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Park View Bay LLC. v. Morales

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Civil Court of the City of New York
County of Bronx

Index # **LT-322414-23/BX**



Park View Bay LLC.

Petitioner(s)

Decision / Order

-against-

Carmelo L. Morales

Respondent(s)

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

Papers	Numbered
Order to Show Cause/ Notice of Motion and Affidavits /Affirmations annexed	_ 1-2 _
Answering Affidavits/ Affirmations	_ 3 _
Reply Affidavits/ Affirmations	_ 4 _
Memoranda of Law	_____
Other	_____

Upon the foregoing cited papers, the Decision/ Order on the motion is granted for the following reason(s):

BACKGROUND AND PROCEDURAL HISTORY

This is a non-payment proceeding wherein Park View Bay LLC (“Petitioner”), sought rent arrears for \$10,000.00 for the period of January 2023 to May 2023 from Carmelo L. Morales (“Respondent”) pursuant to a written lease between the parties for rental of Apartment # 7C (“subject premises”) within 3531 Bruckner Blvd., Bronx, New York, 10461 (“subject building”).

The respondent failed to interpose an answer. Due to the respondent’s failure to answer, the petitioner applied for and received a judgment of possession against the respondent. Based upon the judgment of possession a warrant of eviction was issued to a marshal of the City of New York. A notice of eviction was served upon the respondent; the respondent filed an order to show cause, which was signed, and made returnable on January 24, 2024, in Part J, Room 490 at 9:30 a.m. On the return date, the proceeding was adjourned to February 13, 2024, at 9:30 a.m. for the respondent to seek legal counsel. On February 13, 2024, the respondent’s order to show cause was marked withdrawn and Bronx Legal Services filed a notice of appearance (NY St Cts Elec Filing [NYSCEF] Doc No. 8, notice of

appearance) for the respondent. The parties now both represented by counsel agreed to a motion practice schedule.

The respondent filed an order to show cause along with supporting documentation (NY St Cts Elec Filing [NYSCEF] Doc No. 10-13) seeking to vacate the default judgment and warrant pursuant to Civil Practice Law and Rules (CPLR) § 5015(a)(1) and/or (a)(3), dismissal of the proceeding pursuant to CPLR § 3211 (a)(1) and/or (a)(7), or in the alternative for the court to stay execution of the warrant pursuant to Real Property Actions and Proceedings Law (RPAPL) § 749(3) and/or CPLR § 2201. The crux of the respondent's argument is that "This proceeding was commenced after the expiration of the last rent-stabilized lease in effect between Respondent and Petitioner and seeks alleged rent arrears for a time period after the lease expired" (NY St Cts Elec Filing [NYSCEF] Doc No. 11, affirmation in support, at 40).

Opposition to the respondent's order to show cause was filed by the petitioner along with case law (NY St Cts Elec Filing [NYSCEF] Doc No. 15-16), which alleges the petitioner offered a renewal lease, which the respondent refused to sign.

On March 6, 2024, Honorable Judge Arlene Hahn, issued a decision/order on the respondent's order to show cause, which stated: "AFTER ARGUMENT, WITH FILED WRITTEN OPPOSITION, THAT PORTION OF RESPONDENT'S MOTION SEEKING DISMISSAL IS DENIED, AND THAT PORTION SEEKING TO VACATE THE JUDGMENT AND WARRANT OF EVICTION IS GRANTED. PROCEEDING ADJOURNED TO 4/16/24 AT 9:30AM FOR ALL PURPOSES"

The respondent then filed this motion seeking to reargue the portion of the order to show cause seeking dismissal pursuant to CPLR § 3211 (a)(1) and/or (a)(7) alleging the court "overlooked or misinterpreted the controlling law in denying Respondent's motion to dismiss" as there was no lease "between the parties at the time of commencement" (NY St Cts Elec Filing [NYSCEF] Doc No. 19, affirmation in support, at 16). The respondent further argues the court should not have relied on *Berkhin v Kinsor Management Co.*, 2002 N.Y. Slip Op 40241(U)(Small Claims Ct. Richmond Cty. 2002) as it is

“no longer good law” as it permits landlords to start non-payment proceedings against rent-stabilized tenants by treating “the lease as being renewed by the tenant if no response is received to the offer of a renewal” (NYSCEF Doc No. 19, at 23-25).

The petitioner filed opposition alleging the court did not overlook or misapprehend the law but that “the Honorable Judge Hahn was aware that the Respondent had refused to renew the lease agreement when this proceeding was commenced” and that “the language of the RSC permits the landlord to either treat the lease as being renewed by the tenant if no response is received or commence a proceeding to terminate the tenancy.” (NY St Cts Elec Filing [NYSCEF] Doc No. 22, affirmation in opposition, at 10-13). The petitioner further avers that based upon the above the respondent has failed to demonstrate a basis for the court to grant re-argument (NYSCEF Doc No. 22, at 19-21).

The respondent filed a reply reiterating their argument and alleging the petitioner’s opposition “fails to present any legal foundation the Court’s March 6 decision or for the position that this petition states a cause of action despite the lack of a lease at the time of commencement” (NY St Cts Elec Filing [NYSCEF] Doc No. 23, reply, at 8).

The motion was heard before the court on June 20, 2024, and marked decision reserved.

LAW AND ITS APPLICATION

As a preliminary matter, CPLR § 2221(d), states: “[a] motion for leave to reargue...[s]hall be made within thirty days after service of a copy of the order determining the prior motion and written notice of its entry. This rule shall not apply to motions to reargue a decision made by the appellate division or the court of appeals.” The court notes no notice of entry has been filed and accordingly, the respondent’s motion is timely.

Importantly, the March 6, 2024 decision/order from Honorable Judge Arlene Hahn simply states a conclusion without any discussion of the facts or the law. This court cannot infer from said decision what facts or law was utilized to reach this conclusion. This court can only rely on the undisputed facts.

Neither party disputes that at the time this non-payment proceeding was commenced no lease was in effect between the parties (NYSCEF Doc No. 19, at 17; NYSCEF Doc No. 22, at 13-17).

This court agrees that non-payment proceedings commenced without a lease are treated in accordance with the following portion of *Fairfield Beach 9th, LLC v Shepard-Neely*, 2022 NY Slip Op 51351(U):

“It is undisputed that no rental agreement was in effect when this proceeding was commenced, and a nonpayment proceeding lies only where a "tenant has defaulted in the payment of rent, pursuant to the agreement under which the premises are held" (RPAPL 711 [2]) or, in other words, there must be a rental agreement in effect at the time the proceeding is commenced pursuant to which rent is due and owing (see *Matter of Jaroslow v Lehigh Val. R.R. Co.*, 23 NY2d 991 [1969]; 615 Nostrand Ave. Corp. v Roach, 15 Misc 3d 1 [App Term, 2d Dept, 2d & 11th Jud Dists 2006]; *Licht v Moses*, 11 Misc 3d 76 [App Term, 2d Dept, 2d & 11th Jud Dists 2006]). Thus, this nonpayment proceeding does not lie (see *265 Realty, LLC v Trec*, 2013 NY Slip Op 50974[U]).”

The proceeding is dismissed as it is an undisputed fact there was no lease in effect between the parties at the commencement of this non-payment proceeding.

CONCLUSION

The respondent's motion for re-argument is granted. The proceeding is dismissed pursuant to CPLR § 3211(a)(7) and the above case law since it is an undisputed fact a lease agreement was not in effect at the commencement of this non-payment proceeding. This constitutes the decision/order of this court.



Date: October 7, 2024

Hon. Bryant F. Tovar
Housing Court Judge