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Ramjohn v Khan
2022 NY Slip Op 50104(U)
Decided on February 17, 2022
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This opinion is uncorrected and will not be published in the printed Official Reports.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 February 17, 2022

Civil Court of the City of New York, Queens County

<p style="text-align: center;">Zaheer Ramjohn, Petitioner,</p> <p style="text-align: center;">against</p> <p style="text-align: center;">Brian Khan, Respondent.</p>

L & T Index No.10025/22

For Petitioner: pro se

For Respondents: no appearance

Enedina Pilar Sanchez, J.

This is an alleged illegal lockout case filed as an Order to Show Cause in Lieu of Notice of Petition to Restore to Possession. The subject premises are located at 109-06 112 Street, Apartment 2, South Ozone Park, NY 11420. Pending the hearing on the emergency Order to Show Cause respondent was stayed from reletting and removing any of the contents of the apartment.

On February 4, 2022, petitioner appeared via Microsoft Teams videoconference

pursuant to the Administrative Order in place during the COVID-19 pandemic. Respondent did not appear. Petitioner presented proof of service and service was proper.

Petitioner's Case:

Petitioner was sworn in and testified that he was "*told to move out.*" Petitioner testified that he moved in 2018 or 2019 and pursuant to a written one-year lease. [\[EN1\]](#) Petitioner testified that he began the process of moving out and during the moving out process, when he returned to the apartment the key did not work. Petitioner testified that he had 2 "rings" at the entrance to the apartment and these were broken. He testified that there were things in the apartment which he needed to obtain including his "*kids' uniforms and medicine and other things.*"

The case was adjourned to February 16, 2022 for petitioner to submit documents by [\[*2\]](#)February 4, 2022. The documents were emailed to the clerk in the afternoon of February 7, 2022. Postcards of the adjourned date were mailed to both parties. On the adjourned date respondent did not appear and the testimony of the petitioner continued.

On February 16, 2022, petitioner testified that he has moved into a new residence. While petitioner is not asking to be restored to possession, he stated that he needs access to the premises to recover person items left behind.

Discussion and Decision:

Petitioner brings this case pursuant to *RPAPL Section 713(10)*, which is the only available procedure to file an emergency case when someone had been removed without the benefit of legal process. See, [Watson v NYCHA-Brevoort Houses, 70 Misc 3d 900](#) (Civ. Ct. Kings Co. 2020). Additionally, RPAPL § 711 provides that "*[n]o tenant or lawful occupant of a housing accommodation shall be removed from possession except in a special proceeding,*" if he or she has been in possession for thirty consecutive days or longer. See, *Vatel v. Wills*, 2022 NY Misc. LEXIS 185 (Civ. Ct. NY Co. 2022).

Petitioner testified that he has secured another residence and is not looking to be restored to possession. This Court is now required to treat this case as academic, since restoration to the premises is not sought. The court is precluded from making any findings of

an illegal lockout.

Tavares v. Tavares, 2021 NY Slip Op.50386(U); 2021 NY Misc. LEXIS 2144 (AT 1st Dept.) "*While the proceeding was pending, petitioners informed the court that they no longer sought restoration to the premises. Consequently, the Civil Court should have dismissed the petition as academic rather than on the merits.*"

Based upon the decision in *Tavares v. Tavares (supra)*, the petition is dismissed without prejudice. Petitioner may seek all available remedies in a plenary action, including treble damages upon proper proof pursuant to *RPAPL Section 853*.

Accordingly, based upon the testimony and evidence presented, it is

ORDERED that the petition is dismissed without prejudice and petitioner may seek all available remedies in a plenary action and must do so within the statutory timeframe required.

This Decision and Order is being emailed to petitioner.

This constitutes the Decision and Order of the Court.

So Ordered,
Dated: February 17, 2022
Queens, New York
ENEDINA PILAR SANCHEZ
Judge, Housing Court

Footnotes

Footnote 1: Petitioner emailed to the clerk the front page of a Lease Agreement. The top of the document shows the names of the parties, the address of the subject premises and a term that runs from July 1, 2021 to June 30, 2022. Petitioner also sent to the clerk an alleged "90 Day Notice to Terminate" alleging that the monthly term expires on January 31, 2022. Finally, petitioner sent a picture of a text messages. These documents were not dispositive and lacked a foundation to be allowed to enter into evidence.