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2024-01-08

Hamilton Heights Terrace Assoc. v. Aurora Espillat Vargas & Sabrina Espillat

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NY, PART N/P, ROOM 855

----- X

HAMILTON HEIGHTS TERRACE ASSOC
Petitioner,

Index No. LT-306173-20/NY

- against -

Decision/Order
AFTER TRIAL

AURORA ESPILLAT VARGAS
Respondent-Tenant

SABRINA ESPILLAT
Respondent-Occupant.

----- X

Present: Hon. Daniele Chinea
Judge, Housing Court

DECISION:

After trial, the Court finds for respondents, the petition is dismissed without prejudice to the underlying claims.

HISTORY:

Petitioner commenced this non-payment case on December 23, 2020, seeking a money judgment for past-due rent from the tenant, Aurora Espillat Vargas (hereinafter, "Respondent"), at the Premises: 1821-1833 Amsterdam Avenue, Apt 5Q, New York, NY 10031. Petitioner also seeks a possessory judgment and warrant of eviction against all respondents, including Sabrina Espillat (hereinafter, "Occupant"). The Petition states that the Premises is not subject to the Rent Stabilization Law or Rent Control by reason of the fact that the premises are a subsidized multifamily housing project regulated by the U.S. Department of Housing and Urban Development ("HUD") and the respondent receives a rent subsidy under the Federal Section 8 program.

Petitioner served a predicate Thirty (30) Day Notice to Federally Subsidized Tenant for Material Non-Compliance of Lease Pursuant to Federal Regulations and Concurrent Demand for Rent ("Rent Demand") on Respondent on October 22, 2020, by conspicuous place service (NYSCEF 1). That Rent Demand notified Respondent that Petitioner believed Respondent owed \$43,306 through October 20, 2020, and that if Respondent failed to pay the debt by November 30, 2020, her tenancy would be "deemed terminated." If she failed to surrender possession or pay by November 30th, Petitioner would commence a summary proceeding to recover possession. The Rent Demand also states that it is meant to satisfy notice requirement of RPAPL §711(2). The Occupant was not referenced in, or served with, the Rent Demand. On December 21, 2020, Petitioner served a Notice of Petition and Petition on Respondent and the Occupant by conspicuous place service at the Premises. The Affidavit of service was filed with the Court on December 23, 2020 (NYSCEF 3).

On December 29, 2020, Respondent filed an answer without counsel (NYSCEF 4). In it, she asserts her name appears improperly; Petitioner never properly demanded the rent; the monthly rent sought is not the legal rent as there is no current lease; Petitioner owes Respondent money based upon

their overcharge; there are conditions in the Premises in need of repair; and a general denial; and a generalized counterclaim.

On May 5, 2021, the Occupant submitted a COVID Hardship Declaration claiming she is unable to pay rent or find alternative housing due to Covid-19 (NYSCEF 5). The filing on the Hardship Declaration created a rebuttable stay on the proceeding.

On May 7, 2021, New York Legal Assistance Group (NYLAG) filed a Notice of Appearance for the Occupant (NYSCEF 6).

On December 6, 2022, the matter was restored, any pending ERAP applications having been denied by November 2022. The matter was adjourned for Respondent to retain counsel through the Assigned Counsel Program. Respondent was denied counsel on the basis that she did not meet income requirements to receive free legal services. Respondent represented herself at trial.

On February 24, 2023, Occupant's counsel was permitted to interpose a late answer over Petitioner's objection (NYSCEF 7). The matter was then transferred for trial assignment.

The Occupant's answer asserts a general denial and several defenses and counterclaims. The first defense and counterclaim asserts that the Occupant should be recognized as the tenant based upon Respondent's vacatur of the Premises two years prior – no specific date is provided. Her second defense asserts that the Occupant has no lease with the Petitioner and, therefore, cannot be made responsible for the rent due. Her third defense and counterclaim alleges conditions in the Premises constitute a breach of the Warranty of Habitability and require an abatement of any rent that may be due. Her fourth defense claims Petitioner failed to serve the required VAWA notice with the Rent Demand in violation of 24 CFR §5.2005, creating an incurable defect in the Rent Demand requiring dismissal.

FACTS:

On May 31, 2023, a trial commenced. The trial continued June 1, June 6, June 13, and June 15, 2023. Post-trial memoranda were filed July 17, 2023 (NYSCEF 10 & 11)¹. The Occupant filed a Notice to Admit on May 25, 2023 (NYSCEF 9). No response was ever filed thus, those facts are deemed admitted. In fact, Petitioner admits in its post-trial memo (NYSCEF 10) that the Occupant is an eligible remaining family member now that Respondent has notified Petitioner she vacated the Premises at some point in 2019. At the time of trial, the Court understands that the Occupant has not formally sought RFM status.

