

Matter of Delacruz v Rhea

2012 NY Slip Op 32501(U)

September 25, 2012

Supreme Court, New York County

Docket Number: 403392/2010

Judge: Anil C. Singh

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

HON. ANIL C. SINGH
SUPREME COURT JUSTICE

PRESENT: _____
Justice

PART 61

Index Number : 403392/2010
DELACRUZ, ROXANNA
vs.
RHEA, JOHN B.
SEQUENCE NUMBER : 002
RESTORE ACTION TO CALENDAR

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____	No(s). <u>1</u>
Answering Affidavits — Exhibits _____	No(s). <u>2, 3</u>
Replying Affidavits _____	No(s). <u>4</u>

Upon the foregoing papers, it is ordered that this motion is *is decided in accordance with the attached memorandum decision and order.*

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

FILED

OCT 01 2012

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 9/25/12

RES
HON. ANIL C. SINGH, J.S.C.
SUPREME COURT JUSTICE

1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 61

-----X

In the Matter of the Application of
ROXANNA DELACRUZ,

Petitioner,

For a Judgment pursuant to Article 78
of the Civil Practice Law and Rules,

-against-

JOHN B. RHEA, as Chairman of the New York City
Housing Authority, the NEW YORK CITY HOUSING
AUTHORITY, and 1229-1273 REALTY LLC,

Respondents.

-----X

HON. ANIL C. SINGH, J.:

Respondent 1229-1273 Realty LLC moves for an order: 1) restoring this Article 78 proceeding to the calendar; and 2) pursuant to CPLR 5015, vacating the February 24, 2011 stipulation of withdrawal, settlement and discontinuance, contending that respondent New York City Housing Authority ("NYCHA") has failed to exercise good faith and fair dealing in complying with the terms of the stipulation. Respondent NYCHA and petitioner oppose the motion.

Petitioner Roxanna Delacruz has resided in an apartment at 1239 Clay Avenue in the Bronx since 1993. Ms. Delacruz participates in the Section 8 program administered by NYCHA.

DECISION AND
ORDER

Index No.
403392/10

FILED
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Ms. Delacruz contends that, throughout her tenancy, her landlord has failed to make many necessary repairs. Since 2008, she made numerous requests for the landlord to make repairs, but the landlord repeatedly failed to show up or, when he did, he only did a few repairs.

In August 2008, Ms. Delacruz was notified by NYCHA that her apartment failed a NYCHA Housing Quality Standards ("HQS") inspection. When she received this notification, she understood it to mean that if NYCHA stopped paying the Section 8 subsidy, it was due to the repair conditions in her apartment.

Ms. Delacruz contends that, after the landlord failed the 2008 HQS inspection, it continued to fail to complete repairs.

On December 3, 2010, petitioner filed an Article 78 petition against NYCHA and her landlord 1229-1273 Realty LLC. The proceeding sought to restore petitioner's Section 8 subsidy retroactively due to wrongful termination.

On February 24, 2011, the parties executed a Stipulation of Withdrawal, Settlement and Discontinuance stating in pertinent part as follows:

IT IS HEREBY STIPULATED AND AGREED, by and between counsel for the parties, as follows:

(1) Petitioner Roxanna Delacruz ("Petitioner") withdraws the petition in the above-entitled Article 78 proceeding, and this proceeding is hereby discontinued without prejudice each party to bear her, his or its own costs and attorneys' fees.

(2) Petitioner submitted to Respondent New York City Housing Authority

("Housing Authority") documents and information necessary to certify her continuing eligibility for the Section 8 program. The Housing Authority will determine if Petitioner remains eligible for the Section 8 program within sixty (60) days of the execution of this stipulation. If it finds Petitioner eligible, it will restore her to the program effective December 31, 2008.

(3) Petitioner's restoration to the Section 8 program does not constitute an automatic reinstatement of the Section 8 subsidy payments made by the Housing Authority to Petitioner's landlord. If (a) Petitioner is restored to the Section 8 program, and (b) Petitioner's apartment passes the Housing Authority's inspection for compliance with federal Housing Quality Standards, the Housing Authority will reinstate the subsidy to the landlord effective January 1, 2009. The Housing Authority will not pay the landlord a subsidy on behalf of Petitioner whether prospectively or retroactively, however, for any period during which Petitioner's apartment failed to meet federal Housing Quality Standards.

The landlord contends that, since entering the stipulation, NYCHA has failed to reinstate monthly subsidy payments, although petitioner has been restored to participation with the NYCHA program. According to the landlord, NYCHA has engaged in a deliberate course of action to prohibit the landlord from collecting the outstanding subsidy, due under the stipulation, by purposefully and maliciously refusing to pass the subject premises' HQS inspection.

The landlord exhibits the sworn affidavit of Manny Stein, who states that he is the manager of respondent 1229-1273 Realty, LLC. Mr. Stein contends that the landlord promptly proceeded to repair all of the conditions listed by NYCHA in order to facilitate the subject apartment's passing of the required HQS inspection. Specifically, he asserts that the landlord repaired every condition contained in a June 17, 2011 e-mail

list from Andrew Lupin of NYCHA. Stein asserts that the repairs have been confirmed by petitioner's attorney; however, NYCHA failed to acknowledge the correction of the conditions and continues to deliberately fail the subject apartment's HQS inspection.

In response, petitioner Roxanna Delacruz states in a sworn affidavit that, on or about April 13, 2012, NYCHA again inspected her apartment. The inspector told her that the apartment failed the inspection for the following reasons: defective and/or missing tiles in the kitchen floor; defective and /or missing tiles in the bathroom floor; her son's bedroom needed to be fixed – the wood floor panels have gaps and are defective; the walls in the master bedroom must be scraped and painted; the wall in her son's bedroom is caving in and needs to be repaired, scraped and painted; the bedroom door needs to be fixed and/or replaced; and the bathroom door needs to be fixed and/or replaced.

In light of the facts set forth in the tenant's sworn affidavit, the Court finds that the landlord has failed to demonstrate a lack of good faith and fair dealing on the part of NYCHA.

Accordingly, it is hereby

ORDERED that respondent's motion to restore the proceeding to the calendar and vacate the stipulation is denied.

Date: 9/25/12
New York, New York

FILED
OCT 01 2012
NEW YORK COUNTY CLERK'S OFFICE
Anil C. Singh
HON. ANIL C. SINGH
SUPREME COURT JUSTICE