

| |
|--|
| Tanya Towers, Inc. v Hurtado |
| 2019 NY Slip Op 30977(U) |
| April 17, 2019 |
| Civil Court of the City of New York, New York County |
| Docket Number: L&T 68953/17 |
| Judge: Sabrina B. Kraus |
| Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service. |
| This opinion is uncorrected and not selected for official publication. |

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: PART 118

TANYA TOWERS, INC , X

Petitioner-Landlord

HON. SABRINA B. KRAUS

-against-

DECISION & ORDER
Index No.: L&T 68953/17

OLGA GARCIA HURTADO
620 East 13th Street, Apt. 5L
New York, New York 10009

Respondents- Tenant

“JOHN DOE” and “JANE DOE”

Respondents-Undertenants

X

BACKGROUND

This summary holdover proceeding was commenced by Petitioner against Olga Garcia Hurtado (Respondent) seeking to recover possession of 620 East 13th Street, Apt. 5L New York, New York 10009 (Subject Premises) based on the allegation that Respondent, the Section 8 tenant of record, is in material non-compliance with her lease by allowing a dangerous nuisance condition to exist at the Subject Premises.

PROCEDURAL HISTORY

Petitioner issued a thirty day notice of termination dated June 1, 2017. The notice states that Respondent is “... committing or permitting a hazardous, dangerous and nuisance condition to exist in the subject premises.” The notice further states that :

Respondent refused to provide Petitioner with access for extermination; and

Respondent has allowed large amounts of boxes and personal items, garbage and debris to accumulate in the Subject Premises; and
The accumulated items impede access to and from the Subject Premises and

The accumulated items constitute a fire and safety hazard;

Respondent has repeatedly failed to comply with Petitioner's request to de-clutter and clean the Subject Premises; and

The accumulated items prevent Petitioner and its agents employees contractor and subcontractors from abating the conditions which exist in the Subject Premises; and

Respondent has refused access for the purpose of allowing extermination of a vermin infestation which exists in the Subject Premises ; and

Respondent harbors two finches and one pigeon in the Subject Premises; and

Respondent's failure to provide access to the Subject Premises is a violation of the term and condition of Respondent's lease.

The petition was filed July 21, 2017. Proof of service was filed August 1, 2017, and the proceeding was initially returnable on August 8, 2017.

There is no record in the court file of the Respondent ever having appeared in this proceeding. The proceeding was adjourned on numerous dates. On May 30, 2018, the Commissioner of the New York City Department of Social Services (DSS) moved for the appointment of a *Guardian Ad Litem* for Respondent. The motion was granted on the return date.

On August 2, 2018, the court issued an order appointing Carmen Valentin (GAL) as GAL for Respondent, and the proceeding was adjourned to October 3, 2018 for the GAL to meet with Respondent and inspect the Subject Premises.

On October 3, 2018, the proceeding was adjourned to November 20, 2018 for APS to perform a heavy duty cleaning of the Subject Premises.

On November 20, 2018, the GAL and Petitioner entered into a stipulation adjourning the proceeding to December 19, 2018. The GAL agreed to have the Respondent complete a re-certification package and return it to Petitioner by December 10, 2018, and to arrange access for repairs.

On December 19, 2018, the GAL and Petitioner entered into another stipulation adjourning the proceeding to January 31, 2019. Petitioner acknowledged receipt of the re-certification package but it was missing a social security award letter. The GAL agreed to provide same by January 15, 2019 and agreed to allow Petitioner further access to the Subject Premises on January 15 or 16, 2019. Further, on that date the court noted that the GAL asserted a general denial on the part of Respondent.

On April 17, 2019, the proceeding was assigned to Part 118 for trial. The trial commenced and concluded on that day. At the conclusion of trial, the Court reserved decision.

FINDINGS OF FACT

Respondent did not appear for the trial.

Respondent is 81 years old and the tenant of record of the Subject Premises pursuant to an initial lease for a one year term from April 1, 2009 through March 31, 2010 at a monthly rent of \$852.00 (Ex 3). Respondent lives on a fixed income from SSI of \$771.00 per month.

Respondent's tenancy is governed by HUD Section 8.

Petitioner is the owner of the Subject Building, pursuant to a deed dated July 10, 1971 (Ex 1). There is a valid MDR on file with HPD (Ex 2).

