioner from entering the parking space in the driveway.

Petitioner testified that she has not been given a key to the lock on the driveway gate. She testified that she made numerous attempts to have respondent remove the lock on the gate.

Petitioner testified that since she has lived at the subject premises, she has used the driveway to park her car. There is very limited parking in the area. The denial of the parking space has created needless stress and harm. Furthermore, the parking space is needed to help with her mother who is a senior.

Petitioner also testified that during the day, when she is working, persons have come over the subject premises and appear to be intent on pressuring the family to move out. Petitioner testified that the hot water was previously disconnected and while it has been restored, she no longer has access to the basement. Access to the basement is needed to reach the circuit breakers when they trip. Previously, when the circuit breakers tripped, the First-Floor occupant [*2] would grant access to the basement to reset the circuit that had tripped. Currently there is no one available to give access to the basement to correct the situation when it occurs.

Discussion and Legal Conclusion:

Petitioner brings this case pursuant to *RPAPL Section 713(10)*, which is the only available procedure to file an emergency case when someone has been removed or kept from possession without the benefit of legal process. See, [Watson v NYCHA-Brevoort Houses, 70 Misc 3d 900](#) (Civ. Ct. Kings Co. 2020); *Vazquez v. Suljovic*, 2022 NY Slip Op 50231[U].

Where the petitioner is not voluntarily restored to possession and alleges an ouster, the court is required to hold a hearing. The court must determine if there was an illegal lockout and adjudicate the ultimate issue whether restoration to possession is the proper remedy. Additional remedies may be available pursuant to *RPAPL Section 768(2)(b)* if the petitioner is not restored. See also, *N.Y.C. Adm Code. §26-521 et. al.(New York City Unlawful Evictions)*.

Petitioner testified that she has rented the upstairs apartment and the parking space in the driveway for over twenty years. The undisputed documentary evidence shows that the parking space in the driveway is part and parcel of petitioner's tenancy.

The act of placing a lock on the driveway gate without giving petitioner a key constitutes an illegal lockout. The parking space in the driveway is part and parcel of the lease agreement.

A parking space in connection with the residential use of the subject premises, has been recognized as an important component of lease agreements. Indeed, given the very limited parking options available in parts of Queens County, having a parking space is crucial to enable a family to move about efficiently. Petitioner stated that she also needs the parking space to transport her elderly mother who lives with her. The lease agreement and the termination notice issued to petitioner confirm that the parking space in the driveway is part of the tenancy. See, [*Board of Mgrs. of the Sailmaker at City Is. Condominium v Laddomada, 53 Misc 3d 1103*](#) (2016) parking space is an appurtenance to the building's common element. [*Royal Terrace Assoc., L.P. v Singh, 58 Misc 3d 1213\(A\)*](#) (Civ. Ct. Bx Co. 2018) -the provision of a parking space can be considered an ancillary service for rent stabilized tenants where parking is provided with the lease or with the use of the apartment. See also, [*Matter of Bruckner Realty LLC v Cruz, 139 AD3d 413*](#) (A.D. First Dept. 2016).

The unilateral ouster from the parking space is incompatible with the lease and the very termination notice issued by the owner. The termination notice recites that the owner seeks to terminate the "tenancy" of the upstairs apartment "*plus one parking space in driveway.*" The terms of the lease continue to govern the tenancy and petitioner is entitled to continue parking in the driveway notwithstanding the termination notice. The documentary evidence shows that the parking space is an inextricable term of the lease.

The interference and outright ouster of a space appurtenant to the dwelling unit constitutes an unlawful eviction. *N.Y.C. Adm Code. §26-521.a. it shall be unlawful for any person to evict or attempt to evict . . . by*

(2) engaging in a course of conduct which interferes with or is intended to interfere with or disturb the comfort, repose, peace or quiet of such occupant in the use or occupancy of the dwelling unit, to induce the occupant to vacate the dwelling unit including, but not limited to, the interruption or discontinuance of essential services; or

*(3) engaging or threatening to engage in any other conduct which prevents or is intended to prevent such occupant from the lawful occupancy of such dwelling unit or to induce the occupant to vacate the dwelling unit including, but not limited to, removing the [*3] occupant's possessions from the dwelling unit, removing the door at the entrance to the dwelling unit, removing, plugging or otherwise rendering the lock to such entrance door inoperable; or changing the lock on such entrance door without supplying the occupant with a key.*

Petitioner has established that an illegal lockout occurred when respondent placed a lock on the gate which prevents her from entering the parking space in the driveway. Respondent's actions were done without the benefit of legal process. Petitioner was not given a key, and this denies her of possessory rights pursuant to the lease. Respondent's actions are contrary to the lease and the termination notice. Respondent's actions interfere with petitioner's comfort, repose, peace and quiet in the use of the dwelling unit. Since the lock was installed, petitioner cannot locate a parking space near the home. She must devote extra time to search for a parking spot. The situation has become intolerable and designed to disturb and interfere with petitioner's use and enjoyment of her home.

Petitioner may seek all available and additional remedies in a plenary action, including treble damages upon proper proof pursuant to RPAPL Section 853 and within the timeframes allowed. Violation of the *N.Y.C. Admin Code §26-523* is a class A misdemeanor and subject to civil penalty of "*not more than one hundred dollars per day from the date on which restoration to occupancy is requested until the date on which restoration occurs. . . .*"

Accordingly, it is

ORDERED that the petition is granted, and that petitioner is restored to possession of the parking space in the driveway, and it is

ORDERED that respondent is to take all immediate and necessary steps to restore petitioner to the parking space in the driveway, this Decision/Order is without prejudice to any other claims between the parties; and it is

ORDERED that petitioner shall serve a copy of this Decision/Order upon respondent by

First Class mail with certificate of mailing. If an email or cell number are known, serve by email and text message as well. Service is to be done by no later than September 14, 2022; and it is

ORDERED, that petitioner shall serve a copy of this Decision/Order upon the Law Offices of Ali and Bains at 189-10 Hillside Avenue, Hollis, New York 11423 Tel. 718 544-8000, which prepared the termination notice dated June 24, 2022. Petitioner may serve the Law Office by personal delivery, or facsimile or First-Class Mail by no later than September 14, 2022.

This constitutes the Decision/Order of the Court.

Dated: September 9, 2022
Queens, New York
So Ordered,
ENEDINA PILAR SANCHEZ
Judge, Housing Court

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