

**Plaza Residences LP, Petitioner v. Theresa Rawlerson, Respondent, L&T
55093/14
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**Civil Court, Kings County, Housing Part A
NYLJ Publication Date: Jul 16, 2015**

Cite as: Plaza Residences LP v. Rawlerson, L&T 55093/14, NYLJ
1202732165946, at *1 (Civ., KI, Decided June 10, 2015)

CASENAME

Plaza Residences LP, Petitioner v. Theresa Rawlerson, Respondent
L&T 55093/14

Judge Bruce Scheckowitz

[Read Summary of Decision](#)

Decided: June 10, 2015

ATTORNEYS

For the Respondent-Tenant: Karen May Bacdayan, Sr. Staff Attorney Legal
Services NYC.

For the Petitioner-Landlord: Robert Gordon, Esq.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of
Respondent's motion.

Papers Numbered

Notice of Motion & Affidavits Annexed 1

Notice of Cross-Motion and Affidavits Annexed

Answering Affidavits 2, 3

Replying Affidavits 4

Exhibits

Memorandum of law

DECISION/ORDER

*1

After submission of the foregoing cited papers, Respondent's motion is decided as
follows:

The instant holdover proceeding was commenced by Plaza Residences LP
("Petitioner") on the grounds that Theresa Rawlerson ("Respondent") failed to

complete her recertification and that the New York City Housing Authority ("NYCHA") had terminated Respondent's Section 8 subsidy for the apartment located at 230 Lott Avenue, apt. 2I, Brooklyn, NY 11212 ("Premises"). Petitioner claims that the alleged failure to recertify has caused Petitioner to be penalized civilly, is therefore a violation of the law, pursuant to 24 CFR 982.551(a), and thus grants Petitioner the right to terminate her Rent Stabilized tenancy.

Respondent now moves to dismiss the petition based on Petitioner's failure to state a cause *2 of action and/or the failure to complete an annual recertification has been cured. Alternatively, Respondent moves for summary judgement on her first and second affirmative defenses. In her first affirmative defense Respondent argues that "the predicate notice misstates the consequences of termination from the section 8 program. Respondent's rent stabilized tenancy has not been terminated and petitioner has failed to plead a cause of action. The predicate notice is not a pleading and cannot be amended, thus the proceeding must be dismissed."

In her second affirmative defense respondent claims that "Respondent's section 8 subsidy is in the process of being restored and alleged breach will be shortly cured. This proceeding is ostensibly brought in the nature of a holdover but is in fact a proceeding based on the nonpayment of rent. Failure to pay rent, in this case as a result of a rent subsidy, can be cured any time prior to the issuance of the warrant." Petitioner opposes the motion. Both sides are represented by counsel.

Although Respondent is moving under CPLR 3211(a)(7) for the dismissal of this action for failure to state a cause of action "or" CPLR 3212, the relief actually sought is summary judgment on its affirmative defenses, that Respondent's rent stabilized tenancy has not been terminated and that cure is available. Summary judgment relief is available since the requirements of CPLR 3212 have been met (CPLR §3212; Brill v. City of New York, 2 NY3d 648 [2004]).

FACTS

Respondent was an active participant with NYCHA Section 8 in 2012. In October 2012, NYCHA made a preliminary determination the Respondent had failed to complete her annual recertification and advised Respondent that it intended to terminate the Section 8 subsidy. Respondent then advised Petitioner not only had she completed the recertification, she had exercised her right to a hearing. In March 2013, NYCHA advised Petitioner that a hearing had *3 was conducted and that NYCHA would be terminating the Section 8 subsidy, effective March 31, 2013. On March 31, 2013, the termination of the Section 8 subsidy triggered the

termination of the Housing Assistance Payment (HAP) contract between Petitioner and NYCHA, which in turn terminated the lease between Petitioner and Respondent. Respondent then notified Petitioner that NYCHA erroneously terminated her Section 8 subsidy and that she planned to challenge the administrative decision. Petitioner acquiesced to her request that it not take action against her while she tried to reinstate the subsidy. After nine months with no reinstatement, Petitioner served a Notice of Termination in January 2014. The notice stated that due to her violation of the law by failing to complete her annual recertification, the landlord is being subjected to a monetary penalty of the loss of Section 8 subsidy payments from NYCHA, thus granting Petitioner the right to termination Respondent's tenancy pursuant to 24 CFR 982.551(a). The Notice of Termination further advised Respondent that no cure was available. In February 2014, Petitioner commenced this holdover proceeding on the basis that both Respondent's lease and tenancy had terminated on March 31, 2013 as a result of the termination of the Section 8 subsidy, due to Respondent's failure to recertify.

However, Respondent's Section 8 subsidy was reinstated effective June 1, 2014. This reinstatement is retroactive to the March 31, 2013 termination date (See Affirmation to Notice of Motion, Exh. 3 and Reply Affirmation, Exh.3), since it was determined that Respondent's termination was due to an error of NYCHA's computer system. Specifically, a letter from NYCHA, dated September 10, 2014, advises Respondent that:

"As stated your restoration to the Section 8 Program was effective June 1, 2014 but was retroactive to your move-out date on March 31, 2013. However, due to the fact that the apartment was in non-compliance with Housing Quality *4 Standard (HQS) your landlord was not entitled to any retroactive payments until May 12, 2014 when the apartment passed inspection.