Petitioner presented one witness and various documents (Pet Exhs 1-16, 19-21). Henry Barrenechea, Petitioner's agent, testified that Petitioner has authority to maintain this proceeding (Pet Exh 2 - Attorney Certified Deed) and the premises is properly registered with the Department of Housing Preservation and Development (Pet Exh 1- MDR). The Witness testified that Petitioner properly terminated Respondent's subsidy in March 2018 based upon her failure to timely recertify and again when she failed to sign her lease addendum after interim recertification in October 2018. That same month, Petitioner began charging Respondent the full market rate rent without subsidy, as set by HUD. Market rent was not charged prior to October 2018. The witness also testified to various notices sent to Respondent regarding recertification, termination of subsidy, and the calculation of market rent (Pet Exhs 11, 12(a)-12(d), 13, 14, 15, 19, 20 & 21). He testified to the general practices of Petitioner and that

¹ Occupant's Post-trial memorandum is joined by Respondent.

Petitioner operates in compliance with the HUD regulations governing termination of subsidy and termination of tenancy.

At the end of the prima facie presentation, Occupant's attorney moved for a directed verdict on the grounds that Petitioner failed, as a matter of law, to prove its prima facie case because the notices allegedly provided by Petitioner did not conform to the law for numerous reasons, including that Petitioner failed to serve a VAWA notice with the Notice of Termination of Subsidy (Pet Exh 14) or with the Rent Demand (NYSCEF 1), as required by 24 CFR §5.2005; and failed to notify the Respondent of her "right to request, within 10 calendar days from the date of the notice, a meeting with the owner to discuss the proposed termination of assistance," (HUD Occupancy Handbook, §8-6(A)(3)(e)); the same is required for termination of tenancy for material non-compliance with lease (HUD Occupancy Handbook, §8-13(B)(2)(c)(4)). The Court declined to grant a directed verdict at that time and permitted the trial to proceed.

Respondent presented two witnesses – the respondents – and a photograph of a lease addendum fully executed on April 18, 2018 (Resp Exh B), which was not offered by Petitioner. Respondents testified that Petitioner did not abide by HUD regulations or Federal Law when raising Respondent's rent to market rent in October 2018, or when responding to her objections to the rent calculated in November 2018 lease addendum, or in commencing this proceeding (Pet Exh 11).

LAW:

"A proper rent demand is a statutory prerequisite to a nonpayment proceeding (RPAPL 711 [2]) and an element of a landlord's prima facie case." *Pantiqo Professional Ctr LLC v Stankevich*, 60 Misc3d 133(A) (AT 2d Dept 2018).

24 CFR §5.2005(a)(2) requires that a notification of occupancy rights under the Violence Against Women Act (VAWA) and certification form, *must* be provided to an applicant or tenant no later than at the time (i) assistance is denied; (ii) assistance is offered; (iii) notification of eviction or termination of assistance; and (iv) during the 12-month period following 12/16/2016. 24 C.F.R. § 5.2005 (*emphasis added*). Petitioner provides no evidence it complied with this Federal requirement for termination of assistance or eviction. Respondent was never served with a VAWA notice in this proceeding. And, though Petitioner claims in its post-trial memo (NYSCEF 10) that Respondent was provided a VAWA notice each time she recertified, there is no evidence of that in the record.

Moreover, the HUD Occupancy Handbook §§8-6 and 8-13 require notices to inform tenants of their right to meet with the manager within 10 days of service of the notice, or the effective date of the notice, respectively, when an owner seeks to termination a tenant's subsidy or tenancy. The Rent Demand in this proceeding is silent as to this right.

Based upon the foregoing, the Court reconsiders its denial of directed verdict. To succeed on a motion for summary judgment, a defendant must establish that the plaintiff is unable to prove at least one of the essential elements of the cause of action. *Dupree v Voorhees*, 68 AD3d 810, 811 (AD 2nd Dept, 2009) (*internal citations omitted*). Pursuant to RPAPL §711(2) a proper predicate notice is required to maintain a summary non-payment proceeding. And, a predicate notice is not capable of amendment. *See, Chinatown Apartments Inc v Chu Cho Lam*, 51 NY2d 786, 787 (1980) ("*s*ince the right to terminate the tenancy pursuant to the terms of the lease was dependent upon service of an adequate notice, the subsequent amendment of the petition, which could not operate retroactively to cure a defect in the

notice, did not enhance petitioner's right to relief.") Without a proper predicate notice, the petitioner cannot establish its prima facie requirements.

Based upon the foregoing, the Court reverses its denial of Occupant's motion for directed verdict. While the motion was technically made by the Occupant not the Respondent to whom the right belongs; the Court finds that the Respondent's answer sufficiently raises the defense, Petitioner cannot establish a proper predicate notice; thus, the petition must be dismissed.

ORDER:

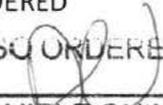
It is ORDERED: the petition is dismissed without prejudice to the underlying claims.

This is the decision and order of the Court, a copy of which will be uploaded to NYSCEF and mailed to the Premises. Parties may retrieve exhibits from the Court within 30 days of the date of this Order or they will be disposed of in accordance with Court directives.

DATED: January 8, 2024

SO ORDERED

SO ORDERED



DANIELE CHINEA

JUDGE, HOUSING COURT
Hon. Daniele Chinea, JHC