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757 Miller Owners, LLC v. Smith

KINGS COUNTY
Landlord Tenant Law

New York Law Journal

March 8, 2017

Judge Jeannine Baer Kuzniewski

[Read Full-Text Decision](#)

Landlord alleged tenant breach a substantial obligation of his tenancy in creating a nuisance in this holdover proceeding. Tenant sought dismissal arguing landlord vitiated the notice of termination by renewing his lease after termination—during the pendency of this proceeding. Landlord did not dispute same, but argued it was statutorily obligated to offer renewal, thus, did not reinstate the tenancy. The court noted there was case law supporting both positions—First Department noted when landlord was required by regulatory authority to tender a renewal lease, same was not construed as vitiating the notice of termination as renewal was not one of free will; Second Department found to the contrary, that entering into a lease renewal without reserving rights under pending litigation vitiated the termination notice. This court found nothing in the renewal lease that could reasonably be said to have alerted tenant that landlord executed the lease merely to comply with mechanical requirements of the Rent Stabilization Code, noting there was no conditional clause in the lease preserving landlord's rights under the pending litigation. Thus, tenant was entitled to rely on the renewal and anticipate reinstatement of the tenancy. Hence, tenant's motion was granted and the petition dismissed.

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757 Miller Owners, LLC v. Smith, L&T 69079/2016

March 8, 2017

Cite as: 757 Miller Owners, LLC v. Smith, L&T 69079/2016, NYLJ 1202780573592, at *1 (Civ., KI, Decided February 17, 2017)

CASENAME

757 Miller Owners, LLC., Petitioner v. Anthony Smith, Respondent-Tenants "John Doe" & "Jane Doe",
Undertenants

L&T 69079/2016

Judge Jeannine Baer Kuzniewski

[Read Summary of Decision](#)

Decided: February 17, 2017

ATTORNEYS

Counsel for Petitioner, 757 Miller Owners LLC: Jonathan Steckler, Esq.

Counsel for Respondent, Anthony Smith: Mark Soto, The Legal Aid Society.

Recitation, as required by CPLR 2219(A), of the papers considered in the review of this Notice of Motion:

PAPERS NUMBERED

NOTICE OF MOTION AND AFFIRMATION & MEMORANDUM OF LAW ANNEXED 1

ORDER TO SHOW CAUSE AND AFFIRMATION ANNEXED 2

ANSWER AFFIRMATION

REPLYING AFFIRMATION 3

EXHIBITS

STIPULATIONS

OTHER

DECISION/ORDER

*1

Upon the foregoing cited papers, the Decision/Order in this Notice Of Motion pursuant to CPLR §3211(a)(1) or (a)(7) is as follows:

This is a holdover proceeding in which the landlord is alleging that the tenant continues to breach a substantial obligation of his tenancy in creating nuisance and further, that he has failed to grant access to the landlord so that his workers can effect repairs.

The Respondent seeks a dismissal on a number of grounds, the first of which contends that the landlord violated the Notice of Termination by renewing the tenant's lease after the termination of the tenancy (during the pendency of this proceeding). The tenant alleges that the registered managing agent, Dhanraj Doodnauth, came to his apartment on or about August 7, 2016 and tendered the lease which he then executed. See Affidavit In Support, paragraph 6.

The Petitioner does not dispute that the lease was renewed; however, they argue that they were statutorily obligated to offer the lease renewal and as such it did not reinstate the tenancy. See Affirmation In Opposition paragraphs 7 and 8. The Court notes that the Opposition contains an Affidavit from Dhanraj Doodnauth that does not address the circumstances surrounding the renewal

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of the lease.

There is case law supporting both positions on this argument. The Appellate Term First Department has been quite clear that the tender of a renewal lease after a Notice of Termination was served in holdovers based on violation of a substantial obligation of the lease does not vitiate the holdover proceeding. "The fact that the petitioner-landlord was required by regulatory authority to send the renewal lease is not construed as vitiating the Notice of Termination when the act of renewing the lease was not one of free will but of adhering to the requirements of law." Cf. *Muller v. N.Y. Telephone Co.*, 40 N.Y.2d 955, 390 N.Y.S.2d 817, 359 N.E.2d 328 (1976). [Court of Appeals] *Kibel v. Appel*, 147 Misc. 2d 141, 142, 555 N.Y.S.2d 559, 559-60 (Civ. Ct. 1990)[Civ. Ct., NY County]. The Appellate Term in the First Department held "[w]e agree with Civil Court that tenant's execution of this renewal lease did not revive the tenancy, which had already been effectively terminated. Given the Rent Stabilization Code mandates and the context in which the lease was tendered, it cannot reasonably be said that landlord intended to, or did, enter into a new agreement which would vitiate the very judgment from which tenant was in the process of taking an appeal." (*AA Spirer & Co. v. Adams*, NYLJ, June 3, 1991, at 27, col 4 [Civ. Ct., Bronx County]; see also *Coleman v. Dabrowski*, 163 Misc 2d 763 [1994] [App. Term, 1st Dept.]) *J.H.B., L.P. v. Martin*, 19 Misc. 3d 142(A), 862 N.Y.S.2d 814 [App. Term, 1st Dept. 2008]. See also *Kibel v. Appel*, 147 Misc.2d 141 [Civ. Ct., NY County].

