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43-09 47th Ave. LLC v. Santiago

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43-09 47th Ave. LLC v Santiago
2024 NY Slip Op 24097
Decided on March 18, 2024
Civil Court Of The City Of New York, Queens County
Guthrie, J.
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Decided on March 18, 2024

Civil Court of the City of New York, Queens County

43-09 47th Avenue LLC, Petitioner,
against
Luis Santiago, John Doe, Jane Doe, Respondents.

Index No. L&T 300438/23

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Clinton J. Guthrie, J.

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of respondent's motion for a stay of the proceeding pursuant to CPLR § 2201 and RPAPL §

755(b):

Papers Numbered

Notice of Motion & Affirmation/Exhibits Annexed 1 (*NYSCEF #10-13*)

Affirmation in Opposition & Exhibit Annexed 2 (*NYSCEF #14-15*)

Upon the foregoing cited papers, the decision and order on respondent's motion is as follows.

PROCEDURAL HISTORY

This summary nonpayment proceeding was filed in January 2023. Respondent, a rent-stabilized tenant, filed a pro se answer and the case was adjourned several times before counsel appeared for respondent. After a fire in the subject building occurred in December 2023, respondent's attorneys made the instant motion for a stay of the proceeding until the DHPD (Department of Housing Preservation and Development) vacate order currently in effect is lifted and respondent is restored to possession of the subject apartment. Petitioner opposed the motion and the court heard argument on March 13, 2024. Decision was reserved upon the conclusion of the argument.

DISCUSSION & CONCLUSION

The court will first address the request for a stay pursuant to RPAPL § 755, as it is the statute more specifically governing this summary eviction proceeding ([*see People v. Avilas, Inc.*, 29 AD3d 764](#), 765 [2d Dept 2006]). Pursuant to RPAPL § 755(1)(a):

"Upon proper proof that a notice or order to remove or cease a nuisance or a violation or to make necessary and proper repairs has been made by the municipal department charged with the enforcement of the multiple dwelling law, the multiple residence law, or any other applicable housing code . . . if the condition against which such notice or order is directed is, in the opinion of the court, such as to constructively evict the tenant from a portion of the premises occupied by him [or her], or is, or is likely to become, dangerous to life, health, or safety, the court before which the case is pending may stay proceedings to dispossess the tenant for non-payment of rent or any action for rent or rental value."

Here, the court finds that the DHPD vacate order constitutes a "notice or order" covered by the statute. [\[EN1\]](#) There is no dispute that respondent is currently constructively evicted from the premises pursuant to the order. Petitioner asserts that notwithstanding any stay remedy in RPAPL § 755(1), respondent must nonetheless comply with the rent deposit

requirement set out in RPAPL § 755(2) to obtain a stay under the statute. RPAPL § 755(2) states that "[t]he tenant or respondent shall not be entitled to the stay unless he [or she] deposit with the clerk of the court the rent then due, which, shall for the purposes of this section, be deemed the same as the tenant was liable for during the preceding month or such as is reserved as the monthly rent in the agreement under which he [or she] obtained possession of the premises." Petitioner argues that respondent must pay all rents currently due, which are alleged to be \$59,331.81, to meet the deposit requirement. At argument on the motion, respondent's attorney opposed the deposit of the full rent due to obtain a stay.

Upon interpreting the plain language of RPAPL § 755(2), the court does not find that a full deposit of all rent due is required to invoke the stay (*see Riley v. County of Broome*, 95 NY2d 455, 463 [2000] [The "unambiguous language of [the] statute is alone determinative" of the legislature's intent.]) Indeed, the statute specifically deems "the rent then due" to be "the same as the tenant was liable for during the *preceding month* or such as is reserved as the *monthly rent* in the agreement under which" the tenant obtained possession (RPAPL § 755(2) [emphasis added]). This is distinguishable from other sections of Article 7 of the RPAPL, which refer specifically to payment or deposit of "the full amount of rent due" (RPAPL § 731(4) and RPAPL § 749(3)) as being required to moot out a case prior to the hearing or effectuate vacatur of the warrant, respectively (*see Matter of Walsh v. New York State Comptroller*, [34 NY3d 520](#), 524 [2019] ["A statute 'must be construed as a whole and [] its various sections must be considered together and with reference to each other.'" [quoting *Matter of New York County Lawyers' Assn. v. Bloomberg*, [19 NY3d 712](#), 721 [2012]]]). An interpretation that requires payment of monthly rent as a condition for the stay (as opposed to all rent due) also comports with the "remedial nature" of RPAPL § 755 that has been recognized by appellate courts (*see Leejon Realty Co. v. Davis*, 99 Misc 2d 681, 682 [App Term, 2d Dept, 2d & 11th Jud Dists 1977] [The statute's "purpose is to motivate a landlord to make the repairs." [internal citations [*2]omitted]; *B. L. H. Realty Corp. v. Cruz*, 87 Misc 2d 258, 260 [App Term, 1st Dept 1975]; *Brissett v. Cherry*, 54 Misc 2d 353, 354 [App Term, 1st Dept 1967])).

The case cited by petitioner, *566 Beck Realty Corp. v. Ramirez*, 88 Misc 2d 92 [App Term, 1st Dept 1976], does not compel a different result. In *Ramirez*, the Appellate Term only reversed the lower court's continuation of a stay where the tenant failed to pay ongoing rent (88 Misc 2d at 93). While the lower court had also conditioned the stay on payment of the rent sought in the petition and payment of future rent as it accrued, the propriety of the initial deposit was not the subject of the appeal.

Accordingly, respondent's motion is granted and the proceeding shall remain stayed until such time as all vacate orders are lifted for respondent's apartment, on condition that respondent pays her monthly rent by the 10th of each month, although March 2024 rent shall be paid by March 22, 2024. [\[FN2\]](#) As the parties agree that respondent's rent is currently reduced to \$1.00 per month by the Division of Housing and Community Renewal (DHCR) as a result of the fire, that shall be the monthly amount required to be paid, subject to any further DHCR orders affecting the rent while the stay remains in effect. While RPAPL § 755(2) refers to deposit of rents with the clerk, due to the nominal amount now required to be paid by DHCR, the court will direct respondent to pay the rents directly to petitioner or petitioner's attorney in the interest of expediency. Upon default in any payment, petitioner may seek to restore the case by motion brought by order to show cause. Upon the vacate orders being lifted, either party may seek to restore the case by motion or stipulation of both parties. If a motion or stipulation is filed on NYSCEF, counsels shall notify the court of the same by email to qn-housing-403@nycourts.gov.

As the motion is granted pursuant to RPAPL § 755, the court does not reach the alternative request pursuant to CPLR § 2201. This Decision/Order will be filed to NYSCEF.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated: March 18, 2024
Queens, New York
HON. CLINTON J. GUTHRIE, J.H.C.

Footnotes

[Footnote 1:](#) The court has taken judicial notice of the vacate order (#246545) dated December 27, 2023 on the DHPD website pursuant to Multiple Dwelling Law § 328(3)).

[Footnote 2:](#) The court takes notice that the NYC Department of Buildings (DOB) has also issued a vacate order for the subject building as a result of the fire ([see *Cashew Holdings, LLC v. Thorpe-Poyser*, 66 Misc 3d 127\[A\]](#), 2019 NY Slip Op 52032[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2019]).