

Byas v New York City Hous. Auth.
2020 NY Slip Op 32668(U)
June 26, 2020
Supreme Court, Bronx County
Docket Number: 801172/2020
Judge: Malaika Scott-McLaughlin
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX: HOUSING PART HE

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DEVIN BYAS,

Petitioner,

Index No. L & T 801172/2020

-against-

DECISION/ORDER

NEW YORK CHITY HOUSING AUTHORITY
(MELROSE HOUSES)

Respondent.

Present:

Hon. Malaika Scott McLaughlin

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Introduction and Procedural History

Petitioner, Devin Byas, commenced this illegal lock-out proceeding against New York City Housing Authority (“NYCHA”)(“Respondent”) under Real Property and Proceedings Law (“RPAPL”) § 713 (10) seeking to be restored to possession of Apartment 13E located at 681 Cortland Avenue, Bronx, New York 10451 (“Subject Premises”). Petitioner alleged that he was in peaceable, possession of the Subject Premises before he was illegally locked out of said premises.

Respondent, appearing through counsel, filed an Answer and asserted a general denial as well as the following affirmative defenses: (i) the Subject Premises was abandoned; (ii) Petitioner is an unauthorized occupant and a trespasser; and (iii) Petitioner has not established that he resided in the Subject Premises for the past thirty (30) days. Petitioner retained Mobilization for Justice as counsel. The Court set the matter down for a hearing on June 4, 2020.

The Hearing

The Court conducted a hearing via Skype over the course of two days – June 4, 2020 and June 10, 2020. Skype technology has allowed the Housing Court to hear emergency cases during

the quarantine due to the current COVID19 pandemic. At the hearing, Petitioner testified on his own behalf and Respondent called Jonathan Kramer as a witness.

Petitioner entered the following documentation into evidence: (1) a copy of a Certificate of Birth, dated September 6, 2000, for Devin Byas; (2) a copy of a Death Transcript, dated January 12, 2018, for Walter Byas; (3) a copy of a New York City Housing Authority Remaining Family Member Claim letter, dated May 13, 2019, to Petitioner that lists the Subject Premises as his address; (4) a copy of a letter, dated May 18, 2019, by Petitioner; (5) a copy of Petitioner's Social Security Card, (6) a copy of a Family Court of the State of New York County of Bronx, Certificate of Adoption, dated October 20, 2010, that granted Walter Byas as the adoptive parent of Devin Monet Byas; (7) a copy of a letter, dated March 12, 2019, by Dr. Patricia E. Clark, Interim Dean at the College of Liberal Arts and Sciences for State University of New York ("SUNY") Oswego that lists the Subject Premises as Petitioner's address; (8) a copy of a letter, dated March 8, 2019, from the SUNY Broome Financial Aid Office that lists the Subject Premises as Petitioner's address; (9) a copy of Petitioner's Certificate of Residence Affidavit, dated April 30, 2018, that lists the Subject Premises as Petitioner's address; (10) a copy of a letter from the United States Government Selective Service System, dated March 21, 2019, to Petitioner that lists the Subject Premises as Petitioner's address; (11) copies of Petitioner's NYCHA payment receipts to the account of Tenant of Record Walter Byas, dated September 4, 2018, October 1, 2018, December 3, 2018, January 3, 2019, February 1, 2019, March 1, 2019, April 1, 2019, and May 6, 2019, respectively; (12) a copy of Petitioner's New York City Department of Education Student Transcript, dated June 2018, that lists the Subject Premises as Petitioner's address; and (13) a copy of Petitioner's Discover It Card account summary statement, dated July 8, 2019, that lists the Subject Premises as Petitioner's address.

Petitioner credibly testified that he moved into the Subject Premises in 2001, and that he lived with the Tenant of Record Walter Byas, who was his grandfather and his adoptive parent. He credibly testified that the Tenant of Record Walter Byas passed away in January 2018 and that he is currently the sole occupant of the Subject Premises. He credibly testified that he contacted NYCHA and requested a grievance as well as a lease for the Subject Premises. He credibly testified that he paid the monthly rent for the Subject Premises until approximately May 2019. He testified that, commencing in the Summer of 2019, he had his mail forwarded to his godmother Catherine Canteen's apartment, which is located at 730 East 166th Street, Apartment 6D, Bronx, New York 10456 ("Canteen's Apartment").

Petitioner credibly testified that he has been attending college in Upstate New York. He credibly testified that he stays at the campus dormitory during the academic semesters and he returns to the Subject Premises during the academic breaks. He credibly testified that he utilizes the Subject Premises as his official mailing address for his college.

Petitioner credibly testified that he maintains the Subject Premises as his residence. He described his belongings at the Subject Premises, which consists of his clothes, tools, and blankets. He testified that he gave his bed to one of his brothers and that he sleeps on the floor with blankets at the Subject Premises. He credibly testified that he recently purchased a new bed. He credibly testified that he intends to refurnish the Subject Premises as he disposed of the deceased Tenant of Record Walter Byas' old furniture.