The appellate authority in Second Department, however, has found to the contrary. In *Carroll St. Properties v. Puente*, 33 HCR 627A, NYLJ 7/13/05, 30:6 [App. Term, 2 & 11th Dept.], the Court ruled that the parties entered into a lease renewal and the landlord did not expressly reserve rights under pending litigation, ergo the renewal vitiated the termination notice. The lower court in *Ambassador Realty Co. v. Wachtel*, 139 Misc.2d 965 [Civ. Ct., Queens County], found that "[t]he tenants in both the Conthur case and the case before this court are entitled to an unequivocal notice which can be relied on." (*Siegel v. Kentucky Fried Chicken*, 108 AD2d 218, affd 67 NY2d 792 [App. Div., 2nd Dept.].) By offering a renewal lease after service of a termination notice the landlord waived the effect of a termination notice.

The case law further supports an inquiry into the actions of the parties, especially the landlord, to consider what reliance, if any, was given to the renewal. The court in *Kew Gardens Associates LLC v. Camacho*, 3 Misc.3d 135 [A][App. Term, 2nd & 11th Dept.], considered that the "tenant executed a renewal lease and returned it to landlord together with the increased security deposit demanded by landlord, which deposit landlord accepted and did not return.... Landlord's ratification of the renewal lease subsequent to the issuance of the warrant vitiated its right to evict pursuant to the final judgment." Even the Appellate Court in the First Department case *Spirer v. Adams*, 144 Misc 2d 903, 909, 545 N.Y.S.2d 504, 509 (Civ. Ct. 1989) ruled:

"[T]he courts of this State have also held consistently that the creation of the landlord-tenant relationship may properly be inferred from intentional, affirmative actions of the parties concerned, in addition to written and executed rental agreements, manifesting the intent to create such a relationship. (See, e.g., *Berkeley Assocs. Co. v. Revere Garage Corp.*, NYLJ, Oct. 22, 1981, at 6, col 4 [App Term, 1st Dept]; *Ansonia Assocs. v. Pearlstein*, 122 Misc 2d 566 [Civ Ct, NY County 1984]; *J.A.R. Mgt. Corp. v. Foster*, 109 Misc 2d 693 [App Term, 2d Dept 1980], supra; 2530 Ocean Ave.

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Realty v. McNeill, NYLJ, June 10, 1976, at 10, col 4 [App Term, 2d Dept 1980].) This court finds that there is absolutely nothing contained within the 'Renewal Lease Form' which can reasonably be said to have alerted the named 'tenant' that the lease renewal was forwarded and executed by the landlord merely (as the landlord now contends) to comply with the mechanical requirements of the lease renewal provisions of the Rent Stabilization Code, i.e. there is nothing which would indicate to a reasonable person that the lease renewal offer, unambiguous on its face, is not what it appears to be...Although the landlord at this time seeks to convince the court that his actual intention in entering into the instant lease renewal agreement is not consistent with the expressed intention contained within the terms of the document on its face, he did not even attempt to place any kind of conditional clause into that lease contract (which was prepared by the landlord and forwarded to the tenant for execution, and in due course returned to the tenant fully executed), either within the printed or typewritten sections thereof." *Spirer v. Adams*, id.

Neither the Petitioner nor the agent allege that there was any conditional clause preserving the Petitioner's rights under the pending litigation. See *Carroll St. Properties v. Puente*, supra. Further, there is no assertion that the renewal lease was sent inadvertently. Therefore, it is not contrary to case law that the Respondent was entitled to rely upon the renewal and anticipate the reinstatement of the tenancy. Accordingly, pursuant to the foregoing, the Motion is granted and the Petition is dismissed. The Court notes that in light of this ruling, there is no need to address the remainder of the arguments. Said dismissal is without prejudice.

Dated: February 17, 2017

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