2023-04-18

100 Realty Equities LLC v. Tian

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100 Realty Equities LLC v Tian
2023 NY Slip Op 50411(U)
Decided on April 18, 2023
Civil Court Of The City Of New York, New York County
Stoller, J.
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This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on April 18, 2023

Civil Court of the City of New York, New York County

100 Realty Equities LLC, Petitioner,

against

Yifei Tian, Respondent.

Index No. 310138/2022

For Petitioner: Mark Davies

For Respondent: Yifei Tian, pro se

Jack Stoller, J.

100 Realty Equities LLC, the petitioner in this proceeding ("Petitioner"), commenced this holdover proceeding against Yifei Tian, the respondent in this proceeding ("Respondent"), seeking possession of 100 Sullivan Street, Unit 1I, New York, New York ("the subject premises") on the allegation that there is no lease and that the subject premises is unregulated due to vacancy deregulation. Respondent interposed an answer with a general denial and a defense that the subject premises is subject to the Rent Stabilization Law. The Court held a trial of this matter on March 17, 2023 and then adjourned the matter to March 31, 2023 to enable the parties to brief an issue.

The trial record

Petitioner proved that it is the proper party to commence this proceeding and that Petitioner has complied with the registration requirements of MDL §325.

Petitioner submitted into evidence a lease between the parties that commenced on August 1, 2017 and expired on July 31, 2018. Petitioner into evidence another lease between the parties that commenced on June 1, 2020 and expired on May 31, 2021 with a monthly rent of $2,050.00.

The parties stipulated into evidence an email from the Office of Temporary and Disability Assistant ("OTDA") stating that OTDA approved Respondent's application for benefits pursuant to the Emergency Rent Assistance Program ("ERAP") on December 22, 2021, approving her for $22,305.03 covering the period from March of 2020 through November of 2021. Petitioner submitted into evidence a rent history showing that Petitioner received an ERAP payment of $22,305.03 on December 30, 2021.

Annexed to the petition in this matter is a predicate notice that Petitioner caused to be served on Respondent pursuant to RPL §226-c. The notice is dated March 15, 2022 and purports to terminate Respondent's tenancy as of June 30, 2022. The petition in this proceeding is dated July 8, 2022.

After Petitioner rested, Respondent raised an issue concerning the effect of Petitioner's [*2]acceptance of ERAP benefits on Petitioner's ability to bring this case. Respondent in this case does not have counsel. As the Court must liberally construe submissions of pro se parties, Zelodius C. v. Danny L., 39 AD3d 320 (1st Dept. 2007), Stoves & Stones, Ltd. v. Rubens, 237 AD2d 280 (2nd Dept. 1997), the Court deemed Respondent to move for a directed verdict and gave the parties an opportunity to brief the issue.

Discussion

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 twelve months after the landlord receives the first assistance payment. L. 2021, c. 56, Part BB, Subpart A, §9(2)(d)(iv), as amended by L. 2021, c. 417, Part A, §5. Acceptance of payment for rent arrears through shall further "constitute [an] agreement by [a] landlord" to refrain from increasing the rent greater than the amount due at the time of the application in the year following the first acceptance of an assistance payment. L. 2021, c. 56, Part BB,

Subpart A, §9(2)(d)(iii), as amended by L. 2021, c. 417, Part A, §5.

Petitioner argues that this statutory language does not prevent it from terminating Respondent's tenancy within one year of accepting an ERAP assistance benefit. Petitioner argues that the statute's prohibition of "evict[ing]" tenants only refers to an execution of a warrant of eviction, not the termination of a tenancy or the commencement of an eviction proceeding. In support of its position, Petitioner points out that a different section of the ERAP statute, L. 2021, Ch. 56, Part BB, Subpart A, §9-A(5), mandates a dismissal of an eviction proceeding if a landlord fails to prove that a tenant's objectionable conduct warrants an exception to an ERAP stay. Petitioner argues that the Legislature's specific provision of a dismissal remedy in that instance but not where a landlord terminates a tenancy of an ERAP recipient within a year of the ERAP benefits means that the Legislature did not intend that courts should dismiss proceedings based on terminations of tenancies within a year of ERAP assistance, citing in support BOP MW Residential Mkt. LLC v. Fanyu Lin, 2023 NY Slip Op. 23043, ¶ 2 (Civ. Ct. NY Co.), Feuerman v. Hugo, 77 Misc 3d 171, 175-76 (Civ. Ct. NY Co. 2022), Park Cent. I LLC v. Price, 2022 NY Slip Op. 31909(U)(Civ. Ct. Bronx Co.). Petitioner's argument is consistent with the canon of statutory construction that requires an irrefutable inference that a Legislature intended an omission of a provision that the Legislature otherwise applied elsewhere in the statute. Myers v. Schneiderman, 30 NY3d 1, 12 (2017).

