

Robo, L.L.C. v. Alford, 17358/16

April 5, 2017

- Civil Court, Bronx County, Housing Court Part F
- 17358/16
- Judge Brenda Spears
- For Plaintiff: Counsel for Petitioner: Sidrane Schwartz-Sidrane, Rockville Centre, NY.
- For Defendant: Counsel for Respondent: Attn: Jean H. Fischman, Esq., Bronx Legal Services, Bronx, NY.

Cite as: Robo, L.L.C. v. Alford, 17358/16, NYLJ 1202782776607, at *1 (Civ., BX, Decided March 7, 2017)

CASENAME

Robo, L.L.C., Petitioner-Landlord v. Brian Alford, as Distributee of Linzia Reed, and Brian Alford, Individually as Occupant, Respondent-Licensee

Decided: March 7, 2017

Recitation, as required by CPLR 2219(A), of the papers considered in review of the respondent's motion for summary judgment

Papers Numbered

Notice of Motion and Affidavits Annexed 1

Answering Affirmation 2

Replying Affirmation 3

Exhibits 4

Decision & Order

*1

Upon the foregoing cited papers, the decision and order in this motion is as follows:

The petitioner commenced this non-payment proceeding against respondent Brian Alford, as the distributee of Linzia Reed, the deceased tenant of record, and individually as an occupant of the subject apartment. The petitioner has alleged that the respondent had failed to pay rent since September 2015.

Presently before the court is the respondent's motion, made pursuant to CPLR §3212, for summary judgment dismissing the petition as a matter of law. The petitioner has opposed the motion. For the reasons set forth herein, the respondent's motion is granted.

The facts are not disputed. The respondent and Linzia Reed resided in the subject apartment since 2013. They were not married and had never filed for domestic partnership.

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Ms. Reed passed away on July 12, 2014. According to the respondent, after her death he asked the petitioner for a lease in his name as the successor to the apartment. He has not been given such a lease.

Summary judgment is appropriate where the moving party can establish his or her cause of action or defense by admissible evidence sufficient for the court to direct judgment in the moving party's favor as a matter of law. CPLR §3212(b). *Friends of Animals, Inc. v. Associated Fur Mfrs, Inc.*, 46 N.Y.2d 1065, 416 N.Y.S.2 790, 390 N.E.2d 298, 4 Media L. Rep. (BNA) 2503 (1979); *Evens v. Charap*, 12/18/91 N.Y.L.J. 23, col. 1 (Civ. Ct. N.Y. Co.).

RPAPL §711(2) provides, in pertinent part, that where the tenant of records dies during the lease term and the rent due has not been paid and no representative or person has taken possession of the premises and no administrator or executor has been appointed, a non-payment proceeding may be commenced after three months from the date of the death of the tenant by joining the surviving spouse, or if there is none, then one of the surviving issue or if there is none, then any one of the distributees.

The respondent has maintained that he is not a distributee of Linzia Reed under applicable New York law, which defines a distributee as a person entitled to share in the property of a decedent under governing laws of descent and distribution. EPTL §4-1.1; N.Y.Ct. Proc. Act §103.

To qualify as a distributee, the respondent would have to be a person entitled to inherit Linzia Reed's property as a surviving spouse. And, the courts have defined "surviving spouse" as a person who was married to the decedent. *Matter of Cooper*, 187, A.D. 2d 128, 592 N.Y.S. 2d 797 (App. Div. 2d Dep't 1993); *Slattery v. City of New York*, 179 Misc. 2d 740, 686 N.Y.S. 2d 683 (Sup. Ct., aff'd as modified, 266 A.D. 2d 24, 697 N.Y.S. 2d 603 (1999)).

The respondent herein is not the surviving spouse since he and the tenant of record were not married and had not filed as domestic partners. He is, therefore, not a distributee and the petitioner cannot seek any unpaid rent from him in that capacity.

The respondent has also argued that the petitioner does not have a cause of action for unpaid rent against him as an occupant of the subject premises. It is axiomatic that a non-payment proceeding can only be maintained where there is a landlord-tenant relationship *3 between the parties and the proceeding must be based on an agreement that the tenant would pay rent, to wit, usually a lease.

Here, there is no landlord tenant relationship between the petitioner and the respondent. It may be that the respondent would be successful in

asserting a succession claim. But, the a person with a succession claim is not personally liable for the arrears of the deceased tenant of record. *Edelstein & Son, LLC v. Levin*, 8 Misc. 3d 135(A), 803 N.Y.S. 2d 18 (App. Term 1st Dep't 2005). See also, *615 Nostrand Ave. Corp. v. Roach*, 15 Misc. 3d 1, 832 N.Y.S. 2d 379 (App. Term, 2nd Dep't 2006).

Therefore, as the respondent is not a distributee of the deceased tenant of record and, is as an occupant who does not have a landlord-tenant relationship with the petitioner, there is no basis in law upon which the petitioner can maintain a non-payment proceeding against him. For these reasons, the respondent's motion for summary judgment is granted. The petition is dismissed.

This constitutes the decision and order of this court.

Dated: March 7, 2017

Bronx, New York