

Fordham Law School

FLASH: The Fordham Law Archive of Scholarship and History

All Decisions

Housing Court Decisions Project

2024-10-23

Latchman v. Hardnett

Follow this and additional works at: https://ir.lawnet.fordham.edu/housing_court_all

Recommended Citation

"Latchman v. Hardnett" (2024). *All Decisions*. 1661.
https://ir.lawnet.fordham.edu/housing_court_all/1661

This Housing Court Decision is brought to you for free and open access by the Housing Court Decisions Project at FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in All Decisions by an authorized administrator of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

CIVIL COURT OF THE CITY OF NEW YORK
 COUNTY OF QUEENS: HOUSING PART D

-----X
 SEERAJ LATCHMAN

Index No. L&T 318552/23

Petitioner,

DECISION/ORDER

-against-

MARY HARDNETT, et al

Respondents.
 -----X

Recitation of the papers considered in support of Respondent's motion to dismiss (mot. seq. #1):
 NYSCEF 7-11.

Respondent moves to dismiss the instant nonpayment proceeding case claiming (1) lack of personal jurisdiction, (2) failure to state a cause of action (no written lease in effect for this rent stabilized apartment at the commencement of the action), (3) that Respondent never signed an agreement to pay the monthly rent sought in the petition, and (4) that the rent demand is not a good faith estimate of the rent owed. For judicial economy, the court will first address the absence of an active lease at the commencement of the action.

Relying on *Fairfield Beach 9th, LLC v Shepard-Neely*, 77 Misc 3d 136[A], 2022 NY Slip Op 51351[U], *4 [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2022], Respondent argues that this case should be dismissed as there was no rental agreement in effect at the time this action was commenced which as required by RPAPL 711(2). Respondent maintains that the last renewal lease she signed was in 2015.


Petitioner in opposition does not dispute the absence of an active lease upon commencement. Instead, Petitioner argues that the parties had an implied agreement to pay rent as evidenced by Respondent's participation in and recertification of a Department of Social Services ("DSS") rental subsidy program which covers a portion of Respondent's monthly rental obligation. Petitioner argues that Respondent's recertification with DSS for the continuing subsidy is an acknowledgment of her rental agreement with Petitioner, and, therefore, the parties did, indeed, have an agreement to pay rent at the time of commencement.

As it is undisputed that the subject premises is rent-stabilized and the last lease renewal was executed in 2015, Respondent's motion to dismiss is granted as the appellate courts in the Second Department have held that "a nonpayment proceeding must be predicated on an existing unexpired agreement to pay rent" (*Shahid v Carillo*, 18 Misc 3d 136[A], 2008 NY Slip Op 50278[U], *1 [App Term, 2d Dept, 2d & 11th Jud Dists 2008]; see also *Fairfield Beach 9th, LLC v Shepard-Neely*, 77 Misc 3d 136[A], 2022 NY Slip Op 51351[U], *4 [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2022] ["(T)here must be a rental agreement in effect at the time the proceeding is commenced pursuant to which rent is due and owing"]; *41 Kew Gardens Road Assocs., LLC v Munarov*, 2024 NY Slip Op 51165[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2024]; *Reno Capital, LLC v Alvillar*, 2024 NY Slip Op 51202 [App Term, 2d Dept, 2d,

11th & 13th Jud Dists 2024)). The remaining branches of Respondent's motion are denied as moot.

This constitutes the decision and order of the Court.

Date: October 23, 2024
Queens, New York



Hon. Logan J. Schiff, JHC