

Matter of Rentas v New York City Hous. Auth.
2009 NY Slip Op 30047(U)
January 12, 2009
Supreme Court, New York County
Docket Number: 401734/2008
Judge: Paul G. Feinman
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
PRESENT: HON. PAUL GEORGE FEINMAN PART 12

Justice

1/m/o Tina Rentas

INDEX NO. 401734/08

MOTION DATE 11-19-08

MOTION SEQ. NO. 001

MOTION CAL. NO. 11

- v -

NYCHA

The following papers, numbered 1 to 4 were read on this motion to/for Article 78.

Notice of Motion/Petition — Affidavits — Exhibits _____
Answering Affidavits — Exhibits (Memo) _____
Notice of Cross-Motion — Affidavits — Exhibits _____
Replying Affidavits (Reply Memo) _____

PAPERS NUMBERED	
_____	<u>1, 2</u>
_____	<u>3, 4</u>
_____	_____
_____	_____

Cross-Motion: Yes No

Upon the foregoing papers, it is ORDERED that this ~~motion~~

**PETITION IS DECIDED IN ACCORDANCE WITH
THE ANNEXED DECISION, ORDER AND JUDGMENT.**

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: 1/12/09

JAF
J.S.C.

Check one: FINAL DISPOSITION DO NOT POST
 NON-FINAL DISPOSITION REFERENCE
Preliminary Conference _____
Compliance Conference _____

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART 12

-----X

In the Matter of the Application of TINA RENTAS,
Petitioner,

Index Number 401734/2008
Submission Date Nov. 19, 2008
Mot. Seq. No. 001
Mot. Cal. No. 11

For an Order Pursuant to Article 78 of the
Civil Practice Law and Rules,

- against -

**DECISION, ORDER AND
JUDGMENT**

NEW YORK CITY HOUSING AUTHORITY,
Respondent.

-----X

For the Petitioner:
Tina Rentas, *pro se*
414 Columbia Street, Apt. 2C
Brooklyn NY 11231
(917) 548-8916

For the Respondent:
Ricardo Elias Morales, Esq.
General Counsel
New York City Housing Authority
By: Brigitte M. Rajacic, Esq.
250 Broadway, 9th Floor
New York NY 10007
(212) 776-5232

Papers considered in review of this petition to reverse:

Papers	Numbered
Order to Show Cause & Affidavit of Service	1, 2
Respondents Memo of Law and Verified Answer	3, 4

PAUL G. FEINMAN, J.:

In this proceeding brought pursuant to CPLR 7803(3), the self-represented petitioner seeks to reverse the determination by respondent, New York City Housing Authority (NYCHA) which finds that she is an unauthorized tenant in a public housing apartment, and must therefore be evicted. She argues she did not have enough time to prepare for the hearing before a NYCHA hearing officer. She also seeks the appointment of a guardian ad litem because she suffers from depression. Respondent opposes based on the failure of the former tenant of record to seek written permission for petitioner to take up residence in the apartment, or to be granted such permission, and because petitioner, the aunt of the former tenant of record, is not in one of the recognized

categories of relative who is eligible to be added to a household. For the reasons set forth below, the petition is denied in its entirety.

It is a well-settled rule that judicial review of administrative determinations is limited to the grounds invoked by the agency (*Matter of Aronsky v Board of Educ.*, 75 NY2d 997 [1990]). The court may not substitute its judgment for that of the agency's determination but shall decide if the determination can be supported on any reasonable basis (*Matter of Clancy-Cullen Storage Co. v Board of Elections of the City of New York*, 98 AD2d 635, 636 [1st Dept. 1983]). The test of whether a decision is arbitrary or capricious is "determined largely by whether a particular action should have been taken or is justified . . . and whether the administrative action is without foundation in fact." (*Matter of Pell v Board of Educ.*, 34 NY2d 222, 232 [1974]), quoting 1 N.Y. Jur., Admin. Law, § 184, p. 609).

It is well-established that an unauthorized occupancy does not give rise to tenancy rights (*Matter of Davis v Franco*, 270 AD2d 55, 56 [1st Dept. 2000]). The Housing Authority's Occupancy Standards for a one-bedroom apartment permit occupancy by a single adult, a married couple or domestic partners, or a single adult with a child under six years old, but not for two adults such as an aunt and a niece (Ver. Ans. Ex. C, Dept. of Housing Manual, ch. 5). Where the person does not meet the standards for tenancy, even if she pays rent, a landlord will not be precluded from denying the person the status of a tenant (*see, Matter of Schorr v New York City Dept. of Hous. Pres. & Dvlpt.*, 10 NY3d 776, 779 (2008)). Moreover, the courts have repeatedly upheld the denial of a tenancy where the occupant has failed to qualify as a remaining family member by obtaining permission to live in the premises (*see, e.g., Matter of Rodriguez v Hernandez*, 51 AD3d 532, 533 [1st Dept. 2008]).

Here, the evidence establishes that NYCHA leased the apartment solely to Latisha Collins, as per the lease agreement signed in December 2002 (Ver. Ans. Ex. D). The Occupant's Affidavit of Income signed by Collins on October 9, 2006, included petitioner's name as a person living in the apartment, but the name was crossed out because she was not legally a co-tenant (Ver. Ans. Ex. E). In October 2006, a request was made to add petitioner as an additional member, based on her statement that she was born and raised in the area, needed a place to live, and had been living with her niece; this request was denied based on the agency's understanding that the request was made *after* Collins had vacated the apartment and because petitioner, Collins' aunt, was not a qualified family member under Housing Authority rules (Ver. Ans. Ex. J).

The NYCHA interview record for this tenancy showed that petitioner had indicated that Collins was working in California, that a NYCHA representative contacted Collins by telephone in December 2006 who told the representative that she had moved out of state and wanted to turn the apartment over to her aunt, and that the agency told Collins she could not turn it over to petitioner (Ver. Ans. Ex. I). Collins' official notice of vacating the apartment was made on January 11, 2007 (Ver. Ans. Ex. K). Petitioner grieved the denial of her request to be given the lease in her name, and the apartment's project manager denied the request (Ver. Ans. Ex. L). The denial was upheld in June 2007 (Ver. Ans. Ex. N). Petitioner requested a formal hearing, which was commenced but adjourned in September 2007, and recommenced in April 2008 at which time she appeared with a guardian (Ver. Ans. Ex. Q; S). On April 24, 2008, the hearing officer issued his denial of the grievance based on the failure by Collins to obtain written permission from NYCHA to add petitioner's name to the lease, because the category of "aunt" is not one of those allowed under the Housing Authority regulations as an additional member, and because a one-bedroom apartment is

not sufficient for her to have legally lived there with her niece (Ver. Ans. Ex. Y).

The decision of an administrative agency is entitled to deference by the courts (*see, Samiento v World Yacht Inc.*, 10 NY3d 70, 79 [2008] [“construction given statutes and regulations by the agency responsible for their administration, ‘if not irrational or unreasonable,’ should be upheld (*see Chesterfield Assoc. v N.Y. State Dept. of Labor*, 4 NY3d 597, 604, 830 N.E. 2d 287, 797 N.Y.S.2d 389 [2005])”]). The court’s role is limited to determining whether there is any reasonable basis to support NYCHA’s determination that petitioner was in violation of the rules and regulations governing the Housing Authority and must result in her eviction. That its determination may have harsh consequences is not the standard of review, even where the petitioner shows that she has always paid the rent in timely fashion. It was rational to find that petitioner was never properly a tenant in the apartment, even though she paid the rent and was the aunt of the tenant of record, and under the regulations, it is not arbitrary or capricious or an abuse of discretion to find that she does not qualify to be deemed a tenant under NYCHA’s rules and regulations.

Moreover, there is no evidence that petitioner’s hearing violated due process; the record shows the it was adjourned in order for her to obtain counsel and she appeared with a guardian ad litem at the hearing in April 2008. She made no objections at that time to the hearing proceeding. Although she improperly appends to her petition documents that were not submitted at the time of the hearing, none of the documents would result in a change of NYCHA’s determination finding her an unlawful occupant of the apartment.

Regarding the appointment of a guardian ad litem in this proceeding, the court notes that the instant action has been adjourned several times for the petitioner to seek counsel from various providers. Petitioner was able to comply with the court’s instructions for filing and serving papers,

was able to contact and be interviewed by various providers of civil legal services for indigent persons. Unfortunately, all legal service providers declined to represent petitioner. However, the court is satisfied that its interactions with the petitioner on the record demonstrated an understanding of the proceedings, and an ability to put forth her position. She was frequently accompanied in court by a family member. Appointment of a guardian ad litem in this special proceeding would not alter the legal result here, given the lack of any serious factual disputes and the court's limited scope of review.

Once, as here, the court has found a rational basis exists for the determination, its review is ended (*Matter of Sullivan County Harness Racing Assoc., Inc. v Glasser*, 30 NY2d 269, 277-278 [1972]). As the record does not support a determination that NYCHA's actions were either arbitrary or capricious, or an abuse of discretion, the petition must be denied. It is therefore,

ADJUDGED and ORDERED that the petition is denied and the proceeding is dismissed; and it is further

ORDERED that any stays of eviction proceedings previously ordered by this court are continued for 30 days from entry of this decision, order and judgment and shall then automatically be deemed vacated, in order to afford petitioner, if she deems it appropriate, to file a notice of appeal and a stay from the Appellate Division, First Department, 25 Madison Avenue, New York, New York 10010.

This constitutes the decision, order and judgment of this court.

Dated: January 12, 2009
New York, New York

ENTER

Paul J. Levin

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel for authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).