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LEAGEM PARTNERS, LLC v. GALLIMORE

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS: HOUSING PART O

LEAGEM PARTNERS, LLC
119-20 Union Turnpike, Apt. # E1D3
Kew Gardens, New York 11415
Petitioner

-against-

EVA GALLIMORE, ESTHER GALLIMORE
JOHN DOE and JANE DOE
Respondents

L&T Index No. 301638/21

DECISION/ORDER

Hon. Clifton A. Nembhard

Background

Leagem Partners, LLC (“petitioner”) commenced this illegal lockout proceeding by order to show cause to be restored to possession of apartment #E1D3 located at 119-20 Union Turnpike, Kew Gardens (“subject premises”). The Civil Court declined to sign the order to show cause for among other reasons, petitioner did not allege that a residential occupancy was interfered with. The Appellate Term however signed the order to show cause upon petitioner’s CPLR 5704(b) application. This Court conducted a hearing on the matter on April 27, 2021. The following constitutes the Court’s findings of fact and conclusion of law following the hearing.

Hearing

Petitioner called Jennifer Lora as its first witness. Lora is the Director of Resident Support at Rezi which was retained by petitioner to market and lease certain apartments in the subject building. Respondent Eva Gallimore (“Gallimore”) applied for the subject apartment on April 1, 2021. She signed a lease and paid a deposit which triggered Rezi’s due diligence process which includes verifying an applicant’s income. Soon thereafter Rezi informed Gallimore that it could not verify one of the three employers she listed on her application and requested additional information from her. Lora further testified that Gallimore made an appoint to see the apartment on April 6, 2021 and subsequently moved in with her family. When Rezi was not able to verify Gallimore’s employment it refunded her deposit and informed her that they were not moving forward with her application. Lora averred that Rezi never delivered possession of the subject premises to Gallimore, never countersigned the lease and never approved her moving in.

Anish Mashettiwar is the general counsel for building's property manager Advantage Property Management. He also testified the petitioner never entered into a lease agreement with respondents and didn't authorize them to take possession of the subject apartment. Mashettiwar also stated that the apartment was last occupied by a tenant in May 2020 and had been in petitioner's possession until Gallimore and her family moved in.

Petitioner then called Eva Gallimore who testified that she moved into the subject apartment on April 8, 2021 and is still in possession.

Keita deSouza, Rezi's corporate counsel, then testified that the company never countersigned the lease and never delivered possession to Gallimore. On April 9, 2021 deSouza spoke with Gallimore and became aware that Gallimore, her sister Esther and possibly their mother are now occupying the apartment. During the phone call deSouza informed Gallimore that she was not approved for the apartment and gave her the option of moving out immediately or providing the information needed to approve her application. She then provided Gallimore with the number to Rezi's support line. The next day deSouza called Gallimore who again told her she was not vacating the apartment. deSouza then went to the building and called the police. When the police arrived, she went with them to the subject apartment. Esther answered the door and told them that they were not moving out.

Eva Gallimore then testified on her own behalf and stated she paid the deposit and first month's rent on April 1, 2021 after being approved for the apartment. However, a few days later Rezi started asking her for more information. On April 6, 2021, Lora called and asked for information regarding her income so she sent her a copy of her pay stub. That afternoon Esther spoke to Rezi's agent Nicole and made an appointment to see the apartment. Nicole told her sister she could have the keys and referred to the apartment as theirs. On April 7, 2021, Alyson from the office called and asked for another image of the pay stub and her bank statement. Gallimore testified that she was confused by this request given that she was already approved for the apartment and refused to provide her bank statement. The following day she moved into the apartment with her sister and mother Gloria. Later that day she informed Lora that they'd moved in. She received a refund of her payments on April 8 or April 9, 2021 and immediately sent it back to petitioner. Gallimore spoke with Alyson and another agent Kay on April 10, 2021. They told her that Lora wanted to approve her application but needed a guarantor because Rezi could not consider her sister's income which she had included on her application. On April 12, 2021, Lora and Kay informed her that petitioner was not signing the lease and that she had to vacate the apartment. Gallimore also testified that she never received a countersigned copy of the lease and acknowledged that she never confirmed that the information she had provide on her application was accurate.

Esther Gallimore then testified that Rezi's agent assured her that petitioner had rented the apartment to her family. On April 1, 2021 she made an appointment to see the apartment. On April 6, 2021, Nicole called her back and gave her the code to the lockbox which contained key

to the apartment. During their conversation Nicole told her not to worry about putting the key back in the lockbox box because the apartment was theirs.