Petitioner credibly testified that, during his 2019 Winter recess, he returned to the Subject Premises in December 2019 and that he continued to intermittently stay at the Subject Premises until approximately January 2020 when he returned to his college campus. He credibly testified that he remained at his college campus until his 2020 Spring recess. He credibly testified that he

left his college campus on March 15, 2020 in the early morning and that he went to visit with his aunt in New Jersey. He testified that, due to the COVID19 pandemic, he temporarily remained at his aunt's New Jersey residence. He testified that on May 6, 2020 he traveled back to his college to retrieve his personal belongings.

Petitioner testified that he was locked out of the Subject Premises on May 7, 2020 and that, upon returning from his college campus early in the morning, his keys did not work as the plate to the door lock had been removed. He credibly testified that thereafter he went to his godmother Canteen's Apartment. He testified that on May 8, 2020 he contacted the Melrose Houses management office and he was not provided with a key to the Subject Premises.

On cross examination, Petitioner testified that his last visit to the Subject Premises was in May 7, 2020 and at said visit he found that the locks to the Subject Premises had been changed. He acknowledged that, prior to being locked out, he was last inside the Subject Premises in January 2020. He credibly testified that he did not return to the Subject Premises between approximately January 2020 through May 2020, because he was on campus at his college in Upstate New York.

Petitioner credibly testified that the Tenant of Record Walter Byas passed away in January 2018 and that he paid the monthly rent for the Subject Premises from February 2018 through May 2019. He acknowledged that he did not make a rent payment after May 2019. He testified that on or about July 2019, he commenced forwarding his mail from the Subject Premises to Canteen's Apartment. There was no redirect examination. Thereafter, Petitioner rested.

On their case-in-chief, Respondent presented the following documentary evidence: (a) a copy of Petitioner's Wayfair receipt, dated May 6, 2020, for a bed that was shipped to Canteen's Apartment; and (b) undated photographs of the Subject Premises.

Respondent called Jonathan Kramer (“Kramer”), the property manager for NYCHA Melrose Houses. Kramer credibly testified that he has been the property manager for the Subject Building for approximately four years. He testified that, upon learning of the death of the Tenant of Record Walter Byas from a deceased report received by NYCHA, he mailed letters to the Subject Premises. He credibly testified that Petitioner was listed as the emergency contact for the deceased Tenant of Record Walter Byas.

Kramer testified that, on May 7, 2020 at 2:30 pm, he was present when a NYCHA maintenance worker changed the locks to the entrance door of the Subject Premises. He observed the locks being changed and thereafter he entered the Subject Premises as well as took photographs of the interior of the Subject Premises on his NYCHA phone. He testified that, based on his observations of the Subject Premises on May 7, 2020, he believed that no one was living at the Subject Premises prior to May 7, 2020. He credibly testified that, after taking photographs, he vacated the Subject Premises.

On cross examination, Kramer credibly testified that he did not have the physical NYCHA file for the Subject Premises with him, because he was not in the office and he was appearing remotely for the hearing. He credibly testified that he was unable to produce the letters, which NYCHA sent to the Subject Premises, because he was not in the office. He credibly testified that the letters are in the NYCHA database. He credibly testified that NYCHA had commenced a licensee holdover proceeding against Petitioner and that he did not have a copy of the holdover proceeding documentation with him, because he was not physically in his office. He testified that he did not have a lock change work order for the Subject Premises. There was no redirect examination. Then Respondents rested.

Both parties provided closing briefs on June 17, 2020 and then the Court reserved decision.

Findings of Fact and Conclusions of Law

Real Property and Proceedings Law (“RPAPL”) § 713 (10) provides, in pertinent part, that:

“A special proceeding may be maintained under this article after a ten-day notice to quit has been served upon the respondent in the manner prescribed in section 735, upon the following grounds:

“10. The person in possession has entered the property or remains in possession by force or unlawful means and he or his predecessor in interest was not in quiet possession for three years before the time of the forcible or unlawful entry or detainer and the petitioner was peaceably in actual possession at the time of the forcible or unlawful entry or in constructive possession at the time of the forcible or unlawful detainer; no notice to quit shall be required in order to maintain a proceeding under this subdivision.”

In addition, pursuant to New York City Administrative Code § 26-521, “[i]t shall be unlawful for any person to eviction or attempt to evict an occupant of a dwelling unit who has lawfully occupied the dwelling unit for thirty consecutive days or longer” except to the extent permitted by law pursuant to a warrant of eviction or other order of a court of competent jurisdiction or a governmental vacate order (*see Salazar v Core Servs. Grp., Inc.*, 2020 NY Slip Op 50424[U][Civ Ct, Bronx County 2020]; *see also Bascus v Lake*, 2020 NY Slip Op 50425[U][Civ Ct, Bronx County 2020]).

