

Lucille C. Clark HDFC, Inc. v Ng

2022 NY Slip Op 34629(U)

May 5, 2022

Civil Court of the City of New York, New York County

Docket Number: Index No. L&T 300183/22

Judge: Marc Finkelstein

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This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK : HOUSING PART F

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LUCILLE C. CLARK HDFC, INC.,

Petitioner-Landlord,
-against-

Index No.
L&T 300183/22

IVY NG,

DECISION AND ORDER

Respondent-Occupant,
and,

“JOHN DOE”, “JANE DOE”,

Respondents-Undertenants.

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MARC FINKELSTEIN, J.:

This summary licensee holdover proceeding was commenced by petition and notice of petition dated December 30, 2022. Petitioner moves for an order directing payment of use and occupancy. Respondent opposes raising that the standard of RPAPL 745 (2) has not been met. However, petitioner brought this motion under an equitable claim.

Contrary to respondent’s argument, the court is not limited to granting use and occupancy exclusively by NY RPAPL §745. See, e.g. 2114 Realty LLC v Estate of Rosa Sanabria, 72 Misc 3d 1218(A) (Civ Ct, Kings County 2021) and Findlay House, Inc. v Zhang Hongliu, 61 Misc 3d 644 (Civ Ct, Bronx County 2018). It is well settled that:

An occupant’s duty to pay the landlord for its use and occupancy of the premises is predicated upon the theory of quantum meruit, and is imposed by law for th purpose of bringing about justice without reference to the intention of the parties.

Eighteen Assoc., LLC v Nanjim Leasing Corp., 257 AD2d 559 (2d Dept 1999); See also, Carlyle, LLC v Beekman Garage LLC, 133 AD3d 510 (1st Dept 2015). Furthermore, “[i]t is manifestly unfair that defendant herein should be permitted to remain in possession of the subject

premises without paying for their use.” MMB Assoc. v Dayan, 169 AD2d 422 (1st Dept 1991).

The amount of use and occupancy “should generally be set a the fair rental value” of the premises which can be determined *inter alia* by proof of rent paid under the prior lease. Vanchev v Mulligan, 52 Misc 3d 138(A), (App Term 2nd Dept 2016).

Petitioner annexes the last signed lease for the subject premises, a senior supportive housing residence regulated by HUD, with a monthly rental amount of \$1,039.00, of which decedent tenant was responsible for \$124.00. Petitioner also annexes papers indicating that respondent Ivy Ng, decedent tenant’s daughter, was accepted as a live in home health aid for her mother, and as such her income was not counted to the tenant’s portion of rent. Respondent does not contest the exhibits submitted and does not address the amount at which use and occupancy should be set.

Respondent is, therefore, ordered to pay use and occupancy directly to petitioner *pendente lite* in the amount of \$1,039.00 per month. May 2022 use and occupancy is to be paid by May 18, 2022. Thereafter, ongoing use and occupancy is to be paid by the 5th of each month commencing June 2022. Additionally, respondent is ordered to pay past use and occupancy in the amount of \$3,117 (representing \$1,039.00 per month for the period of February 2022 through April 2022) by May 30, 2022. The court determined the start date of the use and occupancy obligation under this order to be February 2022, one month after the initiation of this proceeding and considered the notice given to respondent that such use and occupancy would be sought in the Notice to Vacate and the Petition.

This matter will appear on the court's calendar as previously scheduled on May 18, 2022 at 12:30 p.m. for all purposes.

This constitutes the decision and order of the court.

Dated: New York, New York
May 5, 2022


MARC FINKELSTEIN
JHC

MARC FINKELSTEIN
JUDGE, HOUSING COURT