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FRIEDMAN RESIDENCE LLC v. DENSON

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART H

FRIEDMAN RESIDENCE LLC,

Petitioner-Landlord,

against

L&T Index No. 303505-22/NY

DECISION/ORDER

STERLING DENSON,

Respondent(s)-Tenants.

HON. EVON M. ASFORIS

Recitation, as required by CPLR 2219(a), of the papers considered in the review of petitioner’s motion for summary judgment and respondent’s cross-motion to dismiss:

<u>Papers</u>	<u>NYSCEF Doc.#</u>
Notice of Motion and Affidavits & Exhibits.....	<u>10-28</u>
Cross-Motion, Affirmation, Affidavits & Exhibits.....	<u>29-36</u>
Answering Affidavits.....	<u> </u>
Replying Affirmation.....	<u>37-38</u>

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

Relevant Procedural History

Friedman Residence LLC (“petitioner”) commenced this licensee holdover proceeding after service of the Notice of Petition and Petition dated March 15, 2022, against Sterling Denson (“respondent”) after serving respondent with a 10-Day Notice to Quit (“Notice”) dated January 21, 2022. The Notice states that the tenant of record, Kious Kelly, passed away on or about March 24, 2020, and that any license to occupy the subject premises terminated by operation of law upon his death. The Notice also states that if respondent failed to vacate the subject premises by February 28, 2022, the landlord will commence a summary proceeding against respondent to remove him from possession of the premises. Upon expiration of the Notice, petitioner served respondent with a Notice of Petition and Petition.

Respondent retained Manhattan Legal Services (“MLS”) on May 12, 2022, and MLS filed an Answer asserting succession rights to the subject premises and a Demand for a Verified Bill of Particulars. On August 2, 2022, petitioner filed this motion seeking summary judgment against respondent, a hearing to determine fair value use and occupancy, and granting such other

relief as the court deems appropriate. Respondent cross-moved to dismiss the proceeding, deny petitioner's motion for summary judgment, and grant such other and further relief as the court deems just, equitable, and proper.

Summary judgment is a drastic remedy which deprives the litigant of his or her day in court and should not be granted where there is any doubt as to the existence of a triable issue of fact (Rotuba Extruders, Inc. v Ceppos, 46 NY2d 223 [1978]). The court's function is not to determine credibility, but to determine if there is a triable issue or if arguably there is a genuine issue of fact (S. J. Capelin Assoc., Inc. v Globe Mfg. Corp., 34 NY2d 338 [1974]). In order to obtain summary judgment, the moving party must establish its course of action or defense by admissible evidence sufficient for the court to direct judgment as a matter of law (Winegrad v New York Univ. Med. Center, 64 N.Y.2d 851 [1985]). If the movant succeeds in doing so, the party opposing the motion must demonstrate, through presentation of evidence in admissible form, the existence of a factual issue requiring trial (Zuckerman v City of New York, 49 N.Y.2d 557, 560 [1980]).

Petitioner asserts that it established its prima facie case by attaching a certified copy of the deed, among other things, and stating respondent's interests in premises. Petitioner provided notice to respondent that his tenancy was being vacated by 10-day Notice to Quit and served respondent with a Notice of Petition and Petition. Petitioner further argues that the Petition states the facts upon which the proceeding is based, and when Kious Kelly passed away, respondent's license to stay in the subject premises ended.

The death of a party terminates or revokes a license due to the personal nature of the privilege, and the right of the licensee to occupy the real property pursuant to the license ceases upon the death of the licensor. Real Property Law § 235-f provides that 'no occupant, without written consent of the landlord, acquires any right to continue occupancy in the event the tenant vacates the premises, or acquires any other rights of tenancy. A licensee is an occupant under RPL Section 235-f.'" 100 W. 72nd St. Assocs. v. Murphy, 144 Misc. 2d 1036, 545 N.Y.S.2d 901 (Civ. Ct. 1989).

Petitioner asserts that on or about February 2020, Kious Kelly and respondent previously came to the leasing office to discuss adding respondent to the lease, however, the building director explained that a vacant unit may only be rented by an eligible applicant from the building's waiting list. Respondent submitted an application but did not complete the application as he failed to submit the required documentation. Upon the passing of Mr. Kelly, respondent alleged Mr. Kelly was his boyfriend, and he had lived with him since February 2020. Petitioner informed respondent that although his application for tenancy was still under review, he was not entitled to occupy a unit during the process. On May 4, 2020, respondent's application was rejected. The court also notes that the tenant of record's sister who is the Administrator of his estate surrendered possession of the premises to petitioner and denies knowing respondent or about his relationship with her brother.

In opposition, respondent argues that the court should dismiss the proceeding in its entirety based on petitioner's failure to properly plead the regulatory status of the premises. Specifically, respondent argues the petition and the notice to quit are fatally defective, and petitioner's failure to plead the proper rent regulatory status prevents respondent from being able to formulate a proper defense. Petitioner's failure to accurately plead its government contracts is

particularly prejudicial to the respondent because Mr. Denson may indeed qualify for the services offered by petitioner's housing.

Respondent also argues this court should deny petitioner's motion for summary judgment because there are questions of facts regarding respondent's succession claim. Respondent argues he is a non-traditional family member who resided with the tenant of record from the inception of the relationship and is protected from eviction by the RSC.

In consideration of these items, taken together with the fact and circumstances of this proceeding, the court finds that petitioner has not established its right to summary judgment as a matter of law. Respondent's succession claim creates numerous issues of fact that must be resolved at trial. Testimony is needed regarding the length of time the parties lived together, the details of the inception of the relationship; as well as other Braschi factors for the court to make a determination.

Respondent's argument that petitioner has inadequately pled the rent regulatory status is unavailing. The court finds that the Petition is sufficiently pled for respondent to formulate a defense. In this instance, respondent is aware that the subject premises is rent regulated, and he may have succession rights to the premises. If amplification of the pleadings is needed, respondent is entitled to such amplification through a bill of particulars. City of New York v. Valera, 216 A.D.2d 237, 628 N.Y.S.2d 695 (1995).

Therefore, petitioner's motion for summary judgment is denied and respondent's cross-motion to dismiss is denied. The portion of petitioner's motion seeking a hearing for use and occupancy is granted. The matter shall be restored to the court's calendar on May 3, 2023, in Part H, Room 830 at 11:15 a.m. for the parties to schedule a hearing to determine the fair value of use and occupancy of the premises or for settlement. The parties shall appear in person.

The foregoing constitutes the decision and order of this court.

New York, New York
Dated: April 14, 2023


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JUDGE HOUSING COURT

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