

Matter of Gray v New York City Hous. Auth.

2009 NY Slip Op 30885(U)

April 2, 2009

Supreme Court, New York County

Docket Number: 402502/08

Judge: Walter B. Tolub

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

PRESENT: **WALTER B. TOLUB**

PART 15

Index Number : 402502/2008

GRAY, LILLIE

vs.

NYC HOUSING AUTHORITY

SEQUENCE NUMBER : 001

ARTICLE 78

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

This motion to/for _____

PAPERS NUMBERED

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

IS DENIED

IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION.

FILED

APR 03 2009

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 4/2/09

WALTER B. TOLUB J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 15

-----x
In the Matter of the Application of
LILLIE GRAY

Index No. 402502/08

Mtn. Seq. 001

Petitioner,

For a Judgment Pursuant to Article 78 of
the Civil Practice Law and Rules

-against-

NEW YORK CITY HOUSING AUTHORITY,

Respondent.
-----x

WALTER B. TOLUB, J.:

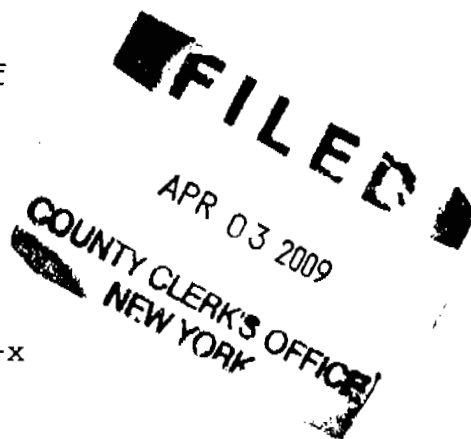
Petitioner Lillie Gray seeks an order vacating her default in this matter and a reversal of the New York City Housing Authority's (NYCHA or Housing Authority) final determination dated May 22, 2008, which terminated her tenancy.

Facts

Petitioner seeks a reversal of NYCHA's determination terminating her tenancy for breaching Lease rules and regulations and chronic rent delinquency.

Petitioner was the sole lessee for apartment 7F located at 50 Avenue D, New York New York (apartment/premises) at the Housing Authority's Lillian Wald Houses. Petitioner's sons, Tyshan Gray (Tyshan), Curtis Gray (Curtis), Jamel Gray (Jamel) Tawhan Gray (Tawhan) and Raheem Gray (Raheem) also resided in the apartment.

On November 27, 2007, the New York Police Department (NYPD)



obtained a search warrant for Petitioner's apartment. The warrant permitted a search for marijuana, evidence of the possession and distribution of marijuana, currency, evidence of proceeds from drug trafficking and evidence of ownership and use of the premises. The NYPD executed the search warrant and recovered marijuana, cocaine and crack cocaine. Thereafter Jamel, Raheem and Tawhan were arrested inside Petitioner's apartment. (Respondent's Ex. D [Warrants]; Respondent's Ex. E [Arrest Reports]).

After learning that the police had executed a search warrant in Petitioner's apartment, the Housing Manager informed the Petitioner by letter dated November 29, 2007, that termination of her tenancy was being considered and urged Petitioner to meet with the Manager on December 3, 2007 to discuss the matter. (Respondent's Ex. F). Petitioner discussed the possible charges against her with the Housing Manager. At the meeting, Petitioner was informed that her tenancy record was being sent to 250 Broadway, the housing Authority's headquarters, and that she would be contacted about a hearing date. Petitioner was also informed of her right to have an attorney present. (Respondent's Ex. G [Interview Record, 12/6/07 entry]).

On January 28, 2008, the Housing Authority sent Petitioner a Notice and Specification of Charges. Petitioner was charged with, inter alia, breach of the Housing Authority's rules and

[* 4]
regulations and chronic rent delinquency. A hearing was scheduled for February 28, 2008 and Petitioner was notified that she was entitled to be represented by counsel. (Respondent's Ex. H [Notice]).

The February 28, 2008 hearing was adjourned several times to afford Petitioner additional time to retain counsel. More than a month after the initial scheduled hearing date and after two adjournments, Petitioner had still not retained counsel.

On the April 10, 2008 hearing date, Petitioner did not appear. The Hearing Officer decided to proceed with the matter because NYPD Detective Christopher Bender was prepared to testify. The Hearing Officer secured the Housing Authority's assurance that in the event that Petitioner retained counsel, it would make every effort to recall Detective Bender for cross examination. (Tr. 29-31).

The Hearing Officer listed the charges on the record and entered a general denial on behalf of the Petitioner. The Housing Authority entered Petitioner's most recent Affidavit of Income and the Lease provisions setting forth her obligations as a tenant to: act in a manner which will not disturb other residents' peaceful enjoyment of their accommodations; act in a manner that will be conducive to maintaining a decent, safe and sanitary environment; and refrain from any criminal activity that threatens the health, safety or right to peaceful enjoyment of

the Development by other residents. (Respondent's Ex. A [Lease]).