However, as long as the Court must parse the wording of the ERAP statute, the Court must wrestle with the deliberate choice the drafters of the statute made to include the word "agreement" in it. After all, the Legislature could have simply stated that a landlord's acceptance of ERAP benefits would stay a landlord from evicting an ERAP applicant for one year without using the word "agreement." The Legislature did not do so. Rather, the Legislature stated that a landlord's acceptance of ERAP "shall constitute [an] agreement" not to evict a tenant without cause for twelve months nor to increase the tenant's rent for twelve months.

The Court must presume that each word used in a statute expresses a distinct and different idea, Tonis v. Bd. of Regents, 295 NY 286, 293 (1946), and thus construe a statute so as to give effect to every word therein to the extent possible. Matter of Mestecky v. City of NY, 30 NY3d 239, 243 (2017). Conversely, the Court cannot conclude that the Legislature deliberately placed a phrase in the statute which was intended to serve no purpose. Rodriguez v. Perales, 86 NY2d 361, 366 (1995), Matter of NY Cty. Lawyers' Ass'n v. Bloomberg, 95 AD3d 92, 101 (1st Dept. 2012). Accordingly, the Court must give effect to the Legislature's

choice to [*3]provide that a landlord's acceptance of an ERAP benefit constitutes an "agreement" not to evict a tenant or increase a tenant's rent.

Statutes which relate to the same subject matter must be construed together unless a contrary legislative intent is expressed. Dutchess Cnty. Dep't of Soc. Servs. ex rel. Day v. Day, 96 NY2d 149, 153 (2001), Matter of Khan v. Annucci, 186 AD3d 1370, 1372 (2nd Dept. 2020). Accordingly, whenever a word is used in a statute in one sense and with one meaning, and subsequently the same word is used in a statute on the same subject matter, it is understood as having been used in the same sense. Benesowitz v. Metro. Life Ins. Co., 8 NY3d 661, 668 (2007). Statutes that use the word "agreement" in landlord/tenant matters use it to mean the kind of binding lease that gives rise to a landlord's cause of action against a tenant for nonpayment of rent, RPAPL §711(2), or a tenancy for a term longer than month to month. RPL §232-c.

Moreover, the "agreement" that the ERAP statute deems landlords and tenants to enter into with one another specifies the amount of rent and definite terms by which the agreement begins and ends, terms that are crucial toward rendering the agreement to be a valid lease. Coinmach Corp. v. Harton Assocs., 304 AD2d 705, 706 (2nd Dept. 2003), Harlen Hous. Assoc., LP v. Metered Appliances, Inc., 19 Misc 3d 1101(A)(Civ. Ct. NY Co. 2008).

Accordingly, a landlord's acceptance of an ERAP benefit creates the kind of an agreement that is essentially a lease, whether for the purposes of giving rise to liability for nonpayment of rent, J.S.B. Props. LLC v. Yershov, 77 Misc 3d 235, 242 (Civ. Ct. NY Co. 2022), or to negate the proposition that a tenant is really just a holdover. Liadi v. Kaba, 78 Misc 3d 1209(A)(Civ. Ct. Queens Co. 2023). The pendency of a lease as such bars the kind of no-cause holdover proceeding that Petitioner commenced against Respondent herein. Lambert Houses Redevelopment Co. v. Adam & Peck Org., 169 Misc 2d 667, 668 (App. Term 1st Dept. 1996), Timothy v. Matison, 20 Misc 3d 1105(A)(Dist. Ct. Nassau Co. 2008).

Accordingly, it is ordered that the Court grants Respondent's motion for a directed verdict and dismisses this proceeding, without prejudice to a different or subsequently-accruing cause of action the parties may have against one another.

This constitutes the decision and order of the Court.

New York, New York
April 18, 2023
HON. JACK STOLLER
J.H.C.

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