

Pratt Assets LP v Kerr

2023 NY Slip Op 32715(U)

July 12, 2023

Civil Court of the City of New York, Kings County

Docket Number: Index No. LT-302056-22

Judge: Tashanna B. Golden

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This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS, HOUSING PART S

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Pratt Assets LP,

Petitioner-Landlord

-against-

Andrew Kerr, Nia Marchioness Nataj, Chanel Kim
Jae-Hung, Andrea Tham, Mohammed Al Sagri,
Sara Ibel,

Respondent-Tenant(s)

and

"John Doe" and/or "Jane Doe"

Respondent's-Undertenants

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Present: Hon. Tashanna B. Golden

Recitation as required by CPLR 2219(a), of the papers considered in the review of the
Petitioner's Order to Show Cause seeking a Use and Occupancy order:

Papers:	Numbers
Petitioner's OSC, Affirmation in Support, and Exhibits.....	53-56
Respondent's Affirmation in Opposition and Exhibits.....	58-59
Petitioner's Reply.....	60
Court File.....	Passim

Petitioner filed this instant holdover proceeding on or about January 2, 2022, seeking final judgment and possession of the premises located at 147 Greene Ave, Unit 2, Brooklyn, New York 11238, from respondents-tenants, Andrew Kerr, Nia Marchioness Nataj, Chanel Kim Jae-Hung, Andrea Tham, Mohammed Al Sagri, Sara Ibel, John Doe, and Jane Doe. Petitioner predicated its holdover proceeding upon service of a 90-day notice of termination of tenancy dated October 14, 2021, terminating the Respondent's month to month tenancy on January 31, 2022. On or about February 17, 2022, Mobilization for Justice ("MFJ") by Meaghan Whyte, filed a notice of

appearance on behalf of the Respondents Ker, Nottage, Kim, Tham and Al Hagri (hereinafter the "Respondents"). An answer was filed on March 29, 2022, wherein personal jurisdiction; de facto rent stabilization; rent overcharge; and warranty of habitability defenses were asserted.¹ The matter was adjourned by the court several times in an attempt at settlement. On June 7, 2022, Respondents filed a motion seeking discovery.² Petitioner filed opposition on July 22, 2022.³ On July 28, 2022 Respondent filed a reply.⁴ The matter was marked submitted on August 11, 2022. On December 12, 2022, Hon. Michael L. Weisberg granted Respondent's motion for discovery, and set a status conference for January 19, 2023.⁵ Discovery was not rendered substantially complete until May 17, 2023, almost one year after the filing of Respondent's motion. On May 23, six days after the "substantial completion" of the discovery request, Petitioner filed the instant motion via Order to Show Cause seeking Use and Occupancy pursuant to RPAPL § 745(2)(a).

Petitioner seeks a Use and Occupancy Order pursuant to RPAPL § 745(2)(a). RPAPL § 745(2)(a) provides in pertinent part:

In a summary proceeding upon the second of two adjournments **granted solely** at the request of the respondent, or, upon the sixtieth day after the first appearance of the parties in court **less any days that the proceeding has been adjourned upon the request of the petitioner**, counting only days attributable to adjournment requests made solely at the request of the respondent and not counting an initial adjournment requested by a respondent unrepresented by counsel for the purpose of securing counsel, whichever occurs sooner, the court may, upon consideration of the equities, direct that the respondent, upon a motion on notice made by the petitioner, deposit with the court sums of rent or use and occupancy that shall accrue subsequent to the date of the court's order, which may be established without the use of expert testimony. The court **shall not** order deposit or payment of use and occupancy where the respondent can establish, to the satisfaction of the court that respondent has properly interposed one of the following defenses or established the following grounds... (iv) a defense based upon the existence of hazardous or immediately hazardous violations of the housing maintenance code in the subject apartment or common areas; or (v) a colorable defense of rent overcharge; or (vi) a defense that the unit is in violation of the building's certificate of occupancy or is otherwise illegal under the multiple dwelling law or the New York city housing maintenance code....(Emphasis added)

¹ See NYSCEF Document # 8

² See NYSCEF Documents #10-25

³ See NYSCEF Documents #26-33

⁴ See NYSCEF Documents #34-35

⁵ See NYSCEF Document #37

As per the summary of the history of this matter, though the Petition was filed 17 months ago, the delay in moving forward cannot be attributed to the Respondent as adjournments were due to motion practice and presumably on consent. See *Allmen v Andre*, NYLJ, Apr. 8, 1998 at 30, col 1 (Civ Ct, NY County 1998) (finding that where a landlord and tenant consent to an adjournment, their agreement, to the extent subject to the approval of the court, is appropriately considered a request by both parties to the court for the adjournment. It is therefore excludable from the thirty days upon the passage of which a rent deposit is to be ordered). Considering it took several months for Petitioner to furnish the ordered discovery, the delay, if any, was on their part, with the final completion date **six** days before the filing of the instant motion. RPAPL § 745 (2)(a) is clear on its face that consideration of a use and occupancy order may only occur “upon the sixtieth day after the first appearance of the parties in court **less any days that the proceeding has been adjourned upon the request of the petitioner.**” Thus, the Court finds that the Petitioner’s request is premature.

Even if this court were to find that Petitioner’s request is appropriate under the stated timeframe for relief, Respondent has set forth three defenses which preclude the requested relief under RPAPL § 745(2)(a). There is no dispute that there are currently 10 outstanding Class B violations for the subject premises. Class B violations are considered “hazardous” under the New York City Housing Maintenance Code. R.C.N.Y. § 44-01(a). Furthermore, Petitioner’s assertion that upon inspection the Department of Buildings expressly observed “the building is according with c or o #1752 issued on 1/15/1928” directly conflicts with violation 16011123 and 16011124 which require the Petitioner to discontinue the rooming unit and remove all partitions at the attic and discontinue the rooming unit at 2nd/3rd story, respectively.⁶ Therefore, the Court finds that it is precluded from granting Petitioner’s motion for use and occupancy under RPAPL § 745(2)(a).

⁶ See HPD website

Petitioner's Order to Show Cause is denied. The matter is hereby restored to the calendar to be sent to the trial part on September 6, 2023 10:30 am, Part S, Rm 602.

The foregoing is the Decision/Order of this court.

Dated: Brooklyn, New York
July 12, 2023



Hon. Tashanna B. Golden
Judge, Housing Court

SO ORDERED
HON. TASHANNA B. GOLDEN
JUDGE, HOUSING COURT

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