Moreover, “[a]n illegal lockout case may be found where the petitioner was in actual or constructive possession of the premises and the respondent’s entry was either forcible or unlawful” (*Wilson v Raput LLC*, 2018 NY Slip Op 51098[U][Civ Ct, Bronx County 2018]; *see Romanello v Hirshfield*, 98 AD2d 657 [App Div, 1st Dept 1983]; *see also Goncalves v Soho Village Realty, Inc.*, 47 Misc3D 76 [App Term, 1st Dept 2015]). It has been held that petitioner’s right to maintain an illegal lockout proceeding is not dependent “upon the number of ‘consecutive’ days he may have resided in the apartment prior to the tenant’s death” (*Goncalves v Soho Village Realty, Inc.*,

47 Misc3d 76, 77). The Court explained that “[a]lthough ‘possession for thirty consecutive days or longer’ is relevant construct in determining whether a landlord-tenant relationship exists in connection with certain limited classes of occupants, it plays no part at all in determining whether a particular forcible entry proceeding is properly maintained” (*Goncalves v Soho Village Realty, Inc.*, 47 Misc3d 76, 77).

Furthermore, it has been held that “a licensee does not have ‘possession’ and “cannot maintain an unlawful entry and detainer proceeding” (*Andrews v Acacia Network*, 59 Misc 3d 10 [App Term, 2nd Dept 2018]). However, the enactment of the Housing Stability and Tenant Protection Act of 2019 (“HSPTA”) made many changes to the law surrounding alleged lockouts. RPAPL § 768 was added and it provides, in pertinent part, that “[i]t shall be unlawful for any person to evict or attempt to evict an occupancy of a dwelling unit who has lawfully occupied the dwelling unit for thirty consecutive days or longer or who has entered into a lease with respect to such dwelling unit for thirty consecutive days or longer . . . except to the extent permitted by law pursuant to a warrant of eviction or other order of a court of competent jurisdiction or a governmental vacate order”. RPAPL § 711, also amended by the HSPTA, provides, in pertinent part, that “[n]o tenant or lawful occupant of a housing accommodation shall be removed from possession except in a special proceeding.”

Also, “[a]bandonment of an apartment is defined as the ‘intent to abandon and engaging in some act or failure to act that indicates that the tenant no longer has an interest in the premises’” (*Coleman v Onsite Pro. Mgt., Inc.*, 44 Misc3d 1221[A]*3 [Civ Ct, Bronx County 2014]). “Surrender is defined as ‘a tenant’s relinquishment of possession before the lease has expired, allowing the landlord to take possession and treat the lease as terminated’” (*Coleman v Onsite Pro. Mgt., Inc.*, 44 Misc3d 1221[A]*3-4). “It must be established that two facts concurrently exist: (1)

[i]ntention to abandon or relinquish, and (2) some overt act or some failure to act which carries the implication that the owner neither claims nor retains any interest in the subject matter of the abandonment” (*Coleman v Onsite Pro. Mgt., Inc.*, 44 Misc3d 1221[A]*4). “The burden of proving an abandonment or surrender is on the party seeking to establish it or relying upon such abandonment or surrender” (*Coleman v Onsite Pro. Mgt., Inc.*, 44 Misc3d 1221[A]*4).

Here, based on the testimonial and documentary evidence, the Court finds that Petitioner has established that Respondent has illegally locked Petitioner out by changing the locks to the Subject Premises without proper legal notice and proceeding and Respondent did not provide a key to Petitioner. The Court finds that Petitioner has established that, although he may not have been in actual possession for thirty consecutive days prior to the date of the lockout, he has been in constructive possession of the Subject Premises (*see Bascus v Lake*, 2020 NY Slip Op 50425[U]). Petitioner showed a sufficient nexus to the Subject Premises for at least thirty (30) days prior to being locked out. Petitioner also gave written notice to Respondent that he was seeking succession rights as a remaining family member of the Tenant of Record Walter Byas and requested a lease to the Subject Premises.

The Court finds that Respondent did not satisfy their burden of proving an abandonment of the Subject Premises by Petitioner. Respondent’s argument that Petitioner is an unauthorized occupant of the Subject Premises and not entitled to legal process is not persuasive since the passage of the HSPTA. Furthermore, Respondent has commenced a holdover proceeding against Petitioner to obtain possession of the Subject Premises.

Based on the foregoing, the petition is granted and the Clerk is directed to prepare a final judgment of possession in favor of Petitioner. Respondent is directed to restore Petitioner to possession of 681 Cortland Avenue, Apartment 13E, Bronx, New York 10451 forthwith upon

service of a copy of this Decision and Order and Petitioner may seek the assistance of the New York Police Department in the enforcement of this order. In making this determination, the Court expresses no views as to Petitioner's ultimate tenancy status.

Petitioner is directed to serve a copy of this Order upon Respondent by email and 1st class mail with certificate of mailing by June 30, 2020. Damages are reserved for a plenary action. This Decision and Order is without prejudice to any claims or defenses the parties may have against one another.

Upon default by Respondent, Petitioner may restore this proceeding to the court's calendar, with proof of proper service of a copy of this Order, for appropriate relief.

Conclusion

Accordingly, the petition is granted.

The foregoing constitutes the Decision and Order of this Court, copies of which are being emailed to the parties' counsel.

Dated: Bronx, New York
June 26, 2020

HON. MALAIKA SCOTT-MCLAUGHLIN
J.H.C.

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