

Lettsome v New York City Hous. Auth.

2011 NY Slip Op 30804(U)

April 1, 2011

Supreme Court, New York County

Docket Number: 402614/10

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

_____ EREA LETTSOME,

INDEX NO. 402614/10

- v -

MOTION DATE 03-23-2011

NEW YORK CITY HOUSING AUTHORITY,

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

The following papers, numbered 1 to 2 were read on this Article 78 petition _____

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

PAPERS NUMBERED

1

Answering Affidavits — Exhibits _____

2

Replying Affidavits _____

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).

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 brings this Article 78 Petition to annul the Hearing Officer's determination dated May 26, 2010, following an administrative hearing, sustaining the administrative charges and terminating her tenancy.

Petitioner resides at 903 East 6th Street Apt. 5C(Riis II Houses) [see Answer Exhibit A]. On May 1, 2007 under index number 5591/07 Respondent served Petitioner with a statement of charges seeking to terminate her tenancy for (1) Breach of Rules and Regulations for allowing an unauthorized occupant, Gustav Lettsome, to reside in the apartment since January 2006 without obtaining prior written consent; (2) Non-desirability in that " during the said time period filed annual affidavits of income with NYCHA which did not include the employment income of Gustav Lettsome ; (3) on or about January 8, 2007 on project grounds or in the immediate vicinity thereof Gustav Lettsome (I) did unlawfully possess a weapon, to wit, a concealed penknife and (ii) did unlawfully possess marijuana; (4) on or about April 8, 2007 said Gustav Lettsome, did unlawfully attempt to steal property from another person, and (5) misrepresentation in that since January 2006 annual review papers submitted failed to include income of Gustav Lettsome as part of your total household income [see Answer Exhibit E, F & G].

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

That proceeding was terminated by a stipulation dated July 16, 2007, approved by the board on September 19, 2007, placing Petitioner on five (5) years probation. In the stipulation petitioner agreed that "any members of the household, guests, or persons who hold themselves out to be authorized members of the household, shall not commit any act or omission which would constitute grounds for termination of tenancy as set forth under the Housing Authority's Termination of Tenancy Procedures, including the following grounds: Non-desirability by Breach of any Rule and/or Regulation of the Authority, Chronic Breach of the Rules and Regulations of the Authority, Chronic Delinquency in the payment of rent, ..." In the Stipulation Petitioner admitted that Gustav Lettsome is not an authorized occupant of the apartment, and agreed to repay the Authority \$9, 306.00 for misrepresentation of income. [see Answer Exhibits H, I, J].

Petitioner became delinquent in payment of her rent in February 2009. She withheld the rent claiming Respondents breached the warranty of habitability. In September 2009 Petitioner's son Gustav Lettsome was arrested and found to be in possession of six bags of crack cocaine in Housing Authority grounds. On October 12, 2009 a search warrant was executed in the apartment following a controlled drug purchase at the apartment by a confidential informant. At the time of the execution of the warrant police recovered crack cocaine from a top a dresser in plain view inside Gustav Lettsome's room. Petitioner, her son Givan and her son Gustav were all arrested. The District Attorney's office decline to prosecute petitioner and her son Givan. Gustav Lettsome pled guilty and was sentenced to probation. [see Answer Exhibits O, Q, R, S, T, U, V, X].

In January 21, 2010, following interviews to discuss the termination of her tenancy, petitioner's file was referred to the Terminations unit [see Answer Exhibits K, L]. Petitioner was charged with (1) Violation of Probation (2) Non-desirability in that " on or about October 12, 2009, in the New York City Housing Authority apartment leased to you and under your control, you, alone or in concert with Givan Lettsome and Gustav Lettsome, did unlawfully possess, sell or attempt to sell a controlled substance, to wit, "crack cocaine" ; (3) on or about September 16, 2009 on Authority premises or in the immediate vicinity thereof said Gustav Lettsome (i) did unlawfully ride a bicycle on a public sidewalk, (ii) did unlawfully possess a controlled substance, to wit, six bags of "crack cocaine"; (4) Breach of Rules and Regulations in that " you permitted unauthorized occupant Gustav Lettsome to take up residence in your authority apartment without obtaining prior written consent as required; (5) you... failed to cause the individual on the premises with your consent, to refrain from illegal or other activity...; (6) you failed to pay your rent when due." [see Answer Exhibit M].

An Administrative Hearing was held on April 21, 2010 before Hearing Officer Joan Pannell. On the date of the hearing Respondent presented the testimony of detective James Lake from the Manhattan South Narcotics unit, Police Officer Joseph Gerasci from the Manhattan Housing Bureau and the following exhibits: (1) Tenant's resident lease; (2) Tenant's summary; (3) Current tenant ledger card showing rental arrears of \$6,614.50 (4) Determination of status in case number 5591/07; (5) search warrant; (6) arrest report Gustav Lettsome; (7) property collection invoices; (8) Arrest Report Mr. Lettsome 9/16/09; (10) Property Collection invoice Gustav Lettsome; (11) Controlled substance analysis report. Petitioner presented the following exhibits (A) letter from District Attorney showing prosecution declined; (B) L & T stipulation for rental arrears payment [c] Fair Hearing compliance statement. [see Answer Exhibit O].

