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2023-06-25

Broadway Crescent Realty Inc. v. Lais

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[*1]

Broadway Crescent Realty Inc. v Lais
2023 NY Slip Op 50709(U)
Decided on June 25, 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This opinion is uncorrected and will not be published in the printed Official Reports.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 June 25, 2023

Civil Court of the City of New York, Queens County

<p style="text-align: center;">Broadway Crescent Realty Inc., Petitioner,</p> <p style="text-align: center;">against</p> <p style="text-align: center;">Alexandre Lais, JOHN DOE, JANE DOE, Respondent(s).</p>

Index No. LT-304140-23/QU

Enedina Pilar Sanchez, J.

Procedural History

This is a holdover proceeding based upon a 10-Day Notice of Termination, it alleges that respondent has violated substantial obligations under Paragraph (40) of the Lease. Petitioner seeks possession of the premises described as 23-35 Broadway, Apartment 6D, Astoria, NY 11106.

Respondent Alexandre Lais did not appear in court.

An inquest was held on June 8, 2023.

Inquest

Petitioner offered certified documents. These documents were entered into evidence.

The deed to the building (P's 1). The Property Owner Registration as required by DHPD, aka the Multiple Dwelling Registration (P's 2). The New York State Division of Housing and Community Renewal Registration Reports (DHCR) for the years 2020 to 2023 (P's 3a, 3b, 3c, and 3d).

Petitioner's witnesses, Mr. Moore, was sworn in and he testified to the signatures on the Lease. He stated that he recognized respondent's signature and the signature of petitioner's agent. The Lease was admitted in evidence as P's 4. The Lease commenced on October 1, 2020, and by its terms ended on September 30, 2021. No other lease was presented. No evidence was presented that the Lease was renewed after September 30, 2021.

The witness testified that petitioner seeks to evict the respondent as it has received complaints from other tenants in the building about respondent's behavior. Petitioner asked the court to take judicial notice of the predicate notice, the notice of petition, the petition, and the affidavits of service. The court took notice of the documents filed to NYSCEF Doc. No. 1, 2, 3, and 5.

Petitioner's witness testified that the named respondent is not in the military or dependent upon any one in the military. Regarding John Doe and Jane Doe, petitioner discontinues this proceeding without prejudice.

Discussion and Conclusion

Upon full consideration of the pleadings, the notices, the affidavits of service, the [*2] testimony and the documentary evidence presented, the court must dismiss the petition.

The court notes that there is no lease in effect, as per the testimony and documents offered in evidence, and the Lease expired in September 2021. There was no testimony regarding a renewal lease or that the parties entered into another agreement. While a holdover may be pursued, such as a no-lease holdover, the instant predicate notice is defective as it relies upon an expired lease.

The termination notice, notwithstanding the reason behind it, cannot operate to terminate a lease that has already expired. The Lease, at Paragraph 17, would have allowed for an early termination of the Lease. Petitioner relies on Paragraph 40 as the the reason to invoke the early termination of the Lease, however, the lease had expired by its own terms before the termination notice was issued. The predicate notice is intrinsically intertwined to the expired Lease. See, [*Fourth Hous. Co., Inc. v Bowers*, 53 Misc 3d 43](#), 44 [App Term, 2d,

Dept, 2d, 11th & 13th Jud. Dists 2016].["A holdover proceeding based upon a landlord's termination of a lease may only be maintained where there is a conditional limitation for its early termination."]. See also, [Fen Xiu Chen v. Salvador, 71 Misc 3d 1225\(A\)](#) [Civ Ct Queens County 2021], [Bldg Mgt. Co. Inc. v. Etienne, 69 Misc 3d 1218\(A\)](#) [Civ Ct Queens County 2020].

The predicate notice seeks to cancel the Lease that had already expired. The termination notice, triggered by the conditional limitation providing for its early termination relies on the expired Lease and renders the predicate notice defective. A predicate notice may not be amended, and as such the court is constrained to dismiss the case based upon the defective predicate notice. See, *Chinatown Apartments, Inc. v. Chu Cho Lam*, 51 NY2d 786 (1980).

Petitioner is directed to mail a copy of this Decision/Order to the respondent via First Class Mail by no later than June 30, 2023, and file proof of service to NYSCEF. Petitioner may retrieve its exhibits from the clerk in courtroom 401.

Accordingly, it is

ORDERED that the petition is dismissed without prejudice.

This Decision/Order will be uploaded to NYSCEF.

This constitutes the Decision/Order of the Court.

Dated: June 25, 2023
Queens, New York
So Ordered,

ENEDINA PILAR SANCHEZ
Judge, Housing Court

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