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Williams v. Lindo

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Civil Court of the City of New York
County of Kings
Part: Part P, Room: 904
Date: November 21, 2023



Index #: LT-052116-20/KI
Motion Seq #: 5

Decision/Order

Monica Williams
Petitioner(s)
-against-

Present: Malikah Sherman
Judge

Roan Lindo; Kyle Lindo; "John" "Doe"; "Jane" "Doe"
Respondent(s)

Recitation, as required by CPLR § 2219(A), of the papers considered in the review of this Motion for:
Miscellaneous

PAPERS	NYSCEF NUMBERED
Notice of Motion and Affidavits Annexed	69-72
Order to Show Cause and Affidavits Annexed	_____
Answering Affidavits	73-75
Replying Affidavits	_____
Exhibits	_____
Stipulations	_____
Other _____	_____

Upon the foregoing cited papers, the Decision/Order in this Motion is as follows:

Petitioner’s attorney and the attorney for Respondent Roan Lindo have appeared today. The parties settled this holdover proceeding on April 20, 2023, and pursuant to their stipulation of settlement,¹ Respondent consented to the entry of a judgment of possession and warrant of eviction; Respondent agreed to vacate the subject premises by June 30, 2023, and execution of the warrant of eviction was stayed to that date; Petitioner agreed to “waive all rent”; Respondent agreed not to “rent out [the] apartment to [third] parties”; Respondent agreed to give Petitioner the apartment keys and Petitioner agreed to provide a receipt; any property left by Respondent after moving out would be deemed abandoned; the parties acknowledged that Respondent had

¹ See stipulation of settlement dated April 20, 2023, at NYSCEF document no. 62.

already received their security deposit; and upon timely vacating the subject premises, the judgment and warrant would be vacated, among other terms.

The relief requested in Petitioner's notice of motion is described as: "An order for a determination of the monthly use and occupancy by the Respondent since January 17, 2020 for the failure to abide by the terms of a stipulation dated April 20, 2023 by failing to vacate the premises as per the term of a signed stipulation between the parties." The specific relief is not articulated again or clarified in the supporting affirmation. Petitioner alleges that Respondent moved out of the subject premises late and returned the keys to Petitioner even later, and that Respondent is in breach of the settlement by failing to surrender pursuant to its terms. Respondent opposes the motion on numerous grounds, including that the stipulation does not contemplate penalties for the breach now being claimed by Petitioner. Petitioner presently seeks "use and occupancy" since January 17, 2020, and Respondent argues that Petitioner agreed to waive all "rent" pursuant to the stipulation of settlement, without conditions.

The relief sought by Petitioner is neither supported by the papers annexed to the motion nor the parties' stipulation of settlement. In the event Petitioner is seeking an order determining the monthly rate of use and occupancy, the motion is completely devoid of any arguments regarding why the Court should perform such a calculation at this stage of the litigation. In the event Petitioner is seeking an order finding that Respondent owes Petitioner some amount of use and occupancy, no basis is presented for this relief either.

First, as correctly pointed out by Respondent, there is no supporting affidavit by an individual with personal knowledge establishing a claim for use and occupancy arrears. No other documentation is presented in support of the alleged debt, and no claimed balance is cited. The Court also finds that the parties' stipulation of settlement simply does not identify the payment of

use and occupancy, or the instant motion, as potential penalties for Respondent's default in vacating timely. As drafted, the only negative outcome which could befall Respondent upon failing to move out timely is that the stay of the warrant's execution would expire.

Lastly, this Court lacks jurisdiction to grant Petitioner the relief it seeks now – ostensibly, the entry of a money judgment, or an order which could form the basis of a later money judgment – because the Court has already granted a possessory judgment in favor of Petitioner, thereby concluding the holdover proceeding and the relief sought therein. *See Teitelbaum Holdings, Ltd. v. Gold*, 48 N.Y.2d 51 (1979). The Court need not reach the remainder of the parties' arguments.

For these reasons, Petitioner's motion is denied. A copy of this decision and order shall be uploaded to NYSCEF.

So ordered,
Dated: November 21, 2023



Hon. Malikah Sherman, J.H.C.