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RIVER PLACE II, LLC v. HURD

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JUN 26 2023

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART F

ENTERED
NEW YORK COUNTY

RIVER PLACE II, LLC
Petitioner

-against-

DANIEL C. HURD
Respondent-Tenant

ALI REZA
Respondent-Undertenant

L&T Index No.: 301012-21

DECISION/ORDER

Order to Show Cause (Seq 1)

This is a nuisance holdover proceeding that was settled with a probationary stipulation on July 12, 2023. (NYSCEF Doc No. 25.) Petitioner claimed that respondents were engaging in loud and violent arguments inside their apartment and in the common areas which disturbed other tenants and caused them to fear for their safety. Pursuant to the agreement, a judgment entered and a warrant issued. Execution of the warrant was stayed for respondents to refrain from the type of behavior alleged in the notice of termination. (NYSCEF Doc No. 1 at 5, notice of termination.) The stipulation also provided that respondents “have the right to seek a hearing if they dispute the allegations in any motion to restore.” (NYSCEF Doc No. 25, probationary stipulation ¶ 5.) Respondents allegedly breached the stipulation, and petitioner caused a notice of eviction to be served on April 3, 2023 with an earliest eviction date of April 18, 2023.

On April 11, 2023, respondent, Daniel Hurd,¹ filed an order to show cause to stay execution of the warrant. (NYSCEF Doc No. 29.)

Respondent’s Order to Show Cause

Respondent’s order to show cause seeks a stay of the execution of the warrant, a hearing, reinstatement of the probationary period, and a satisfaction of judgment piece and if not an order from the court that the clerk mark the file as such, reinstatement of the probationary period. Referring to paragraph 5 of the stipulation, respondent invokes his “right to know what they claim and be heard on that.” (NYSCEF Doc No. 30, Hurd affidavit ¶ 35.)

¹ Hurd, upon whose affidavit this decision is made, is referred to as “respondent” hereinafter. Undertenant, Ali Reza, is referred to as “Reza.”

In his affidavit, respondent claims that he was sober for 10 months without incident until he was attacked on the street May 23, 2023. His briefcase containing his cell phone and medication was stolen, and he was thrown to the ground, suffering cuts and abrasions. (*Id.* ¶ 11.) He was unable to refill his prescriptions because they had just been filled. (*Id.* ¶ 12.) Over the next two days, the trauma from the attack and the lack of medication caused him to have a mental breakdown. “I was losing cognitive skills. I had barely slept, not eaten and without medication. . . . I started becoming paranoid, having hallucinations and other bipolar symptoms. I remember very little about what I did in the days after the attack.” (*Id.* ¶ 17.) Two days after the attack, he recounts that he lost touch with reality. He believed his apartment was his childhood home, that his partner, Ali Reza, was his father, and that he had been beaten by Reza. (*Id.* ¶ 18.) “Out of concern” for respondent, Reza called security. (*Id.* ¶ 19.) Security called the police. When the police arrived, respondent reported to them that the cuts and bruises from the attack were caused by Reza. The police arrested Reza on charges of domestic violence. (*Id.* ¶ 20.) Respondent now vehemently denies that Reza “never hit me or abused me physically in any way.” (*Id.*) Respondent was alone for the next couple of days while Reza was being detained, and he “spiraled.” (*Id.* ¶ 21.)

Respondent attaches affidavits from three professional healthcare workers, and a letter from his neighbors to support his account of the incident. A letter from a psychiatrist, Dr. Leonid Izrayelit, states that respondent suffers from “bipolar disorder” and that the “traumatic event [on March 23, 2023] induced acute stress disorder with psychotic episode, as well as exacerbation of bipolar disorder.” (NYSCEF Doc No. 33, Izrayelit letter.) “Currently,” Dr. Izrayelit states “[respondent] is stabilized on his medications, rational, with no signs of psychosis or mania. Mr. Hurd is not an acute danger to self or others.” (*Id.*) Respondent provides another letter, dated April 6, 2023, from Dr. Jason Kindt, who is employed by the Mount Sinai Friedman Health Center. According to the Mount Sinai website, Dr. Kindt is a primary care doctor.² Kindt states that he is aware of respondent’s “psychiatric emergency with a disturbance at home,” but he “do[es] not expect any further disruptions as he adjusts to his new medical plan.” (NYSCEF Doc No. 34, Kindt letter.) Allyne Spinner, a licensed clinical social worker and clinical director at

²Kindt professional profile available at https://www.mountsinai.org/physicians/primary-care/physician_listing?utm_medium=physician_listing&utm_campaign=YEXTMD&utm_term=primarycare&y_source=1_MTE4MzUwMzgtNDgzLWxvY2F0aW9uLndiYnNpdGU%3D (last accessed June 23, 2023).