At the hearing Petitioner denied the charges alleging that Gustav Lettsome does not reside with her and was not arrested at the premises on the day the warrant was executed. She stated that Gustav took a set of her keys and lets himself into the apartment when she is not around. She stated that there were no drugs found in the apartment when the warrant was executed. Finally she stated that she has applied for a one shot deal which should be sufficient to make her current on her rental arrears. [see Answer Exhibit O].

Hearing Officer Pannell left the record open until April 30, 2010 for petitioner to provide proof that HRA would process her request for a one shot deal. Such request was approved on May 3, 2010 but was not faxed and mailed to Hearing Officer Pannell until May 11, 2010 [see Answer Exhibit FF, Petition Exhibit D].

On May 11, 2010 Hearing Officer Pannell issued her decision sustaining the charges except those alleging drug activity by Petitioner and Givan Lettsome, and disposing that Petitioner's tenancy be terminated. NYCHA's Board approved Hearing Officer Ambert's decision and disposition, to terminate Petitioner's tenancy, on May 26, 2010. [See Answer Exhibits DD & EE].

It is the function of the housing authority Hearing Officer to determine credibility and the weight to be accorded testimony given by a witness in a termination of public tenancy proceeding (see *Jimenez v. Popolizio*, 180 A.D. 2d 590, 580 N.Y.S. 2d 302 [App. Div. 1st. 1992]; *Wooten v. Finkle*, 285 A.D. 2d 407, 728 N.Y.S. 2d 152 [App. Div. 1st. Dept. 2001]). The record supports the charges of Violation of probation, Non-desirability and Breach of Rules and Regulations (See *Romero v. Martinez*, 280 A.D. 2d 58, 721 N.Y.S. 2d 17 [App. Div. 1st. Dept. 2001] Testimony of investigator that tenant's son was in bed when they inspected apartment sufficient to support determination that tenant broke terms of probation and stipulation).

An administrative decision will withstand judicial scrutiny if it is supported by substantial evidence, has a rational basis and is not arbitrary and capricious, (*Matter of Pell v. Board of Education*, 34 N.Y. 2d 222, 356 N.Y.S. 2d 833, 313 N.E. 2d 321 [1974]; *Davis v. Hernandez*, 13 A.D. 3d 90, 786 N.Y.S. 2d 444 [App. Div. 1st. 2004]). Termination of tenancy as a penalty for chronic rent delinquency is not so disproportionate to the offense as to be shocking to one's sense of fairness (*Clendon v. New York City Housing Authority*, 33 A.D. 3d 913, 823 N.Y.S. 3d 456 [App. Div. 2nd. 2006]). The repeated failure or refusal of a tenant to pay rent when due is a sufficient standard for a termination of tenancy adjudication (*Molse v. Christian*, 97 A.D. 2d 536, 468 N.Y.S. 2d 42 [App. Div. 2nd. Dept. 1983]). Petitioner's Chronic Rent Delinquency is not excused by her claimed mitigating circumstance (*Davis v. Hernandez*, 13 A.D. 3d 90, 786 N.Y.S. 2d 444 [1st. Dept. 2004]; *Haggerty v. New York City Housing Authority*, 69 A.D. 2d 862, 415 N.Y.S. 2d 629 [2nd. Dept. 1979]).

Judicial review of an administrative determination under Article 78 is confined to the facts and record adduced before the agency. Sanctions must be upheld unless it shocks the judicial conscience (see *Featherstone v. Franco*, 95 N.Y.2d 550, 742 N.E. 2d 607, 720 N.Y.S. 2d 93 [2000]). The Hearing Officer's decision and disposition to terminate Petitioner's tenancy is not a grossly disproportionate punishment (see *Romero v. Martinez*, 280 A.D. 2d 58, 721 N.Y.S. 2d 17 [App. Div. 1st. Dept. 2001]; *Patrick v. Hernandez*, 309 A.D. 2d 566, 765 N.Y.S. 2d 508 [App. Div. 1st. Dept. 2003]).

Accordingly, for the foregoing stated reasons It is ORDERED and ADJUDGED that the Petition is denied and the proceeding is dismissed. And it is further,

ORDERED, that the file under L & T No. 015309/10 is transferred and referred back to Part E, and it is further

ORDERED, that all stays of the Landlord and Tenant Proceeding under index No. 015309/10 are hereby vacated.

This constitutes the decision and order of this court.

Dated: April 1, 2011

Manuel J. Mendez
J.S.C. **MANUEL J. MENDEZ**
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

UNFILED JUDGMENT

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