2024-06-10

767 Blake Ave LLC v. Said

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART H

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767 BLAKE AVE LLC

Petitioner Index No. LT # 310345/21

FAWAZ SAID DECISION/ORDER

Respondents

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Hon. Jason Vendzules:

Recitation, as required by CPLR 2219(a), of the papers considered in review of Respondent's motion: NYSCEF document numbers: 1-2, 5-6, 32-43.

Upon the foregoing cited papers, the Decision and Order on this motion is as follows:

Petitioner commenced this summary non-payment proceeding on or about November 17, 2021. The Petition states:

> The premises are subject to the Rent Stabilization Law of 1969 as amended, based upon a tax credit program under Section 42 & 142 of the IRS Code. Moreover, the premises is governed by a regulatory agreement entered into with the NYC Housing Development Corporation (HDC) and NYC Department of Housing Preservation and Development (DHPD). Pursuant to the Regulatory Agreement by which all units are regulated certain units in the building are designated as Tax Code Units, of which a portion are HOME units further regulated by the HOME written agreement.[1]

A Fourteen Day Rent Demand, dated September 17, 2021, was served upon Respondent.[2]

Respondent now moves to dismiss this proceeding, pursuant to CPLR Rule 3211(a)(7), because the predicate rent demand served upon Respondent provided only fourteen days' notice and not the thirty days as required by the federal Coronavirus Aid, Relief, and Economic Security Act [CARES]. Under Section 4024(c) of the CARES Act, signed into law on March 27, 2020, "[t]he lessor of a covered dwelling unit may not require the tenant to vacate the covered dwelling unit before the date that is 30 days after the date on which the lessor provides the tenant with a notice to vacate" (15 U.S.C. § 9058(c)(1)). There is no expiration date for this provision.

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[1] NYSCEF Document 1
[2] NYSCEF Document 4.

To qualify as a "covered dwelling unit," an apartment must be in a building that participates in a "covered housing program" or the rural housing voucher program or has a federally backed mortgage or multifamily mortgage loan (CARES Act § 4024(a) (15 U.S.C. § 9058(a)). "Covered housing programs" include the HOME program.

Petitioner concedes both that the subject building is covered by the CARES Act, and that Respondent was entitled to a thirty-day notice but argues the motion must be denied. It argues that Respondent failed to raise any jurisdictional claim in his pro se answer and interposed an answer with unrelated counterclaims, and thus waived any juridical defense.

Moreover, Petitioner, while conceding that it served a fourteen-day notice in the instant proceeding, and that Respondent resides in a covered dwelling and was entitled to a 30-day notice under the CARES ACT, nevertheless contends that it is in compliance with the CARES Act because it served Respondent with a 30-day notice on March 16, 2021, in conjunction with a prior non-payment proceeding. It argues the service of a CARES Act compliant 30-day notice served in conjunction with the prior non-payment proceeding satisfies all obligations under the CARES Act and Petitioner had no continuing obligation to serve an additional 30-day Notice prior to commencing the instant proceeding.

Petitioner's first argument is without merit. Contrary to Petitioner's claim, a motion to dismiss under CPLR Rule 3211(a)(7) may be made at any time, "irrespective of whether [the movant] made a pre-answer motion or asserted the defense in the answer" (CPLR §3211(e); *Butler v. Catinella*, 58 AD 3d 145, 151 (2nd Dept 2008).

Petitioner's second argument, even assuming arguendo it is meritorious, must nevertheless fail. Petitioner failed to submit an affidavit of service of the alleged thirty-day notice, nor is there an affidavit from someone with personally knowledge attesting that it was served upon Respondent. Regardless, in any case, the Court finds this argument to be without merit. Petitioner pro-offers no statutory authority or caselaw to support its argument. Rather, Petitioner urges the Court to consider its argument as one of first impression. The Court declines the invitation. The requirements of the statue are clear on its face. It is also clear the statue has no expiration date. Any policy arguments as to why the statute should not impose a permanent requirement is beyond the purview of this court.

A proper rent demand is an essential element of the cause of action for non-payment of rent (RPAPL § 711(2); *Dendy, supra*). A landlord's failure to plead and prove a proper rent demand requires dismissal of the Petition (*Oberlies v. Oliva*, 257 NYS.2d 327 [App Term 1st Dept 1964]; *Chinatown Apts. v. Chu Cho Lam*, 51 NY 2d 786 [1980]. Even if it can be said that raising a harassment claim in a non-payment proceeding is an unrelated counterclaim, it cannot remedy a defective predicate notice.

Reviewing all evidence "in a light most favorable" to the Petitioner, as required in a motion for summary judgment (*Marine Midland Bank, N.A. v. Dino & Artie's Automatic Transmission Co.*, 168 AD 2d 610, 610 [2nd Dept 1990]), the Court finds that Respondent has

met his burden. Respondent was entitled to a 30-day notice under the CARES Act and Petitioner failed to serve one.

Accordingly, the motion for summary judgment is granted and the proceeding is dismissed (See, *Andrews Plaza Housing Associates LP v. Rodriguez*, 310838/23 [Civ Ct, Bronx County 2023]).

Dated: June 10, 2024
Brooklyn, New York

Jason Vendzules, J.H.C.