First Steps to Recovery, provided a letter stating that respondent has been a client since 2021 and “has 9 months of sobriety.” Due to his assault, Spinner states respondent “had a psychotic break” and “as a result of the result of the assault he should not be evicted.” (NYSCEF Doc No. 35, Spinner letter.) Finally, respondent provides a copy of an April 4, 2023 email from his neighbors, which states that they live in apartment PHB-S60B and have been respondent’s neighbors for 10 months as of the date the email was received. (NYSCEF Doc No. 36, Solomon email.)

Respondent’s neighbors’ testimonial states

“[My partner] and I both understand the important role that medications play in many of our lives!! In the time we have been neighbors, we have heard some arguments coming from your home, but we have heard that from other neighbors and even ourselves at times lol. One thing we want to make 100% crystal clear, there was NEVER any feeling of being in danger or any feeling of threat or any indication of possible impact to public safety at all!!!” (*Id.*)

Petitioner’s Opposition

In opposition, petitioner attaches an affidavit from Janelle Allende who is the property manager for the building and employed by petitioner’s managing agent. Allende cites to 36 alleged incidents between May 2020 and June 2021, all *predating* the commencement of the probationary period under the stipulation. (*Id.* ¶ 3; NYSCEF Doc Nos. 48-49, petitioner’s exhibit F and G, incident logs .) She avers to only four alleged post-probationary stipulation incidents, each of which she claims breached the probationary agreement, and three of which occurred on March 25, 2023 or March 26, 2023: 1) An October 11, 2022 incident during which respondent and his partner, Reza, purportedly had an altercation requiring the police to be called; 2) a March 25, 2023 incident at 10:34 p.m. during which Reza was arrested on domestic violence charges; 3) a March 26, 2023 incident occurring at 3:58 a.m. during which respondent “screamed into his cellphone” in the common areas of the building; and 4) a March 26, 2023 incident occurring at about 4:00 a.m. during which respondent allegedly banged loudly on the elevator door creating “unreasonably loud noises.” (*Id.* ¶ 8.) Allende avers that [p]etitioner would not have agreed to enter into the Probationary Stipulation if it did not explicitly state that Respondents *do not have a right to cure* a violation thereof (emphasis added).” (*Id.* ¶ 7.)

Another affidavit from Danush Delihhasani, a concierge, describes receiving a complaint from another resident on March 25, 2023 at approximately 9:42 p.m. (NYSCEF Doc No. 41, Delihhasani affidavit ¶ 2.) The resident had called to report an altercation in the subject premises.

After calling security, Delihassani proceeded to the premises with a security officer where he heard respondent “screaming for help.” (*Id.* ¶ 3.) “It was clear from the various other noises emanating from the Premises that Respondents were engaged in a physical fight with each other.” (*Id.* ¶ 4.) He states that he witnessed the police leading Reza out of the building in handcuffs. (*Id.* ¶ 6.) An affidavit from Lorvens Augustine, the security officer who accompanied Delihassani, to the apartment, recounts hearing respondent “screaming for help” and that he personally witnessed the police escort Reza from the premises. (NYSCEF Doc No. 42, Augustine affidavit.) Also attached to petitioner’s opposition are four emails from other residents in the building, all pre-dating the probationary stipulation. (NYSCEF Doc Nos. 44-47.) Finally, petitioner attaches an “incident log” comprises approximately four pages of notes made by various building employees after the date of the probationary stipulation in response to complaints lodged by other residents. (NYSCEF Doc No. 59.) The rest of the log is irrelevant to the probationary period. Regardless, petitioner has focused in its opposition on only four incidents, three of which occurred on March 25, 2023 and March 26, 2023, and one of which occurred in October 2022, but which is not explicated in the supporting affidavits.

At oral argument, petitioner opposed respondent’s request for an adjournment or a hearing as causing unnecessary delay which is prejudicial to other residents and staff who fear for their safety.

DISCUSSION

In recent years, courts have become increasingly amenable to finding that a handicapped tenant is entitled to protection under the Fair Housing Act in the form of a reasonable accommodation if necessary to maintain their tenancy and an equal opportunity to use and enjoy a dwelling. (*See generally* 42 USC § 3604, Fair Housing Act [“FHA”].) No specific diagnosis is required to entitle a tenant to protection under the FHA, and in fact a handicap may even be deduced from the “observations of a lay person.” (*Prospect Union Assocs. V DeJesus*, 167 AD3d 540, 543 [1st Dept 2018].) In these decisions, a reasonable accommodation has been granted in the form of a stay on the execution of a warrant of eviction. In some cases the stay is for a finite amount of time; in others, the execution of the warrant is permanently stayed. The failure of a landlord to provide a reasonable accommodation is an unlawful discriminatory act under the FHA. (42 USC § 3604 [f] [2] [A], [f] [3] [B].) In order to determine whether a reasonable accommodation is warranted in cases such as this one, the court must hold a hearing. In *Prospect*

Union Assocs. V DeJesus, 167 AD3d 540, 544 (1st Dept 2018) the Appellate Division First Department held:

“Housing Court failed to consider whether with ongoing supportive services and suitable monitoring tenants can continue to live an orderly existence in the apartment without harming or affecting their neighbors (*RCG-UA Glenwood, LLC v Young*, 9 Misc 3d 25 [App Term, 2d Dept, 9th & 10th Jud Dists 2005] [tenant offered evidence of his improved behavior after enrollment in a treatment program]). We remand for a hearing to determine whether the accommodations proposed by the guardian are reasonable, whether they will curtail the risk of the nuisance recurring, and whether there should be a permanent stay of eviction (*see Matter of Strata Realty Corp. v Pena*, 166 AD3d 401 [1st Dept 2018]).”

