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Gheewala v. Wesley

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[*1]

Gheewala v Wesley
2023 NY Slip Op 50698(U)
Decided on June 20, 2023
Civil Court Of The City Of New York, Queens County
Guthrie, 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This opinion is uncorrected and will not be published in the printed Official Reports.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 June 20, 2023

Civil Court of the City of New York, Queens County

<p style="text-align: center;">Vipul Gheewala, Petitioner,</p> <p style="text-align: center;">against</p> <p style="text-align: center;">Sumpter Wesley, Keerica Carter, John Doe, Jane Doe, Respondents.</p>
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Index No. L&T 304561/22

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Wesley Sumpter, respondent (pro se)

Clinton J. Guthrie, J.

The Decision/Order after trial in this residential holdover proceeding is as follows.

PROCEDURAL HISTORY

This holdover proceeding based on a thirty-day notice was filed in April 2022. Respondent Wesley Sumpter appeared. Respondent Sumpter's general denial and jurisdictional defenses were noted in Hon. Kimon C. Thermos' transfer order before the case

was sent to this trial part. This court conducted a trial on June 20, 2023 and reserved decision upon its conclusion.

TRIAL

At trial, petitioner Vipul Gheewala was the sole witness. Mr. Gheewala testified that he is the owner of the subject premises, which is a cooperative apartment. The court admitted the stock certificate and proprietary lease as petitioner's Exhibits 1 and 2. The court then took judicial notice of the pleadings, predicate notice, and affidavits of service. Mr. Gheewala denied that respondents had applied for ERAP or LRAP, and he denied that he received rent or made any new rental agreement after the termination notice expired.

The court then admitted a rent ledger and the parties' lease (petitioner's Exhibits 4 and 5), upon testimony by Mr. Gheewala. After a brief cross-examination wherein Mr. Gheewala [*2] confirmed that he signed the lease, petitioner rested.

Respondent Sumpter did not testify or call witnesses. The court permitted summations by both parties and the trial concluded.

DETERMINATION/CONCLUSION

Upon due consideration of the trial evidence and testimony, the court finds that petitioner failed to sustain its prima facie burden. The petition must be dismissed as a result. The court admitted the parties' lease (petitioner's Exhibit 5), which is for a term of one (1) year. The term ran from March 1, 2021 through February 28, 2022. Petitioner's thirty-day notice is dated February 13, 2022 and advises respondents of an intention not to renew the lease and to terminate their tenancy as of March 30, 2022.

Under Real Property Law (RPL) §232-a, "[n]o monthly tenant, or tenant from month to month, shall hereafter be removed from any lands or buildings in the city of New York on the grounds of holding over the tenant's term unless pursuant to the notice period required by subdivision two of section two hundred twenty-six-c of this article the landlord or the landlord's agent serve upon the tenant... a notice in writing to the effect that the landlord elects to terminate the tenancy and unless the tenant removes from such premises on the day designated in the notice, the landlord will commence summary proceedings under the statute to remove such tenant therefrom." RPL § 226-c requires the notices to be for the "cumulative amount of time the tenant has occupied the residence or the length of the tenancy in each lease, whichever is longer." For tenancies of less than one year, a thirty-day notice is required; for tenancies/leases of at least one year but less than two years, a sixty-day notice is

required; for tenancies/leases of at least two years, a ninety-day notice is required. [See *Mohegan Vista Props. LP v. Mazo*, 76 Misc 3d 500](#), 502 [Ossining Just Ct 2022]; [64 *Van St., LLC v. Cuevas*, 67 Misc 3d 614](#), 616 [Civ Ct, Queens County 2020].

Here, as the parties' lease ran for one (1) year and the tenancy was terminated one year-and-thirty days after the lease commenced, a 60-day notice was required. Accordingly, petitioner's 30-day notice is defective and is unable to be amended at this juncture. *See Chinatown Apts. v. Chu Cho Lam*, 51 NY2d 786, 788 [1980]; [DLB of NY, LLC v. Billan](#), [70 Misc 3d 143](#)[A], 2021 NY Slip Op 50158[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2021]. In the absence of a valid predicate notice, petitioner has failed to sustain its prima facie case. *See e.g. 1646 Union, LLC v. Simpson*, [62 Misc 3d 142](#)[A], 2019 NY Slip Op 50089[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2019]; [Kings Highway Realty Corp. v. Riley](#), [35 Misc 3d 127](#)[A], 2012 NY Slip Op 50572[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2012].^[FN1]

The clerk shall issue a judgment dismissing the petition without prejudice. Petitioner's claims for use and occupancy are also denied without prejudice, as a monetary judgment for use and occupancy may only be granted in a summary eviction proceeding "concomitant with an award of possession." [615 Nostrand Ave. Corp. v. Roach](#), [15 Misc 3d 1](#), 4 [App Term, 2d Dept, 2d & 11th Jud Dists 2006].

This Decision/Order will be filed to NYSCEF. The court will also mail copies of the [*3]Decision/Order to respondents.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated: Queens, New York
June 20, 2023
HON. CLINTON J. GUTHRIE, J.H.C.

Footnotes

Footnote 1:By entering a general denial, respondent put the requirements of petitioner's prima facie claim, including a proper predicate notice, "into issue." [Matter of Metro Plaza Apts., Inc. v. Buchanan](#), [204 AD3d 45](#), 48-49 [3d Dept 2022].