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1356 Walton Ave. LLC v Russ

2024 NY Slip Op 32038(U)

June 17, 2024

Supreme Court, New York County

Docket Number: Index No. 150410/2021

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

-----X

1356 WALTON AVENUE LLC,

Petitioner,

- v -

GREGORY RUSS, as Chairperson of the
New York City Housing Authority, and
the NEW YORK CITY HOUSING AUTHORITY
(NYCHA), Respondents,

MARIA SANTOS,
Co-Respondent.

-----X

INDEX NO. 150410/2021

MOTION DATE N/A¹

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1- 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 34, 35

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

Respondents Russ and The New York City Housing Authority (collectively, “Movants”)’s cross-motion to dismiss the petition is granted.

Background

Petitioner owns a building in the Bronx and leased an apartment to Co-respondent Santos. It alleges that Ms. Santos participates in the Section 8 voucher program under which respondent New York City Housing Authority (“NYCHA”) would pay monthly assistance payments directly to petitioner on behalf of Ms. Santos. Part of this program involved NYCHA conducting inspections to ensure that the apartment met certain quality standards. Petitioner contends that on October 28, 2019, NYCHA conducted an inspection of the subject apartment pursuant to its

¹ The Court must address the elephant in the room- that this proceeding has been fully briefed and waiting for a decision for years. Although it was only recently assigned to this part, the Court apologizes, on behalf of the court system, for the absurd delay in the resolution of this proceeding.

annual housing quality standards and found a number of issues. Petitioner maintains that it corrected all of the issues except for the lack of electricity and it blames Ms. Santos for removing all of the lightbulbs in the apartment.

Petitioner contends that the apartment failed NYCHA's reinspection on January 10, 2020 for some of the conditions identified in the October 28, 2019 original inspection, including the electricity issue. Another inspection took place in February 2020 and the apartment again failed; petitioner insists that the conditions were corrected.

A review of that inspection report reveals that the NYCHA inspector found issues in the bathroom ("Sink stoppage"), the living room ("Floor Tiles- cracked, damaged, loose missing"), found mouse droppings and rodent infestation as well as problems with a door ("Cracked, Damaged, Holes, Loose") and loose or missing tiles in a bedroom (NYSCEF Doc. No. 17).

Petitioner claims the conditions were corrected and speculates that the inspector did not actually visit the premises. It contends that NYCHA failed to schedule yet another inspection of the premises after the February 2020 inspection.

Movants contend that the NYCHA inspector found multiple violations in October 2019. They explain that they sent a notice to petitioner that subsidy payments would be suspended as of December 1, 2019 and that the contract would be terminated if repairs were not made within 60 days of the suspension date. Movants claim that they reinspected the premises in both January 2020 and February 2020 and the conditions were not corrected.

They insist that the apartment did not meet the required standards and that federal law bars them from making subsidy payments in such a situation. Movants emphasize that pursuant to the initial notice, the contract between the parties expired on January 30, 2020. They contend that even if they had not terminated the contract as of January 30, 2020, the contract would have

ended on April 29, 2020 pursuant to operation of law. Movants also claim that the instant petition is time-barred.

In opposition, petitioner claims that the instant proceeding is not time barred as it was entitled to get reinspections and submit additional paperwork well after the time when Movants claim the limitations period began.

Discussion

In an Article 78 proceeding, “the issue is whether the action taken had a rational basis and was not arbitrary and capricious” (*Ward v City of Long Beach*, 20 NY3d 1042, 1043, 962 NYS2d 587 [2013] [internal quotations and citation omitted]). “An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts” (*id.*). “If the determination has a rational basis, it will be sustained, even if a different result would not be unreasonable” (*id.*). “Arbitrary action is without sound basis in reason and is generally taken without regard to the facts” (*Matter of Pell v Board of Educ. of Union Free Sch. Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231, 356 NYS2d 833 [1974]).

The Court grants the cross-motion to dismiss as Movants established, through documentary evidence, that it properly terminated the subsidies at issue. As Movants point out, the inspection reports suggest that petitioner’s apartment failed an inspection and multiple reinspections. Although petitioner attempts to blame Ms. Santos for removing lightbulbs, the fact is that there were numerous other conditions cited by the inspectors that were not corrected. And, to the extent that petitioner now claims in opposition that Ms. Santos is to blame for some sort of destruction in the apartment, Movants correctly point out that this was not raised in the

petition or before NYCHA. Moreover, the Court questions how Ms. Santos is solely to blame for both the mouse and roach infestation; petitioner did not meet its burden to absolve itself of all responsibility to fixing the conditions.

Plus, Movants detailed a procedure under which petitioner could certify that it corrected the conditions identified by the inspectors. They point to instructions on the form that required petitioner to certify the conditions with (or even without) the tenant's signature (NYSCEF Doc. No. 15 [providing a space where an owner can certify that the tenant refused to sign or give access])). Instead, petitioner only refers to a work order signed by its managing agent; that is not the procedure set forth by NYCHA nor does it refute the fact that there were multiple inspections, none of which certified that the conditions were corrected.

In an Article 78 proceeding, this Court's role is merely to assess whether or not an agency's determination was rational. Here, the agency rationally relied upon inspection reports that detailed numerous and serious conditions that were not fixed. Based on those reports, the subsidy payments were terminated. Nothing in this record suggests that this conclusion was irrational. The Court recognizes that petitioner thinks it fixed the problems², although it changed its argument in opposition to the cross-motion that it was the tenant's fault for any conditions in the apartment.

Although it does not change the outcome, the Court observes that the instant proceeding was timely. The fact is that NYCHA agreed to do multiple inspections which, in theory, could have resulted in the resumption of the subsidy payments. Therefore, NYCHA's position that the limitations period began to run after the first inspection in October 2019 makes little sense when

² Petitioner submitted photos in support of this claim but they were low resolution and such poor quality that they did not show much of anything. In any event, they do not adequately rebut the inspection reports.

additional inspections were performed in January and February 2020. The COVID-19 executive orders (which began in March 2020) tolled the relevant limitations as is relevant here.

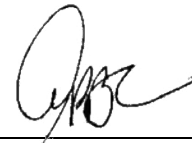
Accordingly, it is hereby

ORDERED that respondents' cross-motion to dismiss is granted; and it is further

ADJUDGED that the petition is denied and this proceeding is dismissed without costs or disbursements.

6/17/2024

DATE



ARLEME P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE