

Matter of Key v New York City Hous. Auth.

2009 NY Slip Op 30142(U)

January 20, 2009

Supreme Court, New York County

Docket Number: 401082/08

Judge: Joan A. Madden

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MADDEN
Justice

PART 11

Jerome Kobay
- v -
NYCHA

INDEX NO. 401082/08
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this ~~motion~~ Article 78 proceeding is determined in accordance with the annexed decision, order and judgment.

INDEXED 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).

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: January 20, 2009

[Signature]
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 11

-----X

In the Matter of the Application of
JEROME KEY,

INDEX NO. 401082/08

Petitioner,

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

-against-

NEW YORK CITY HOUSING AUTHORITY,

Respondent.

-----X

JOAN A. MADDEN, J.:

Petitioner Jerome Key brings this Article 78 proceeding pro
se to annul the February 13, 2008 determination by respondent New
York City Housing Authority (NYCHA), which approved the January
24, 2008 decision by NYCHA Hearing Officer Stuart G. Laurence
dismissing petitioner's grievance that he was wrongfully denied a
lease as a remaining household member.

Petitioner's brother, Lawrence Long, was the tenant of
record in apartment 11H (Apartment) of NYCHA's Lehman Village
development, located at 1641 Madison Avenue in Manhattan, from
some time in 1999 until February 28, 2007, when he vacated the
Apartment, having in the meantime moved to Baltimore to care for
his father. On October 7, 2005, at Mr. Long's request,
petitioner was given permission to move into the Apartment on a
temporary basis, until April 1, 2006. Petitioner remained in the
Apartment past that date.

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).

On April 3 and May 1, 2006, the building management sent Mr. Long notices warning that it was considering terminating his lease for failure to submit his yearly income verification, and inviting him to meet with management at specified times. Neither Mr. Long nor petitioner, responded to these notices. On January 19, 2007, NYCHA commenced a termination-of-tenancy proceeding based on Mr. Long's failure to verify his income, and that of any other members of his household. The notice stated that a hearing would be held on February 20, 2007.

On January 29, 2007, Mr. Long returned from Baltimore in order to submit his affidavit of income for the year, and it appears that at that time he asked to have petitioner's name added to the lease. However, the NYCHA housing assistant whom Mr. Long saw told him that, pursuant to NYCHA rules, a tenant who was absent from his or her apartment for more than six months could not continue the tenancy. Mr. Long, thereupon, signed a Notice of Intent To Vacate, indicating that he would vacate the Apartment on February 28, 2007.

Prior to January 29, 2007, Mr. Long had never listed petitioner on his income verification form. Because Mr. Long failed to appear for the February 20, 2007 administrative hearing, the hearing officer deemed the charges specified in the January 19, 2007 notice admitted, sustained the charges, and concluded that termination of the tenancy was warranted. On March 14, 2007, the NYCHA adopted the Hearing officer's decision

and issued a determination terminating Mr. Long's tenancy.

On May 22, 2007, petitioner, who had continued to live in the Apartment, met with building management and requested a lease in his name, as a remaining family member. The request was denied, and petitioner then progressed through the multi-step grievance procedure that culminated in the January 24, 2008 dismissal of his grievance.

It is settled that, absent NYCHA knowledge and implicit approval of a person's occupancy in an apartment, written permission is a prerequisite to remaining-family-member status. Matter of Aponte v New York City Hous. Auth., 48 AD3d 229 (1st Dept 2008); Chavez v Hernandez, 22 AD3d 408 (1st Dept 2005); Matter of McFarlane v New York City Hous. Auth., 9 AD3d 289 (1st Dept 2004).

Here, it is undisputed that petitioner was not given written permission to remain in the Apartment as a remaining family member. There is no evidence that NYCHA knew, at any time between April 1, 2006 and January 29, 2007, that petitioner had overstayed his permission for temporary occupancy, and on January 29th, when Mr. Long sought to list petitioner on his income verification form, such permission was expressly denied, on the ground that Mr. Long had been absent from his apartment for more than six months. See 24 CFR § 982.312 (a).

Petitioner does not contend that the determination that he is challenging was arbitrary or capricious, or contrary to law.

Rather, petitioner asserts that he did not know that the permission that he had been given to live in the Apartment was only temporary, that the rent has been paid on time, and that, if he is evicted, he will become homeless and have nowhere to spend time with his 10-year-old son. These assertions are without merit.

First, petitioner, as well as Mr. Long, signed their names directly under a notice on the temporary permission request that they filed on October 3, 2006, that states:

I understand that if temporary permission is given for the additional person(s) ... to live in my apartment, the additional person(s) ... must vacate the premises upon the expiration of the temporary permission. Whenever I vacate my apartment ... the additional person(s) must also vacate with me, and will have no right of possession of the premises.

Second, the payment of use and occupancy is a necessary condition to pursuing the NYCHA grievance procedure; it does not determine the issue that is being grieved. See Matter of Garcia v Franco, 248 AD2d 263 (1st Dept 1998). Nor does the acceptance of use and occupancy estop the NYCHA from denying tenancy to claimant. Matter of Kolarick v Franco, 240 AD2d 204 (1st Dept 1997).

Finally, while the court is not unsympathetic to the harsh consequences of the NYCHA's determination, petitioner nevertheless fails to provide a sufficient basis for awarding him relief.

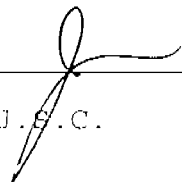
Accordingly, it is hereby

ORDERED AND ADJUDGED that the petition is denied and the proceeding is dismissed.

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

Dated: January 20 , 2009

ENTER:



J.S.C.

UNFILED JUDGMENT
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