

Catlett v New York City Hous. Auth.

2011 NY Slip Op 30123(U)

January 14, 2011

Sup Ct, NY County

Docket Number: 401865/10

Judge: Manuel J. Mendez

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

PRESENT: MANUEL J. MENDEZ
Justice

PART 13

LORENZO CATLETT,

INDEX NO. 401865/10

- v -

MOTION DATE 08-09--2010

NEW YORK CITY HOUSING AUTHORITY,

MOTION SEQ. NO. 1

MOTION CAL. NO. _____

The following papers, numbered 1 to 2 were read on this petition to/for Art. 78

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits
Answering Affidavits — Exhibits _____ cross motion
Replying Affidavits _____

PAPERS NUMBERED
JUDICIAL DECISION
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).

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered and adjudged that this Article 78 petition is denied and the proceeding is dismissed.

Petitioner resides at 65-75 Pike Street Apt. 15A (Rutgers Houses) which is managed by the Respondent New York City Housing Authority. Petitioner filed a grievance with Respondent to be qualified as a Remaining Family Member (RFM) and succeed to the apartment.

The apartment had been leased to Petitioner's mother, Ms. Emegine Catlett. Petitioner had been an original member of the household but moved out in September 2002 [see Answer Exh. I]. Petitioner claims that he never left the apartment and that due to his mother's deteriorating health he was always around to take care of her needs. Affidavits of income filed by Ms. Emegine Catlett beginning October 2003 through October 2005 do not list petitioner as a member of the family composition [see Answer Exh. E]. In 2003 the New York City Housing Authority sought to terminate Ms. Catlett's tenancy for various violations to the lease, including Non-desirability. A proceeding was commenced against her under index number 9580/03. This proceeding terminated in a settlement where Ms. Catlett was placed on three years probation and Petitioner was permanently excluded from the premises. [see Exh. J]. On April 30, 2008 Petitioner appeared at the management office seeking permanent and temporary permission to reside in the apartment [see Exh. K]. On June 18, 2008 petitioner appeared at the management office to say that Ms. Catlett had passed away [see Exh. M]. Ms. Catlett passed away on June 10, 2008 [see Answer Exh. L].

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

Following Ms. Catlett's death Petitioner filed a grievance with management seeking remaining family member status. This grievance was denied on December 30, 2008 by project manager Pearl Stroud stating as a reason " ...a thorough review of folder revealed that Mr. Lorenzo Catlett was permanently excluded from household in December 2003 and the CBC submitted was returned ineligible." [see Exhibit O]. On December 1, 2009 the Borough Manager, Virgilio Cruz, agreed with the manager's disposition denying Petitioner's grievance [See Exhibit P]. The Grievance was then referred to Hearing Officer Desiree Miller who recused herself. The matter was then transferred to Hearing Officer Esther Tomlin-Hines who held a hearing on May 25, 2010. At the hearing petitioner, who was representing himself, testified. [see Transcript Exh. S].

The hearing officer by decision dated June 18, 2010 determined that "the credible testimony and evidence presented demonstrate that the grievant was an original family member who vacated the subject apartment. In December 2004 the tenant signed a stipulation of continued absence in settlement of an administrative termination proceeding which prohibited the grievant from residing in or even visiting the tenant in the subject apartment. Before the tenant could have sought permission for the grievant to join her household either permanently or temporarily, she would have first been required to submit an application to vacate condition of permanent exclusion/continued absence and have the application approved by a hearing officer. The tenant submitted a permanent permission request and temporary permission request to management on April 30, 2008 for the grievant to join the household; Management did not make a written decision on the requests and the tenant passed away a short time thereafter on June 10, 2008. Even if the grievant was not excluded from the apartment and the permission request submitted by the tenant was immediately approved by management the grievant would still not succeed to his claim of residual tenancy. NYCHA's one year rule requires that an additional occupant reside in the subject apartment for at least one year after receiving written permission and prior to the tenant's death or the tenant's otherwise vacating the subject apartment. The grievant is not a remaining family member as defined by NYCHA regulations and accordingly the grievance is not sustained." [see Exh. Z].

NYCHA'S Board reviewed the Hearing Officer's decision and approved it by decision date July 7, 2010. [see Exh. AA]. Petitioner filed the instant Article 78 petition on July 14, 2010, seeking judicial review of Respondent's determination denying his grievance. [see Article 78 petition].

“... A proceeding against a body or officer must be commenced within four months after the determination to be reviewed becomes final and binding upon the petitioner....”[C.P.L.R. § 217(1)]. This abbreviated time frame is said to serve public policy by freeing government operations from the “cloud” of potential litigation [Best Payphones, Inc., v. Department of Information, Technology and Communications of City of New York, 5 N.Y. 3d 30, 832 N. E. 2d 38, 799 N.Y.S. 2d 182 (2005)]. An administrative determination becomes “final and binding” triggering the four month statute of limitations for commencing an Article 78 proceeding, when the petitioner seeking review has been aggrieved by it. [Rocco v. Kelly, 20 A.D. 3d 364, 799 N.Y.S. 2d 469 [App. Div. 1st. 2005]; Yarbough v. Franco, 95 N.Y. 2d 342, 740 N.E. 2d 224, 717 N.Y.S. 2d 79 [2000]. The four month limitations period for Article 78 review runs from petitioner’s receipt of the adverse determination [Yarbough v. Franco, 95 N.Y. 2d 342, 740 N.E. 2d 224, 717 N.Y.S. 2d 79 [supra].