Petitioner presented the testimony of one witness at trial, Jeannette Marquez (JM). JM has been a property manager at the Subject Building since 2016.

JM testified that she inspected the Subject Premises on the day before the trial. JM submitted in evidence pictures taken on that date. These include two pictures of the kitchen (Ex 4A & 4B), three pictures of the terrace (EX 4D, 4E, & 4G). One photo that is blurry is disregarded by the court (Ex 4C) and one photo is of the front door to the Subject Premises (Ex 4F).

JM presented very little, if any, evidence to support the allegations in the termination notice. JM testified, in a very general way, that there was a problem with the condition of the Subject Premises, that she tried to work with Respondent to resolve it prior to commencing this action and that the Subject Premises previously, at some un-designated date, failed a section 8 inspection due to clutter and roach infestation.

No further documentation or testimony of any kind was submitted on behalf of Petitioner, who rested at the conclusion of JM's testimony.

The GAL also testified as to her interactions with Respondent and APS. The GAL testified that Respondent suffers from mental illness and has a home attendant at the Subject Premises several hours a day. The GAL testified that Respondent has no family to support her and that some of the clutter includes item's from Respondent's deceased sister, that Respondent is unwilling to part with.

The GAL stated the Subject Premises had been cleaned by APS, but that the clutter began to reoccur. Again no specific dates were provided. The GAL testified without

contradiction, that she provided Petitioner access to perform extermination services at the Subject Premises.

DISCUSSION

Pursuant to applicable HUD regulations, a landlord may not terminate a Section 8 tenancy except upon enumerated grounds (24 CFR 247.3; *Westbeth Corp. HDFC v Ramscale Productions, Inc.* 37 Misc.3d 13).

Petitioner alleges the grounds in this proceeding are material non-compliance with the rental agreement. 24 C.F.R. § 247.3 (c) defines Material non-compliance as including:

- (1) One or more substantial violations of the rental agreement;
- (2) Repeated minor violations of the rental agreement that:
 - (i) Disrupt the livability of the project,
 - (ii) Adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related project facilities,
 - (iii) Interfere with the management of the project, or
 - (iv) Have an adverse financial effect on the project

The court finds that Petitioner failed to establish its *prima facie* case by a preponderance of credible evidence. The proof submitted by Petitioner was woefully inadequate and many of the allegations in the notice were simply not addressed at all.

Petitioner presented no evidence that the clutter presented a fire or safety hazard.

Petitioner presented no evidence regarding the animals alleged to be harbored by Respondent in the termination notice.

Petitioner presented no evidence of any specific date where access was requested and denied by Respondent.

Petitioner presented no evidence that any clutter prevented Petitioner and “its agents employees contractor and subcontractors” from abating any specific condition alleged to exist in the Subject Premises.

Petitioner presented no evidence that the clutter impedes access to and from the Subject Premises.

JM testified that the Subject Premises failed inspection and the reasons for same, but no documentation was submitted to substantiate this testimony.

There was no allegation or evidence that Respondent’s occupancy or the condition of the Subject Premises has disturbed any other tenant or occupant in the Subject Building.

The petition alleges that a DHPD violation was issued for the Subject Premises for roach and vermin infestation. No evidence of such a violation was presented at trial.

Petitioner’s sparse trial submission is simply inadequate to support entry of a judgment of possession against Respondent [*150 West 21st LLC v Doe* 50 Misc.3d 140(A)] on the grounds alleged in the petition and predicate notice.

Based on the foregoing, the proceeding is dismissed.

This constitutes the decision and order of this Court.¹

Dated: New York, New York
April 17, 2019

Hon. Sabrina B. Kraus, JCC

TO: ANDREW F. TROIA PC
Attorneys for Petitioner
By: Dorothy B. Nunez , Esq.
59 Maiden Lane, 41st Floor
New York, New York 10038
212.390.8750

OLGA GARCIA HURTADO
Respondent
620 East 13th Street, Apt. 5L
New York, New York 10009

CARMEN MELAGROS VALENTIN
Guardian Ad Litem

¹ Parties may pick up trial exhibits from clerk's office on the second floor of 111 Centre Street, New York, NY 10013, at window 9, within thirty days of the date of this decision. After said period, exhibits may be disposed of in accordance with Administrative Directives.