Rezi's agent Nicole Parker testified on rebuttal that part of her duties include helping clients access the apartment keys from the lock box. She confirmed that Esther spoke with her on the morning of April 6, 2021 to schedule an appointment to see the apartment for the purpose of taking measurements. Parker denied telling Esther that she could keep the keys and averred that Esther assured her that she knew the process of returning it to the lockbox when she was done. She also explained that she referred to the apartment as respondents' during her conversation with Esther because it was Rezi's practice to remove an apartment from the market when it was conducting due diligence on a prospective tenant. Parker then introduced a recording of the conversation which supported her claim that she never told Esther to keep the keys.

Lora then testified that she never told Gallimore that her application had been approved. She also introduced e-mails she exchanged with Gallimore on April 6, 2021. In the first, Lora informs Gallimore that "[Rezi] would need all the documents to complete our due diligence process before finalizing the lease. Note, you would not be able to move in prior to us finalizing the lease." Gallimore responds that Rezi's website does not specify this and states that "I have already paid the 1st months [sp] rent so I need to make sure I will be duly compensated for that if I need more time to add more documents."

Alyson Vivattanapa is Rezi's Residential Support Associate. She testified that Gallimore failed to qualify for the apartment because of insufficient income information. Specifically, she noted that Gallimore's application included her sister's income information. Vivattanapa testified that she spoke with Gallimore on April 6, 2021 and told her that she was having trouble verify her income information. She requested pay stubs and bank statements from her but Gallimore never provided them.

Discussion

RPAPL § 713 provides for the maintenance of a special proceeding where there is no landlord-tenant relationship between the parties. Petitioner seeks restoration pursuant to subsection 10 of the statute which involves cases where "[t]he person in possession has entered the property or remains in possession by force or unlawful means and he or his predecessor in interest was not in quiet possession for three years before the time of the forcible or unlawful entry or detainer and the petitioner was peaceably in actual possession at the time of the forcible or unlawful entry or in constructive possession at the time of the forcible or unlawful detainer".

Here the credible evidence and testimony shows that a landlord-tenant relationship does not exist between petitioner and the Gallimore. It is axiomatic that "[t]he relation of landlord and tenant is always created by contract, express or implied, and will not be implied where the acts and conduct of the parties negative its existence." *Stern v. Equit. Trust Co. of New York*, 238 NY

267 [Ct App 1924]. Gallimore insists that she became the tenant of the subject premises by virtue of signing the lease and paying the deposit. However, petitioner's actions show that there was not a meeting of the minds. Petitioner never countersigned the lease and made it clear to Gallimore from the outset that her tenancy was contingent on it verifying her income. Before taking possession of the apartment three of petitioner's agents told her (and her sister) that her application was incomplete and that she need to provide the requisite income information. Gallimore does not dispute the fact that she never provided this information. Thus, when she moved in she knew that petitioner had not agreed to have her do so. Despite her claims to the contrary, she also knew why. Petitioner's actions after finding out that Gallimore moved in also evinced its belief that she was not its tenant. Their corporate counsel immediately informed Gallimore that she would have to vacate or complete the application process. When she failed to comply deSouza called the police to attempt to oust her. Having not completed the application process, Gallimore's argument that she and petitioner entered into a landlord-tenant relationship is unavailing. This argument is also belied by the fact that Gallimore did not receive the keys to the apartment or insist on getting them on April 1, 2021 when she claims to have become the tenant.

The facts here show that the relationship between the parties was that of invitor-invitee. *See, e.g., Potter v. Furniture Mfrs. Bldg., Inc.*, 26 NY2d 269 [Ct 1970]. Gallimore entered the premises with petitioner's permission for the purpose of conducting business- to wit renting the subject apartment. Upon her failure to do so, Gallimore's continued presence in the premises and refusal to vacate constituted an unlawful detainer. Since petitioner was in constructive possession of the premises prior to Gallimore and her family's entry and since RPAPL § 713(10) does not expressly limit said possession to residential occupancy, the Court finds that petitioner has standing to maintain this proceeding.

Conclusion

Based on the foregoing the Court finds that respondent's actions have unlawfully deprived petitioner of possession of the subject premises. Accordingly, petitioner is awarded a final judgment of possession as against Eva Gallimore, Esther Gallimore, John Doe and Jane Doe. The warrant may issue and execute forthwith.

This constitutes the decision and order of the Court.

Date: May 7, 2021
Queens, New York

Hon. Clifton A. Nembhard, JHC