

Rahi v Nehari
2018 NY Slip Op 31707(U)
July 23, 2018
Civil Court of the City of New York, New York County
Docket Number: 50773/2018
Judge: Jack Stoller
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART N

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HICHAM RAHI,

Petitioner,

Index No. 50773/2018

- against -

DECISION/ORDER

RIDA NEHARI,

Respondent.

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Present: Hon. Jack Stoller
Judge, Housing Court

Hicham Rahi, the petitioner in this proceeding (“Petitioner”), commenced this holdover proceeding against Rida Nehari, the respondent in this proceeding (“Respondent”), seeking possession of 308 West 94th Street, Apt. 321, New York, New York (“the subject premises”) on the basis that Petitioner is the tenant of the subject premises and that Petitioner terminated Respondent’s month-to-month tenancy. Prior to the trial, the Court took Respondent’s answer orally pursuant to RPAPL §743. Respondent, who was unrepresented by counsel, answered that Petitioner has abandoned the subject premises and, in effect left the subject premises to Respondent. The Court held a trial of this matter on July 2, 2018.

The parties did not dispute pertinent facts at trial. The subject premises is subject to the hotel provisions of the Rent Stabilization Code. Petitioner became a tenant of the subject premises in 1998 and Petitioner’s landlord (“the landlord”) has been registering him as such with the New York State Division of Housing and Community Renewal (“DHCR”) pursuant to 9 N.Y.C.R.R. §2528.3. The subject premises has one room. The rent is \$367.00 a month. By an

oral agreement, Petitioner sublet the subject premises to Respondent in 2004. Respondent has been living in the subject premises ever since that date and Petitioner has not been living in the subject premises since that date. While the parties have some dispute about whether Respondent paid rent directly to the landlord, and Respondent did not introduce any evidence of such payments, there is no dispute that for a good portion of Respondent's subtenancy, Respondent paid rent to Petitioner and Petitioner then paid rent to the landlord.

Under ordinary circumstances, subtenants are in the same legal position vis a vis their sublessors as tenants are with landlords. IBM v. Joseph Stevens & Co., L.P., 300 A.D.2d 222, 223 (1st Dept. 2002). Accordingly, a sublessor may terminate the tenancy of a subtenant on thirty days' notice, as Petitioner has done here. RPL §232-a.

However, upon proof that a sublessor has abandoned the premises, the Court shall dismiss a summary proceeding that a sublessor subsequently commences against a subtenant. See Davis v. Bonds, 61 Misc.2d 917 (App. Term 2nd Dept. 1969). The matter of Bruenn v. Cole, 165 A.D.2d 443, 448 (1st Dept. 1991), states the test to determine whether a sublessor has abandoned the premises:

[A]nimus revertendi[] remains the criterion by which a tenant is judged to have conveyed a sublease and retained a reversionary interest. In this regard, the length of time for which the tenant has relinquished occupancy of the premises remains a salient consideration. The [C]ourt notes that, in the current Rent Stabilization Law, the duration of a sublease is expressly limited to two years [N.Y.C. Admin. Code §26-511(c)(12), and] may be construed as a statutory expression of what constitutes a reasonable time period for a sublease. In any event, given the number of years which passed between the date [the prime tenant] relinquished occupancy of the apartment and the time the issue of the nature of her tenancy arose, she may fairly be said to have abandoned any reversionary interest in the leasehold.

The "issue of the nature of the tenancy" of the putative sublessor in Bruenn, supra, 165

A.D.2d at 448, arose when the rental converted to a cooperative, which was in February of 1980. Id. at 446. The sublessor had not lived in the premises at issue since January of 1971. Id. at 447. Accordingly, the Court found that the nine years she was out of possession of the subject premises was a “salient consideration” in the determination that she had abandoned her apartment.

The facts of Bruenn, supra, are not exactly the same as the facts adduced at trial herein. The sublessor in Bruenn, supra, had even less of a connection to her apartment than Petitioner has to the subject premises. However, Petitioner has not lived in the subject premises for fourteen years. Petitioner offered no explanation as to why he wanted to live in a single-room occupancy apartment after this substantial period of time.

As the Court in Bruenn, supra, stated, in language relevant to Petitioner:

[R]egulatory protection should not be available where the tenant’s claim to the subject premises is based on less than the need for a place to call home.... Rent regulatory statutes universally exempt from their operation dwelling units “not occupied by the tenant, not including subtenants or occupants, as his primary residence” [N.Y.C. Admin. Code §26-504(a)(1)(f)]. While no finding as to primary residence was sought or made, there is no reading of the facts in this case which would permit the conclusion that the subject apartment was [the sublessor’s] primary residence and, therefore, there is no philosophical or equitable basis for applying the Rent Stabilization Law to protect her tenancy.

Id. at 447-48.