At the hearing, Detective Bender testified about the execution of the search warrant and authenticated several documents including the search warrant for Petitioner's apartment, arrest reports and field test reports. As a result of the search warrant, officers recovered a 88 zip bags containing marijuana from a bag that was thrown out of a bedroom window, five bags of cocaine which were found in an unlocked bedroom and five bags of crack cocaine found in a Chicklet box in an unlocked closet. Consequently Petitioner, Raheem, Tawhan and Jamel were all arrested. Each party was charged with criminal possession of a controlled substance in the third degree, tampering with physical evidence, unlawful dealings with a child in the first degree and criminal possession of marijuana in the fifth degree.

After Detective Bender concluded his testimony, the hearing Officer adjourned the matter until May 8, 2008.

When the hearing resumed on May 8, 2008, the Housing Authority introduced Certificates of Disposition for Jamel and Raheem. On December 20, 2007, Jamel plead guilty to criminal possession of a controlled substance in the seventh degree and received 30 days in prison and a six month license suspension. On February 14, 2008, Raheem also plead guilty to criminal possession of a controlled substance in the seventh degree and

received a sentence of time served. Raheem was arrested again on December 19, 2007 for robbery and criminal trespass. On January 7, 2008 he plead guilty to attempted larceny.

Petitioner's rent ledger was also submitted. The ledger indicated that at the time of the hearing, Petitioner was \$264.44 behind in rent.

At the conclusion of the May 8, 2008 hearing, the hearing was again adjourned to May 22, 2008 so that Petitioner could present her case and secure counsel. Petitioner did not appear on May 22, 2008¹.

After recounting all of the evidence, by decision dated May 22, 2008, the Hearing Officer sustained the charges, except the charge that Raheem trespassed on Housing Authority property. The Hearing Officer recommended, based on the "overwhelming evidence presented by the Authority in this case" that Petitioner's tenancy should be terminated. (Respondent's Ex. Q).

One day later, on May 23, 2008, Petitioner requested that the hearing be reopened. Petitioner stated that she missed the hearing because she was ill. Although Petitioner states that she went to a doctor, this court had not been presented with any evidence that Petitioner was ill on the day of the hearing.

The Housing Authority objects to vacating Petitioner's

¹In her moving papers, Petitioner states that she did not appear at the hearing because she was ill and cites Ex. B, a doctor's note, as evidence of her sudden illness. However, after searching through all of Petitioner's paper, the Court has not seen said doctor's note.

default. Respondent argues that Petitioner failed to show good cause for not appearing at the hearing, failed to provide a meritorious defense to the charges against her and failed to even notify anyone that she would be unable to attend.

On June 24, 2008, the Hearing Officer denied Petitioner's application to reopen her default because she failed to establish that the default was excusable and for failed to provide a meritorious defense.

Petitioner then commenced this action seeking a vacatur of the default and a reversal of the Housing Authority's final determination dated May 22, 2008, which terminated her tenancy.

Discussion

The Housing Authority's decision to deny Petitioner's request to vacate her default and reinstate her tenancy is consistent with the discretion it is afforded by law. The decision to terminate Petitioner's tenancy was based on uncontested evidence that Petitioner did not meet the Housing Authority's requirement of residing at the premises.

An administrative's decision will withstand judicial scrutiny if it has a rational basis and is not arbitrary and capricious. (Pell v. Board of Edu., 34 NY2d 22, 231 [1974]).

In order to set aside a default in a termination of tenancy hearing, the defaulting party must demonstrate good cause for the nonappearance (Respondent's Ex. C [Termination Procedures];

Barnhill v. New York Housing Authority, 280 AD2d 339 [1st Dept 2001]). Although Petitioner asserts that she became ill on the May 22, 2008 hearing date, she submitted nothing more to support her claim. Moreover, even if Petitioner had submitted a medical note, she fails to explain the numerous previous defaults in her tenancy proceedings.

Additionally, Petitioner fails to state a meritorious defense to the charges against her. Petitioner only states that she was unaware that there were drugs in the apartment. Without more, and in light of the overwhelming evidence against her, Petitioner's claims are insufficient to vacate the default and decision rendered against her. Respondent's determination was neither arbitrary nor capricious and therefore the Petition must be and is dismissed.

Accordingly, it is

ORDERED that the Petition is dismissed and the determination of the Housing Authority to not vacate Petitioner's default and not reverse the Housing Authority's final determination dated May 22, 2008, which terminated her tenancy is confirmed.

This memorandum opinion constitutes the decision and order of the Court.

Dated: 4/2/09

FILED
APR 03 2009
HON. WALTER B. TOLUB, J.S.C.
COUNTY CLERK'S OFFICE
NEW YORK