

Albany Hous. Auth. v Arner

2021 NY Slip Op 31970(U)

January 25, 2021

City Court of Albany

Docket Number: LT-282-20

Judge: William A. Kelly

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STATE OF NEW YORK COUNTY OF ALBANY
CITY OF ALBANY CITY COURT, CIVIL PART

Albany Housing Authority

Petitioner,

-against-

INDEX NO. LT-282-20
DECISION and ORDER

Thomas Arner

Respondent.

Brian Kremer, Esq.
Attorney for Petitioner
200 South Pearl Street
Albany, NY 12202

Thomas Arner
Defendant, *Pro Se*
680 Central Avenue
Apt 11A
Albany, NY 12202

HON. WILLIAM G. KELLY, JR.

Petitioner commenced this summary proceeding against Respondent on January 2, 2020 seeking eviction based on a holdover tenancy. The petition prays for a final judgment awarding possession of the subject premises to Petitioner and the issuance of a Warrant of Eviction.

The parties were scheduled to appear on March 30, 2020; however, effective March 16, 2020 all New York State Courts were shut down except to conduct matters deemed to be essential, which landlord-tenant summary proceedings were not so deemed. This case was therefore adjourned initially without date and then scheduled for a court appearance to be held on September 8, 2020. The September 8, 2020 court date was thereafter rescheduled to September 18, 2020, at which time the matter was scheduled for trial for September 30, 2020. On the date of trial

Respondent claimed to be represented by Legal Aid, however, Legal Aid did not appear on behalf of Respondent. The trial was then rescheduled for October 13, 2020 to enable Respondent to obtain an attorney if so desired. Respondent appeared pro se on the scheduled trial date. The Court finds the following facts and conclusions of law.

Petitioner commenced this summary proceeding to terminate Respondent's tenancy based on the grounds of drug-related criminal activity. At the hearing, Petitioner presented the testimony of Albany Police Detectives William Norris and John Regan who coordinated a sale of illegal narcotics involving Respondent. As members of the Community Response Unit (CRU) the Detectives are responsible, in part, to investigate crimes in the sale of narcotics and controlled substances. According to Detective Norris, the CRU had received several complaints from other tenants who reside in the same apartment building as Respondent, that illegal drug activity was occurring on the premises.

Detective Norris testified that on January 28, 2019, the CRU performed a controlled buy of illegal narcotics with respondent at 680 Central Avenue. A controlled buy refers to a type of drug investigation in which an undercover officer or a confidential informant is first searched to confirm she/he has no contraband on her/his person. The officer or confidential informant is then provided with prerecorded funds to make a buy and transported to a prearranged area for the transaction. Here, the CRU used a confidential informant (CI) who wore a camera and microphone allowing the officers to view the illegal sale in real time. Detective Norris testified that the CI entered the elevator at the premises and engaged in a discussion with respondent, asking respondent if he could provide them with narcotics. Respondent said he could and was given \$50 from the CI. Respondent then left the premises and returned a short while later and delivered a quantity of crack-cocaine to the CI while inside the premises. Detective Regan submitted to the

Court the Booking and Arrest Report stemming from the controlled buy, indicating that Respondent was charged with Criminal Sale of a Controlled Substance 3rd Degree in violation of Penal Law §220.39(1), a B Felony. The criminal matter is still pending.

Respondent sought to exploit an inconsistency between the testimony of Detectives Norris and Regan. Detective Norris indicated that the crack-cocaine was turned over to Respondent while on the elevator with the CI, while under cross-examination Detective Regan recalled that the exchange of the crack-cocaine occurred outside of the elevator and in front of Respondent's apartment. Regardless, the alleged criminal activity occurred within the AHA property.

Petitioner's action to terminate the tenancy is based on the lease provision which states in part that the "tenant ... shall not engage in: [a]ny criminal, violent or drug-related activity on or off the Authority's premises that the Authority determines may interfere with or threatens the health, safety or right to peaceful enjoyment of the public housing premises by other tenants, or employees of the Authority."

Based upon a review of the record, Petitioner has set forth substantial evidence that Respondent violated a material term of the lease by engaging in criminal and/or drug-related activity on the premises of the Albany Housing Authority and is subject to eviction. Willock v. Schenectady Mun. Hous. Auth., 271 A.D.2d 818 (Third Dept 2000). Despite the inconsistency as to whether the exchange of the crack-cocaine took place in or outside of the elevator, the Court views this inconsistency as slight and otherwise gives full credence to the testimony of Petitioner's witnesses.