"Furthermore, please be informed that you are not responsible for any of the unpaid NYCHA subsidy payments during the period that the apartment was in non-compliance with Housing Quality Standards."

See, Reply Affirmation, Exh. 3.

DISCUSSION

Where a respondent is the proponent of a motion for summary judgment, the respondent must establish that the cause of action has no merit, sufficient to warrant the court, as a matter of law, to direct judgment in its favor (*Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). The respondent's motion must be denied if it fails to produce admissible evidence demonstrating the absence

of any material issues of fact (*Winegrad v. New York Univ. Med. Ctr.*, supra; *Zuckerman v. City of New York*, 49 NY2d 557, 562 [1980]).

Petitioner argues that a holdover summary proceeding is a remedy available to a landlord when the proceeding is based on a breach of the lease stemming from the tenant's failure to recertify for Section 8 eligibility specifically, since Respondent failed to comply with federal law, it has suffered financial penalties the loss of the Section 8 subsidy payments. Petitioner posits that as a Section 8 participant, 24 CFR 982.551(a)(1) required her to supply any information the NYCHA determined was necessary, including a recertification and that 24 CFR 982.551(a)(2) obligated Respondent to supply information requested in order to accomplish a regularly scheduled re-examination of family income and composition. Petitioner claims the Respondent violated the law when she failed to provide the information and submit to the re-examination and this violation has caused Petitioner to suffer financial penalties as NYCHA terminated the subsidy as of April *5 2013. Petitioner asserts that this would satisfy the grounds under the rent stabilization code for termination of the tenancy pursuant to 9 NYCRR 2524.3(c) (tenant engages illegal activity that cause the owner to be penalized civilly).

Respondent disputes this argument on many fronts. First, she claims that 24 CFR 982.310(a)(2) is inapplicable in this instance because the statute only applied to causes of action to terminate a tenancy that arise during the term of the lease. Here, Respondent argues, the lease terminated due to the termination of a Section 8 subsidy, however, she asserts that the tenancy did not, thereby creating month-to-month tenancy. She avers that until Petitioner renews Respondents lease, or serves her with proper notice that it intends not to renew her lease, she remains a month-to-month tenant. See *Baginski v. Lysiak*, 154 Misc. 2d 275 (App. Term, 2d Dept. 1992). Respondent also claims that the failure to recertify is not a grounds to terminate the tenancy of a rent stabilized tenancy and that in any event, such a failure is curable.

The court finds that Petitioner brought this proceeding predicated on the argument that the Section 8 subsidy was terminated due to Respondent's willful act in failing to complete her annual recertification. In fact, the courts have held that a holdover proceeding may be a remedy available to a landlord where the HAP contract terminated, such proceedings are predicated upon the malfeasance of the tenants, specifically, that the tenants willfully did not submit their annual recertification. See e.g., *Pinnacle Bronx W., LLC v. Jennings*, 29 Misc. 3d 61, 62-63 (App. Term, First Dept., 2010) (in dicta: potential remedies available to landlord is the commencement of a holdover summary proceeding based upon an alleged breach

of lease stemming from tenant's failure to recertify for Section 8 eligibility); *Macon St. Associates, L.P. v. Sealy*, 32 Misc. 3d 52 (App. Term, 2d Dept., 2011) (tenancy may be terminated when tenant refuses to recertify income).

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Here, however, Respondent did not willfully fail to submit her recertification papers, on the contrary, Respondent asserts in her affidavit that she "tried over and over to have [her] subsidy reinstated" and that she "gave them many documents more than once." Furthermore, by the time this motion was filed, Respondent had been reinstated to Section 8, retroactive to the March 2013 termination date, a date 15 months prior to the service of the Notice of Termination. "In the absence of any showing that tenant's delay in recertifying for Section 8 eligibility was purposeful, and it being undisputed that tenant's Section 8 subsidy had already been reinstated for several months prior to landlord's commencement of the within holdover summary proceeding, we agree that the eviction remedy herein sought by landlord does not lie." *DU 1st Realty Co. LP v. Robinson*, 35 Misc. 3d 138(A) (App. Term, First Dept. 2012).

Since Respondent has successfully recertified and her Section 8 subsidy has been retroactively restored, the court finds that any loss suffered by Petitioner was not due to Respondent's willful failure to meet her obligations under the terms of the Section 8 Program and has cured any violation of the substantial obligations of her tenancy. See, *2011 Newkirk Newkirk LLC v. Legree*, NYLJ., July 9, 2010, p. 28, col. 1 (Civ. Ct. Kings Co.) (dismissing the Petition, holding that even if the tenant was under an obligation to reinstate her subsidy, the subsidy had been reinstated and so any alleged violation of the tenancy had been cured by the time the motion to dismiss was made). Furthermore, the court notes that had NYCHA not determined that Petitioner failed to maintain the premises in compliance with the Housing Quality Standards, Petitioner would not be precluded from receiving the retroactive Section 8 subsidy payments.

Accordingly, Respondent's motion for summary judgment is granted and the Petition is dismissed, rendering the remainder of the motion moot.

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Any relief requested but not expressly addressed is hereby denied. This constitutes the decision and order of the court.

Dated: June 10, 2015

Brooklyn, New York