NYCHA’s determination became final and binding when petitioner received notice of the Board determination in July of 2010. He filed this Article 78 Petition within four months of receipt of NYCHA’s determination therefore the petition is timely.

According to the “one year rule” only where a remaining family member has lived in an original public housing tenant’s apartment for one year after having been granted written permission to do so may the remaining family member succeed to the apartment (Torres v. New York City Housing Authority, 40 A.D. 3d 328, 835 N.Y.S. 2d 184 [App. Div. 1st. Dept. 2007]). As such remaining family member status has been denied to a Grandson who despite residing in the apartment many years, did not become “ an authorized occupant of the apartment prior to the Grandmother’s death.”(Valentin, v. New York City Housing Authority, 72 A.D. 3d 486, 898 N.Y.S. 2d 130 [App. Div. 1st. Dept. 2010]), a Granddaughter who failed to obtain written approval or occupy the apartment continuously for a period of one year after obtaining permission (Hargrove v. Van Dyke Housing, 63 A.D. 3d 741, 880 N.Y.S. 2d 156 [App. Div. 2nd. Dept. 2009]), a Daughter who had not resided in the apartment for one year prior to her mother’s death and had not applied for permission to rejoin household (Pelaez v. New York City Housing Authority, 56 A.D. 3d 325, 867 N.Y.S. 2d 413 [App. Div. 1st. Dept. 2008]), an occupant who did not enter the apartment lawfully and for which no written permission was given to the tenant of record (Abreu v. New York City Housing Authority, 52 A.D. 3d 432, 860 N.Y.S. 2d 115,[App. Div. 1st. Dept. 2008]; Jamison v. New York City Housing Authority, 25 A.D. 3d 501, 809 N.Y.S. 2d 14 [App. Div. 1st. Dept. 2006]; New York City Housing Authority v. Newman, 39 A.D. 3d 759, 834 N.Y.S. 2d 541 [App. Div. 2nd. Dept. 2007]).

“ A showing that the authority knew of, and took no preventive action against, the occupancy by the tenant’s relative, could be an acceptable alternative for compliance with the notice and consent requirements.” [McFarlane v. New York City Housing Authority, 9 A.D. 3d 289, 780 N.Y.S. 2d 135 [App. Div. 1st. 2004]; However, it has not been shown by this record that the authority knew of Petitioner’s occupancy and took no action. The documents submitted by petitioner to show that the Housing Authority was aware of his presence in the apartment were not documents submitted to or issued by the Housing Authority. The letter from the Law Firm of Binder & Binder and from the Human Resources Administration addressed to Petitioner at the subject premises do not prove that Respondent NYCHA, was aware of and acquiesced to petitioner’s presence in the apartment [see Exh. T & U]. In addition, as previously stated by Project manager Pearl Stroud, petitioner was excluded from the apartment for non-desirability and a Criminal Background Check [CBC] determined petitioner to be ineligible. Respondent has the right to impose screening and eligibility requirements for remaining family member claimants (Falson v. New York City Housing Authority, 283 A.D. 2d 353, 726 N.Y.S. 2d 23 [1st. Dept. 2002]), and this decision under these facts cannot be said to be arbitrary and capricious.

Finally, there was no evidence presented to indicate that the tenant lacked the mental capacity to request written permission for petitioner’s occupancy [Rivera v. New York City Housing Authority, 2009 WL 673843 (App. Div. 1st. Dept. 2009)].

Petitioner did not obtain written permission from Management to reside in the apartment permanently; Petitioner had been permanently excluded from the household and from even visiting the apartment; petitioner did not reside in the apartment for a period of one year with written permission prior to the tenant’s of record death; Therefore, petitioner cannot be granted remaining family member status and his petition to annul the Hearing Officer’s determination must be denied.

Accordingly, it is the decision and order of this court that the petition is denied and the proceeding is dismissed. The Landlord Tenant proceeding under Index number L & T 01894708 is transferred and referred back to housing court Part E for a further determination.

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

ORDERED, that the Landlord Tenant proceeding under Index number L&T 018947/08 is transferred to Housing Court Part E for further determination; and it is further

ORDERED, that all stays in the Housing Court proceeding are lifted.

This constitutes the decision and judgment of this court.

Dated: January 14, 2011

MANUEL J. MENDEZ
J.S.C.

MANUEL J. MENDEZ
J.S.C.

Check one: X FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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).