

Nunez v New York City Hous. Auth.

2015 NY Slip Op 32018(U)

July 24, 2015

Supreme Court, New York County

Docket Number: 100233/15

Judge: Joan B. Lobis

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This opinion is uncorrected and not selected for official publication.

EA
7/28/15
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

Index Number : 100233/2015

NUNEZ, JANIRYS

vs

NYC HOUSING AUTHORITY

Sequence Number : 001

ARTICLE 78

PART _____

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). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is

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

**MOTION DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION AND ORDER**

*The clerk of court is
directed to enter a judgment
of dismissal*

FILED

JUL 28 2015

**NEW YORK
COUNTY CLERK'S OFFICE**

Dated: 7/24/15

[Signature], J.S.C.

JOAN B. LOBIS

- 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
NEW YORK COUNTY: IAS PART 6**

-----X
JANIRYS NUNEZ and JISELLE R. MAY,

Petitioners,

-against-

NEW YORK CITY HOUSING AUTHORITY,

Respondent.

-----X
JOAN B. LOBIS, J.S.C.:

Index No. 100233/15

**Decision, Order, and
Judgment**

When David M. May, the tenant of record at apartment 10H at 401 East 102nd Street, was incarcerated in May 2012, Ms. Nunez and her daughter, Ms. May – who is the daughter of Mr. May – resided at 1001 St. Nicholas Avenue. Mr. May gave her power of attorney at that time so that she could represent him during respondent’s proceedings to terminate his tenancy. Ms. Nunez failed to appear before a Hearing Officer on May 6, 2014, which was the final adjourn date for the hearing. Accordingly, the Hearing Officer held an inquest on May 6, 2014, considered evidence relating to the May 2012 arrest and plea bargain, and in a written order, granted the application to terminate. On July 31, 2014, the Officer denied Ms. Nunez’s motion to vacate the default judgment. On that day, respondent served Mr. May with the writ order both at his apartment and at his place of incarceration. On October 3 and 4, respondent served a 30-day notice to vacate at both places and also mailed a copy to Ms. Nunez at her St. Nicholas Avenue address.

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NEW YORK
COUNTY CLERKS OFFICE

Petitioners commenced this Article 78 proceeding on February 13, 2015. They argue that they have resided in the apartment since August 2012, paid rent, and been responsible tenants who have caused no problems. Therefore, they ask the Court to “remove Mr. David M.

May from the lease [of apartment 10H at 401 East 102nd Street] and grant the lease in [their] name.” Respondent cross-moves to dismiss the petition on several grounds, several of which the Court discusses below.

After careful consideration, the Court grants the motion. As respondents note, there must be a legal basis for the claims in the petition, and here the legal basis is unclear. Moreover, the petition cannot challenge the July 31, 2014, determination or the 30-day notice to vacate. For one thing, petitioners have no standing to assert the challenges, as the termination proceedings and the 30-day notice relate to Mr. May’s tenancy and not to that of petitioners. See Lakins v. New York City Hous. Auth., 67 A.D.3d 604, 604 (1st Dep’t 2009). Moreover, any proceeding relating to the July 31, 2014 decision of the Hearing Officer is untimely, as under CPLR § 217(1) petitioners had 4 months, or until December 31, 2014, to bring a challenge. See Banos v. Rhea, 25 N.Y.3d 266, -- (2015). The July decision was a final determination. See Rasnick v. New York City Hous. Auth., 128 A.D.3d 598, 598 (1st Dep’t 2015)(reviewing the order of termination as a final determination). The challenge to the 30-day notice also cannot stand, as it is not a final determination subject to Article 78 review. Finally, although Ms. May is the daughter of Mr. May, petitioners did not apply to respondent for succession rights to the apartment and do not appear to make any related claim in this proceeding.

Ms. Nunez correctly states that respondent’s arguments relate to Mr. May’s conduct and not to her and her daughter’s behavior. Unfortunately, however, because Mr. May was the tenant on the lease, it is his conduct that was at issue during the termination proceedings and in the notice to vacate. Accordingly, it is

ORDERED that the cross-motion is granted and the petition is dismissed.

Dated: *July 24*, 2015

ENTER:



JOAN B. LOBIS, J.S.C.

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