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3030 BRIGHTON LLC v. FARBER

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

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3030 BRIGHTON LLC,
Petitioner-Landlord,

Index No. LT-315585-23/KI

- against -

AMENDED DECISION/ORDER

ALEXANDER FARBER
Respondent-Tenant

“JOHN DOE” and “JANE DOE”
Respondents-Undertenants

-----X

Recitation, as required by CPLR §2219(a), of the papers considered in the review of this motion:

Papers	Numbered
Respondent’s Motion, affirmation, affidavit and exhibits	NYSCEF 10-15
Petitioner’s opposition, affirmation	NYSCEF 17-18
Respondent’s Reply	NYSCEF 20

Papers Considered: (NYSCEF Doc. Nos. 1 through 20)

Upon the forgoing cited papers, the Decision/Order in this motion is as follows:

Petitioner brought this holdover against Respondents, rent-stabilized tenants, pursuant to § 2524.3(a) of the Rent Stabilization Code (“RSC”). Petitioner alleges that it properly terminated the Respondents’ tenancy and is now entitled to possession of the subject unit as respondents violated a substantial obligation of their tenancy and failed to cure that breach within the time they were allowed by statute. Respondent Alexander Farber seeks dismissal pursuant to CPLR § 3211(a)(7) and, if dismissal is not granted, he seeks discovery. The court denies Respondent’s motion for dismissal and discovery, and instead grants petitioner summary judgment pursuant to CPLR § 409(b), awarding petitioner a judgment of possession as against Alexander Farber. The court also exercises its discretion to permanently stay issuance of the warrant as against Mr. Farber.

Respondent's Summary Judgment Motion

Petitioner served a 10 Day Notice to Cure on Respondent on March 22, 2023, alleging, broadly, two types of behavior it believed breached provisions of the lease between the parties as well as §2524.3(a) of the Rent Stabilization Code. The first behavior concerned Respondent's alleged failure to grant access to the subject premises to allow Petitioner to correct HPD violations that had been issued since July 2021. The Notice to Cure alleges that Petitioner sought access repeatedly between July and August 2021, then once again in December 2022 and once in February 2023. The second alleged behavior concerns urination in the common areas of the building. The Notice to Cure alleges that Respondent was observed urinating by the building entrance on January 23, 2023, and in the elevator on February 13 and 17, 2023. The Notice to Cure required Respondent to (1) provide petitioner with access to the subject unit and (2) "cease all nuisance behavior" by April 4, 2023, or Petitioner would terminate the tenancy.

Petitioner served Respondent with notice of its election to terminate the tenancy on May 2, 2023. The "Ten (10) Day Notice of Termination" (hereinafter "Termination Notice") restated the allegations contained in the Notice to Cure and alleged two "incidents" that occurred after the expiration of the Notice to Cure sufficient to terminate the tenancy. First, Petitioner alleges that it had not been able to gain access to the apartment for repairs since April 4, 2023. Second, Petitioner alleges that it sent a certified letter to the Respondent on April 19, 2023, requesting Respondent arrange access to the subject unit. The Termination Notice alleges that Respondent failed to respond to this certified letter. The Termination Notice is silent as to any additional incidents of public urination after the Notice to Cure was served.

When a notice to cure is served, the Rent Stabilization Code requires that the termination notice establish that the tenant failed to cure the alleged behavior within ten days. RSC § 2524.3(b). Merely stating in boilerplate language that the alleged behavior has not been cured is insufficient. A landlord seeking to terminate a tenancy after a notice to cure is served must allege specific facts showing that the alleged conduct continued past the cure period. *Hew-Bug Realty v. Mocerino*, 163 Misc.2d 639 [Civ. Ct., Kings County 1994]; see also *31-67 Astoria Corp. v. Landaira*, 54 Misc.3d 131[A] [AT 2nd Dept. 2017].