Landlords are not obligated to accommodate dangerous tenants at the expense of the health and safety of other residents. However, landlords *are required* to demonstrate that there is no reasonable accommodation that “will eliminate or acceptably minimize the risk posed by the handicapped tenant.” (*529 W. 29th LLC v Reyes*, 63 Misc 3d 65, 67 [App Term, 1st Dept 2019], citing *Sinisgallo v Town of Islip Hous. Auth.*, 865 F Supp 2d 307, 341 [EDNY 2012]. “The overarching guiding factor . . . is that a landlord is obligated to provide a tenant with a reasonable accommodation if necessary for the tenant to keep his or her apartment.” (*De Jesus* at 543.)

In *529 W. 29th LLC v Reyes*, 63 Misc 3d 65, 67 (App Term, 1st Dept 2019), the tenant was facing eviction for lighting fires during psychotic episodes. The Appellate Term First Department upheld the trial judge who found, through the testimony of a licensed clinical psychologist, that the tenant suffered from schizophrenia and unspecified mood disorder. Thus, the tenant was properly considered “handicapped within the meaning of the FHA.” (*Reyes* at 66.) A psychologist testified that Reyes took “prescribed medication for his illness and is seen frequently by medical and social service providers . . . and has shown marked improvement since he started in [a] program.” The court found this testimony compelling, and ordered a stay of execution of the warrant for a six-month probationary period. On appeal, the Appellate Term found this exercise of discretion to be an “objectively reasonable” accommodation. (*Reyes* at 68.)

Guided by this controlling caselaw, it would be erroneous for the court to accept petitioner’s allegations at face value and, together with respondent’s explication of the issues he purportedly faced on March 25, 2023 and March 26, 2023 and based on the negotiated “no cure” provision of the two-attorney stipulation, allow for the warrant of eviction to execute without a

hearing. However, respondent's attorney was careful to barter for respondent's right to seek a hearing; and "[c]ourts are obliged to interpret a contract so as to give meaning to all of its terms (internal quotation marks and citations omitted)." (*150 Broadway N.Y. Assocs., L.P. v Bodner*, 14 AD3d 1 [1st Dept 2004].)

Here, on the other hand, the "no cure" proviso and the "right to seek a hearing" proviso of the stipulation are incompatible and cannot be reconciled. A party cannot have a right to seek a hearing which a judge may grant in their discretion, and simultaneously stipulate to what the judge must determine. It would be a pointless waste of judicial resources to hold a hearing if the ultimate outcome is already pre-determined by a stipulation. It would render our judicial system meaningless if litigants could decide to strip judges of their decision-making power. Here, there may have in fact been a breach of the probationary stipulation. However, respondent has averred that said breach was a direct result of a handicap. Thus, under the FHA and controlling case law in this judicial department, petitioner must demonstrate that there is no reasonable accommodation that "will eliminate or acceptably minimize the risk posed by the handicapped tenant," and the court must determine what, if any, reasonable accommodation is warranted.

Moreover, while respondent does not so argue, the court finds the "no cure" provision of the stipulation to be void as against public policy. "A contractual provision [may] be unenforceable where the public policy in favor of freedom of contract is overridden by another weighty and countervailing public policy." (*159 MP Corp. v Redbridge Bedford, LLC*, 33 NY3d 353, 360 [2019].) "Public policy is found in the State's Constitution, statutes and judicial decisions" (*Schultz v Boy Scouts of Am., Inc.*, 65 NY2d 189 [1985].) Given the plethora of housing protections for the disabled provided by federal laws, New York State and New York City Human Rights Laws, and judicial opinions such as *De Jesus* and *Reyes, supra*, it is evident that the no cure provision in the parties' stipulation --- which abridges respondent's right for the court to determine if, under the circumstances, he should be afforded a reasonable accommodation --- violates the strong public policy to protect persons with disabilities from housing discrimination.

Accordingly, it is

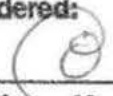
ORDERED that the parties shall appear in Part F, Room 523, of the New York County Civil Courthouse on August 11, 2023 at 2:15 for a hearing on whether respondent is entitled to an accommodation, and, if so, what that accommodation should be; and it is further

ORDERED that the parties shall exchange witness lists one week prior to the hearing date.

This constitutes the decision and order of this court.

DATED: June 26, 2023
New York, New York

So Ordered:



Hon. Karen May Bacdayan

Hon. Karen May Bacdayan