2023-12-11

Bikram Singh v. Doris Hawkins

Civil Court of the City of New York
County of Kings

Index # **LT-304283-23/KI**

Bikram Singh
Petitioner(s)

-against-

Doris Hawkins; Deanna Dewitt; Hiaria Hiraldodebregnan;
"John" "Doe"; "Jane" "Doe"
Respondent(s)

Decision / Order

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

Papers	Numbered
Order to show Cause/ Notice of Motion and Affidavits /Affirmations annexed	NYSCEF 8-14
Answering Affidavits/ Affirmations	NYSCEF 16-17
Reply Affidavits/ Affirmations	NYSCEF 18
Memoranda of Law	
Other	

Respondent Doris Hawkins moves to dismiss this holdover brought to recover possession of Apartment 3 at 393 Miller Avenue in Brooklyn. Petitioner Bikram Singh brought this suit after terminating Ms. Hawkins' tenancy via a "Ninety (90) Day Notice of Termination" served on Ms. Hawkins on August 31, 2022, and purporting to terminate her tenancy as of November 30, 2022. Ms. Hawkins claims that Mr. Singh was not permitted to terminate her tenancy as described in the 90 Day Notice because Mr. Singh accepted funds provided by the "COVID-19 emergency rental assistance program of 2021" (or "ERAP Statute") (Chapter 56, Laws of 2021, Part BB) on January 11, 2022. Ms. Hawkins argues that the ERAP Statute bars Mr. Singh from terminating her tenancy within one year of the acceptance of those funds, and that her tenancy could therefore not have been terminated until at least January 10, 2023.

Petitioner counters that the ERAP Statute does not bar him from terminating Ms. Hawkins' tenancy or bringing this proceeding as she claims, the statute only bars him from

evicting her. Therefore, Mr. Singh argues, he was entitled to terminate the tenancy when he did, and he complied with the statute insofar as Ms. Hawkins was not evicted before January 10, 2023.

At heart, the dispute here is one of statutory interpretation—and there is good reason for confusion about the meaning of the statute. To understand why that confusion arises, one must first appreciate what the ERAP statute does. The ERAP statute sets out a bureaucratic structure for New York tenants to apply for emergency arrears assistance and for the New York State Office of Temporary and Disability Assistance ("OTDA") to evaluate eligibility for those funds. It also sets out how OTDA should administer the disbursement of those funds to landlords in accordance with the priorities and qualifications enunciated in the statue. The statue was not created just to pay tenants' arrears, however. The statute also enumerates several restrictions placed on landlords when they accept ERAP funds. One of these restrictions is that landlords who accept ERAP funds agree, simply by virtue of accepting those funds, "not to *evict* for reason of expired lease or holdover tenancy any household on behalf of whom rental assistance is received for 12 months after the first rental assistance payment is received . . ." (Chapter 56, Laws of 2021, Part BB § 9(d)(iv) (Italics added.))

An agreement by landlords not to evict tenants makes sense in common usage of the word "evict", but it is nonsensical to forbid a landlord from evicting a tenant within the context of New York Landlord-Tenant Law. In New York, evictions occur when the warrant of eviction is executed upon. The only parties entrusted with the power to execute upon the warrant of eviction in New York City are the county sheriffs and the city marshals. (RPAPL § 749(1).) Landlords do not have the power to evict. They do not even have the power to direct a marshal

to execute upon the warrant of eviction—that power lies with the court. (*Id.*) ("The court shall issue a warrant directed to the [sheriff or marshal] . . . commanding the officer to remove all persons named in the proceeding . . .")

Petitioner's interpretation of the ERAP statute is therefore untenable. Petitioner asks the court to interpret the ERAP statute as forbidding him from doing something he never had the power to do in the first instance. Such an interpretation would fly in the face of a fundamental canon of statutory interpretation: that all parts of a statute must be harmonized with each other, and each part should be given effect. (McKinney's Statutes §98; *see also Matter of Albano v. Kirby* 36 N.Y.2d 526, 530, 330 N.E.2d 615, 618 [1975] ("[T]he enacting body will be presumed to have inserted every provision for some useful purpose.")) As such, the court must reject petitioner's interpretation and interpret paragraph 9(d)(iv) of the ERAP statute in another way.

Because the ERAP statute frames the acceptance of ERAP funds as binding the landlords who accept those funds, the correct interpretation of the agreement "not to evict" must prohibit some action of the landlord that could result in a holdover proceeding brought against the tenant whose arrears were paid. There are only two affirmative actions a landlord could normally take that, if prohibited, would prevent a tenant from being dispossessed: a landlord could be prevented from terminating the tenancy, or a landlord could be prevented from bringing a holdover proceeding. The court, not the landlord, is ultimately responsible for any action taken in furtherance of an eviction after the holdover proceeding is brought.

In most instances, the distinction between prohibiting the termination of the tenancy and prohibiting the commencement of the proceeding is academic for practical purposes. Because the landlord is prohibited from collecting rent during the period between the termination of the tenancy and the commencement of the holdover proceeding, (*See 92 Bergenbrooklyn, LLC v. Cisarano*. 50 Misc.3d 21, 21 N.Y.S.3d 810 (AT 2nd Dep't, 2nd, 11th & 13th Jud. Depts. 2015),) a landlord would not terminate a tenancy until he had the right to bring suit because of the loss of rental income.

In the present case, however, the difference is material because petitioner terminated the tenancy less than one year after the receipt of ERAP funds, but the case was commenced (by filing of the petition, *see 92 Bergenbrooklyn, supra*.) more than one year after the receipt of those funds.

While the landlord did not actually seek dispossession of the respondent until the commencement of the proceeding (Petition § 10, NYSCEF Doc. 1), the court holds that the proper interpretation of the ERAP statute is to bar the landlord from terminating the tenancy. Analysis of the statutory text and equitable concerns support this interpretation. Paragraph 9(d)(v) of the ERAP Statute places an affirmative obligation on landlords to "to notify the tenant of the protections established under this subdivision", including the tenant's right not to be evicted for a year. By giving the landlord this notice requirement, the statute makes the landlord the source of information about the rights under the statute. It would be inequitable to allow the landlord to terminate the tenant's tenancy without also acknowledging that no suit could be brought for some time after the termination. Indeed, allowing such early terminations

could result in tenants vacating before the holdover proceeding is brought, even though they were statutorily protected from being removed for some months afterward.

As such, respondent's motion is GRANTED. The proceeding is DISMISSED.

This is the decision and order of the court, which will be delivered to the parties via NYSCEF.

Date: December 11, 2023

Hon. Jason P. Vendzules, J.H.C.