This showing will not be the same in all cases; the appropriate test for sufficiency of a predicate notice is reasonableness in view of the attendant circumstances. *Hughes v. Lenox Hill Hosp.*, 226 A.D.2d 4, 18, 651 N.Y.S.2d 418 [1st Dept. 1996], *lv denied* 90 N.Y.2d 829, 660 N.Y.S.2d 552, 683 N.E.2d 17 [1997].

Petitioner has failed to establish any public urination or similar behavior in the termination notice. The court therefore assumes this behavior was cured and Petitioner is foreclosed from maintaining this proceeding based on that behavior. As to the failure to grant access, however, Petitioner has clearly articulated post-cure facts establishing that respondent failed to grant access to the subject unit. Respondent's admission that access was not granted until after the termination notice was served only serves to underscore his failure to abide by the terms of the Notice to Cure. As such, Respondent's summary judgment motion is denied.

Respondent's Discovery Motion

Respondent seeks disclosure of Petitioner's security camera footage showing Mr. Farber urinating in public spaces. The court has already found that Petitioner's Notice of Termination fails to state any post-cure behavior regarding the public urination allegations, leading the court to assume such behavior has been cured. Since this matter no longer concerns public urination, Respondent can not show "ample need" for the disclosure of the camera footage, as it is unrelated to Respondent's failure to grant access. *New York University v. Farkas*, 121 Misc.2d 643, 468 N.Y.S.2d 308 (Civ. N.Y. 1983). As such, Respondent's motion for discovery is denied.

CPLR 409(b) Analysis

CPLR §409(b) permits a court to make a summary determination based upon the pleadings, papers and admissions insofar as there are no questions of fact present that would require a hearing. Consequently, where it is clear that no dispute as to the facts exists and no prejudice will result, the court can, when deciding a motion to dismiss, decide the petition on the merits. *Warren v. Panning Bd. of the Town of W. Seneca*, 225 A.D.3d 1248 [4th Dep’t 2024] (quoting *Matter of Guttman v. Covert Town Bd.*, 222 A.D.3d 1357, 1358-59 [4th Dep’t 2023]).

It is undisputed that Petitioner is the owner of the subject premises, that Petitioner served a Notice to Cure upon Respondent claiming, in part, that Respondent had failed to grant Petitioner access to the subject unit to perform necessary repairs. It is also uncontested that Respondent failed to grant petitioner access for several months after the Notice to Cure was served, finally granting access only after the third appearance in these proceedings. Respondent has therefore engaged in a “wrongful act” as described by § 2524.3 of the Rent Stabilization Code and Petitioner. The court is therefore entitled to a judgment of possession as against Alexander Farber.

Stay Analysis

There have been no allegations of public urination since the Notice to Cure was served. While it is uncontested that Mr. Farber failed to grant the Petitioner access during the cure period, it is also undisputed that he has provided access to the landlord after the termination notice was served, and that all HPD violations have been corrected. Based on this, along with the facts that Mr. Farber is a senior citizen who has lived in the subject rent-stabilized apartment for more than thirty-four years, compels the court to permanently stay issuance of the warrant of eviction as against him. *See 1123 Realty LLC v Treanor*, 75 Misc3d 1218[A] at *3 (Civ. Ct, Kings County 2019) *affd.* 74 Misc.3d 131(A) [AT 2nd Dep’t 2022].

ORDERED: Respondent’s motion is DENIED;

ORDERED: that a final judgment be entered in favor of Petitioner as against Alexander Farber;

and

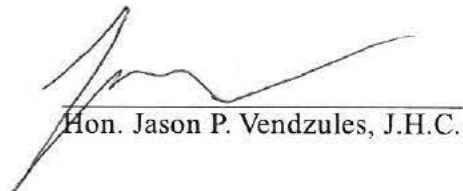
ORDERED: that the issuance of the warrant of eviction be permanently stayed.

This matter is adjourned to December 5, 2024, at 9:30 AM for adjudication against the remaining respondents.

This constitutes the decision and order of the Court.

So Ordered,

October 11, 2024



Hon. Jason P. Vendzules, J.H.C.

EED 10/10/2123