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MORGAN v. 440 ST. MARKS REALTY LLC

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF RICHMOND: HOUSING PART Y

-----X
JEANIA MORGAN,

Petitioner,

- against -

440 ST. MARKS REALTY LLC; TIM HUONG,

Respondents.
-----X

REMY SMITH, JHC:

DECISION/ORDER

Hon. Remy Smith, J.H.C.

Index No.10197/20

AFTER INQUEST

Petitioner Jeania Morgan (“petitioner”) has commenced this illegal lockout proceeding pursuant to RPAPL §713(10) on or about May 8, 2020 by service of an Order to Show Cause in Lieu of Notice of Petition to Restore to Possession of 440 St. Marks Place, Apt. #3, Staten Island, New York (“premises”) and Verified Petition in support on respondents 440 St. Marks Realty LLC (owner) and Tim Huong (managing agent) at the registered address¹ of 936 81st Street, Brooklyn, New York 11228. Respondents failed to appear at to defend against this relief and an Inquest was held on May 14, 2020.

Petitioner Jeania Morgan testified on her own behalf. She moved into the premises on March 2 or 3, 2020, obtaining keys to the front entrance door as well as her apartment door from her brother James Gibbs, who had lived there since February 2020. She neither paid rent nor entered into a lease with the respondent landlord or managing agent. She did set up a ConEdison account in her (middle) name to obtain electric service at the premises in early April

The Department of Housing Preservation and Development web site, over which this court takes judicial notice pursuant to Multiple Dwelling Law §328, reflects that respondents registered the premises at 936 81st Street, Brooklyn, New York as of February 2020 and effective through and including the current date.

2020. See Exhibit P1. She brought in furniture and shared other items with her brother. Photographs of the furnished apartment were admitted into evidence as Exhibits P2 and P3. While she was living there, she did not believe that her brother had signed a lease for the premises, nor did she believe that her brother paid rent to the landlord owner or managing agent. She had never met the managing agent until the alleged lockout, as discussed below.

On or about April 27, 2020, New York Police Department officers arrived at the premises twice to address her brother. The managing agent was with them to address that he did not know who Gibbs and Morgan were. No action was taken during either visit. Officers returned on April 30, 2020 at which time both Gibbs and Morgan were removed from the apartment. The next day, May 1, 2020, Morgan learned that Huong changed the locks and placed deadbolts thereupon and therefore neither she nor her brother could gain entry. She was able to obtain belongings approximately four days prior to the hearing whereupon Mr. Huong opened the door to so accommodate and then replaced the locks after she finished taking items. No other items had been taken out at that point and the apartment was otherwise as it was when she and her brother were removed on April 30, 2020. Morgan testified that she was never served with either a vacate order from a government agency or predicate notices or pleadings requesting that she vacate.

Khadeja Clemente testified on petitioner's behalf. She had lived on the 2nd floor at 440 St. Marks Place for a number of years, during which time she and petitioner were friends. She observed Morgan move into the unit in early March 2020 and also became aware that she and Morgan's brother Gibbs were removed on or about April 30, 2020 after having had been approached by NYPD officers at the premises on April 27, 2020. She had actually engaged in a

text message conversation with Mr. Huong on April 27, 2020 wherein the latter asked about whether the residents at the 3rd floor would be willing to pay rent. Exhibit P4.

Morgan credibly testified that she had been residing at the premises for over 30 days prior to her removal by the police on April 30, 2020². She also credibly testified that she was unable to gain unfettered entry on May 1, 2020 or while retrieving belongings later in May 2020 and was so restricted by the actions of Mr. Huong as the owner's managing agent. She also credibly testified that she was neither served with pleadings or a Marshal's notice nor was removed by virtue of a vacate order from a government agency, and was unaware of any proceedings seeking her removal. Mitchell v. New York, 154 Misc.2d 222 (Civ. Ct. Bx. Cty. 1992)(the law is unmistakably clear that a tenant shall not be removed from possession except in a special proceeding). It is moreover undisputed that respondents did not legally regain possession of the premises by way of summary proceeding. In light of this, respondent Huong's actions in changing the locks and adding a deadbolt without allowing petitioner entry and access to unlock the bolted door was improper and in violation of RPAPL §713(10). The statute states as follows:

RPAPL §713(10). Grounds where no landlord-tenant relationship exists

A special proceeding may be maintained under this article after a ten-day notice to quit has been served upon the respondent in the manner prescribed in section 735, upon the following grounds:

The 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; no notice to quit shall be required in order to maintain a proceeding under this subdivision.

²Both Morgan's testimony and failure to contradict same support a conclusion that no charges have been asserted against her in relation to her occupancy of the premises or by anyone purporting to have an interest therein.

The court finds that the credible testimony of both non-party witness Khadeja Clemente and petitioner Jeania Morgan, as well as documentary and pictorial evidence, together support the conclusion that, by changing the locks and deadbolting the apartment entrance door and failing to provide to petitioner a means of unlocking the door and entering the apartment, respondent Tim Huong, on his own behalf as well as that of the respondent owner, violated RPAPL §713(10) by illegally locking her out and that petitioner is entitled to re-occupy the apartment of which she was in actual and peaceable possession at the time of her removal on April 30, 2020 and thereafter. Ms. Clemente's credible testimony about her own observations as well as her text conversation with Mr. Huong revealed that Mr. Huong was aware of petitioner's occupancy and therefore his actions to effectuate her removal and refusal to allow her back in violated RPAPL §713(10). Petitioner never abandoned the premises, nor was she removed as a result of an eviction by a city marshal or by vacate order issued by a governmental agency.

The court does not address whether or not petitioner is a tenant, licensee, squatter or otherwise, as it finds that she was in actual peaceable occupancy for over 30 days as required by RPAPL §711. The court does not pass on the status of her occupancy, whether lawful or otherwise, but does find that she was peaceably in actual possession at the time of ouster, rendering same unlawful and requiring remedy. Petitioner is entitled to reoccupy the premises as of the effective date of this order, which shall be five (5) days from the date of service thereof with Notice of Entry upon both respondents by regular mail with certificate of mailing. After expiration of the five day notice period, petitioner may seek to occupy the premises as consistent with her occupancy prior to her removal on April 30, 2020.

Respondents are ordered to unbolt the apartment entrance door and provide keys for said

door to the petitioner and to the front door, if applicable. To the extent that respondents fail to do so or impede upon petitioner's actions to regain occupancy in accordance with this Decision/Order, petitioner shall seek any and all remedies provided under the law, including but not limited to civil and/or criminal contempt pursuant to the Judiciary Law and any and all other applicable statutes.

All stays remain in full force and effect through and including the date of re-occupancy, at which point they shall be deemed expired and lifted without further notice. Petitioner may seek assistance of the New York Police Department to access premises to the extent she deems necessary.

The foregoing constitutes the Decision/Order of this Court.

Dated: Staten Island, New York
May 15, 2020



REMY SMITH, J.H.C.