Not only would Petitioner’s protracted absence from the subject premises militate against any proposition that the subject premises is Petitioner’s primary residence, Berwick Land Corp. v. Mucelli, 249 A.D.2d 18 (1st Dept. 1998), Sommer v. Ann Turkel, Inc., 137 Misc.2d 7, 9-10 (App. Term 1st Dept. 1987), *leave to appeal denied*, 1988 N.Y. App. Div. LEXIS 65 (1st Dept. 1988), but Petitioner’s long-term subletting of the subject premises is probative of nonprimary

residence as well. Glenbriar Co. v. Lipsman, 5 N.Y.3d 388, 392-393 (2005), Riverbay Corp. v. Houston, 23 Misc.3d 1104(A) (Civ. Ct. Bronx Co. 2009). Even if Petitioner were to move back into the subject premises after regaining possession of the subject premises from Respondent, he would still be subject to eviction on the basis of nonprimary residence, as a failure to maintain an rent-regulated apartment as a primary residence is incurable, Arroyo v. Donovan, 70 A.D.3d 517 (1st Dept. 2010), O'Quinn v. N.Y. City Dept. of Hous. Pres. & Dev., 284 A.D.2d 211, 212 (1st Dept. 2001), Stahl Assoc. Co. v. State Div. of Housing & Community Renewal, 148 A.D.2d 258, 268 (1st Dept. 1989), and the entire history of a tenancy is subject to scrutiny on this ground. 615 Company v. Mikeska, 75 N.Y.2d 987, 988 (1990), Berwick Land Corp., *supra*, 249 A.D.2d at 18, King Enters., Ltd. v. Glazer, 27 Misc.3d 127(A)(App. Term 1st Dept. 2010).

If Petitioner did not prevail, however, Respondent would be entitled to be deemed to be a “permanent tenant” of the subject premises as defined by 9 N.Y.C.R.R. §2520.6(j).¹ For housing accommodations located in hotels, a “permanent tenant” is an individual who has continuously resided in the same building as a principal residence for a period of at least six months. 9 N.Y.C.R.R. § 2520.6(j). As a straightforward application of this language to the instant matter demonstrates that Respondent is an individual who has resided in a hotel for more than six months, the only requirements for permanent tenant status, he is a permanent tenant. PR 307 W. 93, LLC v. Peralta, 59 Misc.3d 141(A)(App. Term 1st Dept. 2018). See Also Kanti-Savita v.

¹ While Respondent did not plead that he is a permanent tenant, both parties made argument on closing about whether the Court can deem Respondent to be a “permanent tenant.” Under these circumstances, Respondent’s failure to plead the issue does not preclude the Court from considering it. 366 W. 30th St., L.L.C. v. Avila, 57 Misc.3d 157(A) (App. Term 1st Dept. 2017)(a failure by a represented party to specifically assert in a pleading a claim to possession as a “permanent tenant” does not preclude a litigant from raising the issue), Einhorn v. McCloud, 2017 N.Y. Slip Op. 51323(U), ¶¶ 1-2 (App. Term 1st Dept.).

Santiago, 18 Misc.3d 74 (App. Term 2nd Dept. 2007), Smiley v. Williams, 26 Misc.3d 170, 174 (Civ. Ct. N.Y. Co. 2009).

Petitioner argues that Respondent cannot be a “permanent tenant” because Petitioner’s extant tenancy pre-dates Respondent’s occupancy. The specific language of 9 N.Y.C.R.R. §2520.6(j) informs the Court in an evaluation of Petitioner’s argument. As an occupant has to reside in a hotel for at least six months before obtaining “permanent tenant” status, logic demands that an occupant of a hotel is not a permanent tenant before the six-month duration elapses. The Rent Stabilization Code explicitly recognizes that an occupant of a hotel may not yet be a permanent tenant. 9 N.Y.C.R.R. §2520.6(m). Moreover, the regulation does not require that an occupant solely reside in one particular unit at a hotel in order to become a permanent tenant. Rather, the regulation defines a “permanent tenant” as a continuous resident of “the same building” for six months. 9 N.Y.C.R.R. §2520.6(j). What this tells the Court is that an occupant can reside in a hotel under color of any incarnation of residency, be it as a hotel guest or as a licensee without detracting from the occupant’s ultimate eligibility for permanent tenant status. 222 E. 12 Realty LLC v. McNally, 2016 N.Y.L.J. LEXIS 4854, *6-7 (Civ. Ct. N.Y. Co.); *aff’d*, 59 Misc.3d 127(A) (App. Term 1st Dept. 2018). Accordingly, an extant tenancy in a hotel-stabilized unit does not prevent another occupant from attaining a “permanent tenant” status. *See, e.g.,* Aimco 240 W. 73rd St., LLC v. Koren, 59 Misc.3d 127(A)(App. Term 1st Dept. 2018)(an occupant was a permanent tenant when even when the landlord recognized the occupant’s family, including her adult child, as a tenant instead of the occupant), Dexter 345, Inc. v. Hanlon, 2018 N.Y. Slip Op. 50797(U)(App. Term 1st Dept. 2018)(occupant deemed a permanent tenant although his sister had already been a tenant of the premises).

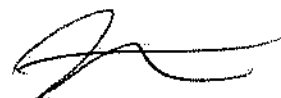
Petitioner's regaining possession of the subject premises would deprive Respondent of a permanent tenancy that he should be entitled to by law for the benefit of a tenant whose sheer longevity of absence from the subject premises demonstrates, at best, that Petitioner is not the kind of tenant who is the victim of a housing crisis and therefore should not be a beneficiary of the Rent Stabilization Law or demonstrates, at worst, an abandonment of the subject premises.

Accordingly, the Court dismisses this proceeding against Respondent with prejudice.

The parties are directed to pick up their exhibits within thirty days or they will either be sent to the parties or destroyed at the Court's discretion in compliance with DRP-185.

This constitutes the decision and order of this Court.

Dated: New York, New York
July 23, 2018



HON. JACK STOLLER
J.H.C.