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Liadi v. Kaba

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Liadi v Kaba
2023 NY Slip Op 50187(U)
Decided on March 13, 2023
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This opinion is uncorrected and will not be published in the printed Official Reports.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 March 13, 2023

Civil Court of the City of New York, Queens County

<p>Hakeen Liadi, Jr., Petitioner,</p> <p>against</p> <p>Louise Kaba, OLAIDE ABIODUM AJISAFE, JOHN DOES 1-2 and JANE DOES 1-2, Respondents.</p>

Index No. LT-050197-22/QU

For Petitioners: pro-se

For Respondents: pro-se

Enedina Pilar Sanchez, J.

This is a summary holdover proceeding. Petitioner seeks to recover possession of the premises described as 116-33 Sutphin Boulevard, Apartment 2F, Jamaica, New York 11434. This is a building with two apartments above a store front.

Procedural History

This case was filed in late June 2022 and assigned to the Small Property Part on August

25, 2022. The case was transferred to Part X to be assigned to a Trial Part.

During the pre-trial conference, the parties were not able to resolve this matter. The case proceeded to trial on March 10, 2023.

Petitioner Hakeen Liadi, Jr. and respondent Louise Kaba are pro-se litigants. Both parties were sworn in, testified and presented their respective testimony and documents.

After examination of the all the evidence presented by the parties, it is undisputed that on or about November 10, 2021, the Office of Temporary and Disability Assistance (OTDA) issued rental payments to the petitioner. The ERAP rental application is identified as No. 4UHEH and the payments totaled \$13,600.00. Petitioner accepted the rental payments sometime in November 2021. On February 19, 2022, petitioner issued to respondent a termination notice based on non-renewal of lease.

The Court is called upon to determine whether the termination notice may be permitted given the statutory obligation created upon the acceptance of ERAP rental payments. Absent a proper predicate notice, the holdover petition fails to state a cause of action and the petition must be dismissed.

Discussion and Conclusion

Upon the acceptance of ERAP rental payments the property owner must acknowledge and accept certain terms. Among the terms include an agreement that the property owner will *"not evict for reason of expired lease or holdover tenancy any household on behalf of whom [*2] rental assistance is received for 12 months after the ERAP rental assistance is received."* Furthermore, the property owner is required to *"notify the tenant of the protections listed in this section."*

The Legislature determined that upon an owner accepting ERAP rental payments, eviction based upon a lease expiration holdover could not lie for 12 months. The obligation not to evict for 12 months, the window period, was deemed as necessary and *quid pro quo* to address widespread evictions, The Legislature found as follows:

More than two million New Yorkers have been infected by the COVID-19 coronavirus, and the disease has killed more than 55,000 New Yorkers since March 2020. Measures necessary to contain the pandemic have brought about widespread economic and societal disruption. Millions of residents have experienced financial hardship due to such measures, which closed businesses and

schools, and resulted in income losses across the state.

Petitioner, the property owner, issued a termination notice and commenced a holdover proceeding just a few months after ERAP payments were received and accepted. The obligation not to evict for an expired lease is a term that is binding upon acceptance of the ERAP payment. Regardless of the intent of the Legislature, the language in the governing statute is clear. The issuance of a termination notice or the filing of a holdover based upon a lease expiration are acts designed to cause an eviction. The act of initiating an eviction within the 12-month period, effectively undermines the plain reading of the statute and the obligation not to evict.

The termination notice is dated February 19, 2022. The termination notice was used as the basis to file an eviction case in June 2022. The case appeared on the court's calendar in August 2022. The termination notice and the filing of the eviction case were acts done within the 12-month period after petitioner accepted ERAP payments. The pursue of an eviction case during the window period, 12-months after the acceptance of ERAP funds, is not permitted. Nor can the adjournment of a case relieve the property owner from the obligation not to evict, and not adhere to the 12-month period. The eviction case cannot be started during the window period, and to do so and then hope that it remains dormant in the court's calendar does not validate a termination notice that should not have been issued pursuant to the obligations created by the acceptance of ERAP funds. The passage of time cannot work to correct a defective or improper predicate notice.

The predicate notice issued during the 12-month period after petitioner accepted ERAP funds, and as such the predicate notice is defective. The notice seeks to terminate a tenancy contrary to the terms of the OTDA obligations that were triggered upon the acceptance of ERAP funds. [*JSB Props. LLC v. Yershov*, 77 Misc 3d 235](#) [Civ Ct NY Co 2022] (landlord's acceptance of ERAP constitutes landlord's agreement not to evict due to expired lease or holdover tenancy for 12 months, citing L. 2021, c. 56, Part BB, Subpart A, § 9[2][d][iv]).

Petitioner is bound by the obligations that accompanied the acceptance of ERAP funds.

The relevant provision provides that upon the acceptance of rental assistance program funds it shall constitute [an] agreement by the recipient landlord:

*iv) not to evict for reason of expired lease or holdover tenancy any household on behalf of whom rental assistance is received for 12 months after the first rental assistance [*3] payment is received, unless the dwelling unit that is the subject of the lease or rental agreement is located in a building that contains 4 or fewer*

units, in which case the landlord may decline to extend the lease or tenancy if the landlord intends to immediately occupy the unit for the landlord's personal use as a primary residence or the use of an immediate family member as a primary residence; and (v) to notify the tenant of the protections established under this subdivision. [L. 2021, c. 56, Part BB, Subpart A, as amended by L.2021, c. 417, Part A. §5(d)(iv)]

Based upon the testimony and documents presented, petitioner was in violation of the obligation created upon acceptance of ERAP funds. The predicate notice was used to support this holdover case during the 12-month window period when no such proceeding was to be commenced. Petitioner's request for a final judgment of possession cannot be granted as the predicate notice was defective from its inception, and the predicate notice cannot be amended. See, *Chinatown Apartments, Inc. v. Chu Cho Lam*, 51 NY2d 786 (1980).

Accordingly, it is

ORDERED that petition is dismissed without prejudice, and it is

ORDERED that all essential services that are required pursuant to the residential warranty of habitability be maintained as required by law.

This Decision/Order will be emailed to both sides.

This constitutes the Decision/Order of the Court.

Dated: March 13, 2023
Queens, New York
So Ordered:

ENEDINA PILAR SANCHEZ
Judge, Housing Court

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