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Spring Creek Apartments Preservation LLC. v. Mitchell

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**CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: PART F** x

L&T No. 304307/2021

Spring Creek Apartments Preservation LLC.,

Petitioner,

-against -

DECISION/ORDER

Mercedes Mitchell
902 Drew Street
Apartment 5
Brooklyn, NY 11208

Respondent,

“J. DOE”

Respondents.

_____ x

Hon. Hannah Cohen

Recitation, as required by CPLR 2219(a), of the papers considered in the review of respondent’s motion to dismiss.

Papers	Numbered
Notice of Motion and Affidavits Annexed	1 _____
Opposition	2 _____
Reply Affidavits	3 _____

Upon the foregoing cited papers, the Decision and Order on this Motion is as follows:

Petitioner commenced this holdover proceeding after service of a thirty day notice of termination dated March 3, 2021 and to vacate by April 30, 2021. Petitioner alleges that respondent has violated a substantial obligation of her tenancy in engaging in anti social, destructible, dangerous and or illegal activity in violation of rent stabilization law section 2524.3(b) and (d). The premises are subject to rent stabilization.

Respondent appeared with counsel and now by motion seeks to dismiss the proceeding pursuant to CPLR 3211(a)(1) and CPLR 3211(a)(7). Respondent seeks dismissal based upon the argument that the termination notice is insufficient in that it only alleges one incident and not an ongoing nuisance behavior and that petitioner's vitiated the notice of termination by offering respondent a renewal lease, which was signed and returned to the petitioner.

Petitioner in opposition argues that the termination notice is sufficient and that the lease offer was sent in error as the respondent had sought a hardship declaration and an ERAP and the case was administratively on hold, leading to the confusion by management.

Courts have ruled differently on this issue, depending on the particular department that the case is heard in. The Appellate Term in the First Department has held that execution of a renewal lease does not vitiate the holdover proceeding where the petitioner-landlord was required by regulatory authority to send the renewal lease (*AA Spierer & Co. v Adams*, NYLJ June 3, 1991, at 27, col 4 [Civ Ct., Bronx County]; see also *Coleman v Dabrowski*, 163 Misc2d 763 (AT 1st Dept 1994). However, in the Second Department, the appellate authority has ruled to the contrary. Where parties entered into a renewal lease where the landlord did

not expressly reserve its rights under pending litigation, the renewal vitiated the termination notice (See *Carroll St. Properties v Puente*, 3 HCR 627A, NYLJ 7/13/05 30:6 [App Ter, 2 & 11 Dept.]).

Here, respondent was sent a cover letter and a renewal lease dated January 9, 2023 which respondent signed on January 23, 2023. Petitioner's contention that the renewal lease was in error and does not vitiate the previous termination notice is unavailing based upon the case law in this department and in light of the lack of any express preservation of petitioner's rights in this litigation. The offer of a renewal lease to the respondent clearly exhibited acts by the petitioner which would lead a tenant to rely upon the lease offered (See *757 Miller Owners v Smith*, NYLJ 1202780573592, at 1 [Civil Ct., Kings County 2/17/2017] and vitiated the notice dated November 20, 2018.

As such, respondent's motion to dismiss is hereby granted. The court need not address respondent's remaining arguments in light of the above dismissal.

The foregoing constitutes the decision and order of the court.

Dated: July 7, 2023
Brooklyn, New York



Hannah Cohen, J.H.C.