Based on the foregoing, the Court concludes that Petitioner has satisfied their burden and are entitled to a warrant of eviction.

Before the issuance of a warrant of eviction, the Court must determine if the recently enacted COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020 is applicable to the facts at hand. Intent on staving off an eviction influx, the New York State Legislature passed the COVID-19 Act to prevent, in part, evictions and proceedings against residential tenants experiencing financial or health-related hardships. Absent “special circumstances,” eviction proceedings pending on the effective date of the act are stayed for a period of 60 days allowing residential tenants unable to pay their rent, secure alternate housing or are suffering a financial/health related hardship, to file a “Hardship Declaration” that will prevent the filing, proceedings on and execution of any warrant of eviction until May 1, 2021.

“Special circumstances,” exempt from protection, exist where tenants are “persistently and unreasonably engaging in behavior that substantially infringes on the use and enjoyment of other tenants or occupants or causes a substantial safety hazard to others.” Pending matters alleging such behavior may continue to proceed.

Here, in response to numerous tenant complaints the Community Response Unit conducted an undercover operation to combat unlawful drug-related activity. The operation showed that respondent sold illegal narcotics, crack-cocaine, while on AHA property. In as much as this Court determined that respondent’s criminal and drug-related activity on AHA premises interferes with or threatens the health, safety or right to peaceful enjoyment of the premises, tenants or employees, in the same breath, Respondent’s conduct causes a substantial safety hazard to others extinguishing the right to stay the proceedings.

As a side note, the Court acknowledges the necessity of more than one event to qualify as “persistently and unreasonably engaging in behavior that substantially infringes on the use and enjoyment of other tenants.” However, the multiple event qualifier does not apply when the

safety of others is at hand. The very phrase of “substantial safety hazard” dispenses with the need for more than one event. It is further illogical to think that the Legislature’s efforts were to provide additional protection for tenants creating safety hazards. Regardless, 680 Central Avenue is a federally subsidized low-income housing project subject to the rules and regulations promulgated by the United States Department of Housing and Urban Development. (see 42 USC § 1437d [1] [6]; 24 CFR § 5.100), and (*West Haverstraw Preserv., LP v Diaz*, 2d Department, 2018 N.Y. Misc. LEXIS 225 *; 2018 NY Slip Op 50085(U) **; 58 Misc. 3d 150(A); 94 N.Y.S.3d 541). Requiring multiple instances of objectionable conduct contradicts the federally mandated proscription against “drug-related criminal activity” on federally subsidized property. (Id.)

The Court notes that the petition does not set forth the aforementioned *persistently, unreasonably or substantial safety hazard* language. However, that shall not prove fatal to the petition and require a new submission. The petition clearly states that respondent, “did knowingly and unlawfully exchange... .5 grams of crack-cocaine a narcotic drug, to another,... for “50.00... This criminal ... activity interferes with and threatens the right to peaceful enjoyment of the premises by other tenants, and furthermore pose a serious safety concern as such acts are conducive in maintaining decent, safe and sanitary housing conditions.”

The petition further notifies all that such “criminal, violent or drug-related activity on ... the Authority’s premises that the Authority determines with or threatens the health, safety, or right to peaceful enjoyment of the ... premises by other tenants, or employees” is a lease violation and grounds for termination. With respondent clearly being on notice of the alleged conduct and Petitioner’s intent to evict, the Court shall amend the petition, sua sponte, to include the additional basis for petitioner to seek a judgment of possession and a warrant of eviction. As

there has been no change to the factual allegations, there is no prejudice or undue surprise to respondent requiring the submission of a new petition.

Under these circumstances, requiring a new filing subverts the purpose of the COVID-19 Act which is to protect our law-abiding citizens facing eviction when coping with a financial and/or health related crisis, while allowing proceedings to continue against tenants whose conduct creates a substantial safety hazard. Judicial economy further encourages such discretion when a pandemic such as this has imposed limitations upon the Courts accessibility, but for these special circumstances.

Submit Warrant.

So ordered.

Dated at Albany, New York
January 25, 2021



William Kelly Jr.
Albany City Court Judge