

Hari Om Hotels LLC v Wechsler

2024 NY Slip Op 32914(U)

August 8, 2024

Justice Court of the Town of Clarkstown, Rockland
County

Docket Number: Index No. 24-050847

Judge: Amiee Pollak

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**JUSTICE COURT OF THE TOWN OF CLARKSTOWN
COUNTY OF ROCKLAND**

----- X
HARI OM HOTELS LLC d/b/a QUALITY INN, :
 :
 Petitioner-Landlord, : DECISION AND ORDER
 :
 -against- : Index No. 24-050847
 :
 :
 LEONTINE WECHSLER a/k/a MARY QECHSLER, :
 And every person in possession of the premises :
 known as :
 100 SPRING VALLEY MARKETPLACE, :
 ROOM 225 :
 SPRING VALLEY, NY 10977 :
 :
 Respondent-Tenant. :
----- X

Hon. Aimee Pollak, Town Justice:

The Court has before it the Motion to Dismiss the verified petition of Hari Om Hotels LLC d/b/a Quality Inn (Petitioner) to recover real property from Leontine Wechsler a/k/a Mary Qechsler and every person in possession of the premises known as 100 Spring Valley Marketplace, Room 225, Spring Valley, NY 10977 (Respondent/Tenant). The following papers were read in deciding this motion:

1. Notice of Motion, dated June 6, 2024/Affirmation of Zev Goldstein, Esq., dated June 5, 2024, with Exhibit A;
2. Affirmation of Brian Condon, Esq., in opposition, dated July 11, 2024;
3. Reply Affirmation of Zev Goldstein, Esq., in further support, dated July 16, 2024.

Background

Hari Om Hotels LLC (Petitioner) owns and operates the Quality Inn Hotel located at 100 Spring Valley Marketplace, Spring Valley, New York 10977. Leontine Wechsler a/k/a Mary Qechsler (Respondent) resides in Room 225 at the Hotel.

On April 12, 2024, Petitioner caused a Thirty Day Notice to be served personally on Respondent. The notice, which is dated April 10, 2024, indicates that Petitioner has elected to terminate Respondent's occupancy. It further states that unless Respondent removes herself from the premises on or before May 20, 2024, Petitioner will commence summary proceedings for her removal. The Notice of Petition and Verified Petition to Recover Real Property were served on Respondent via "nail and mail" service on May 22, 2024. The petition alleges that Respondent continues in possession without permission after expiration of "said term." (§ 7). The petition does not allege the specifics of the term.

On June 17, 2024, Respondent moved to dismiss the petition per CPLR § 3211(a)(7) based on Petitioner's failure to serve a proper predicate notice pursuant to Real Property Law §226-c, which came into effect as part of the Housing Stability and Tenant Protection Act (HSTPA) of 2019. (codified at Laws 2019, ch 36, §§3, 29 (Part M)).

Arguments

Respondent argues that this Court must dismiss the petition because the predicate notice was not proper. Respondent argues that she was entitled to a 60 day notice pursuant to RPL §226-c(2)(c). Respondent argues in the alternative that the 30 Day Predicate notice was improper pursuant to RPL § 232-b because the termination date of May 20, 2024 did not provide a complete calendar's month notice. Finally, Respondent argues that RPAPL § 702 and RPL § 234-a prevent assessment of legal fees in a summary proceeding.

In opposition, Petitioner argues that RPL § 226-c is not applicable in this case because Respondent is a tenant at will per RPL § 228. Petitioner argues that Respondent is considered a tenant at will because the term of the tenancy is of an indefinite period. Petitioner points out that a tenancy at will can be terminated by a written notice of "not less than 30 days" pursuant to RPL

§ 228. Petitioner further argues that RPL § 232-b allows termination of a month-to-month tenancy by notification at least one month prior to expiration of the term. Petitioner argues that there was no expiration of the rental month since Respondent overstayed, so the one month notice was valid.

In reply, Respondent argues that she cannot be considered a tenant at will because she has lived at the Hotel for more than one year. Respondent further argues that even if she was a tenant at will at some point, her tenancy was converted to a month-to-month tenancy by RPL § 226-c because she has been in possession for more than one year.

Discussion

On a motion to dismiss for failure to state a cause of action, the court must accept as true all of the factual allegations in the petition. See Leon v Martinez, 84 N.Y.2d 83, 87-88, (1994). The pleading is to be afforded a liberal construction, per CPLR § 3026, and the petitioner is accorded the benefit of every possible favorable inference. See 511 W 232nd Owners Corp. v. Jennifer Realty Co., 98 N.Y.2d 144, 152 (2002). “Whether a [petitioner] can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss.” EBC I, Inc. v. Goldman, Sachs & Co., 5 N.Y.3d 11, 19 (2005).

The summary eviction proceedings are codified at Article 7 of the Real Property Actions and Proceedings Law (RPAPL). As creations of statute in derogation of the common law, the courts have held that there must be strict adherence to the governing statutory provisions. See Dulberg v. Ebenhart, 68 A.D.2d 323, 328 (1st Dept. 1979) (summary proceeding may be maintained only where authorized by statute); Zenila Realty Corp. v Masterandrea, 123 Misc.2d 1 (Civ. Ct. NY Co. 1984). A proper notice is a condition precedent to validly terminating a lease. See Chinatown Apts. v. Chu Cho Lam, 51 N.Y.2d 786, 787-788 (1980). A petitioner has no basis

to initiate a holdover proceeding without a valid predicate notice, and a predicate notice cannot be amended to cure its defects. See id.

Here, the factual allegations are sparse. Neither Petitioner nor Respondent provided affidavits. The only factual allegations in the Petition are (1) that the Thirty Day Notice was served on Respondent by certified mail¹ (Pet'n ¶ 3) and (2) that the term of possession that has expired, (Pet'n ¶ 7) ("Respondent and respondents-undertenants continue in possession of the Premises without permission of the Petitioner after the expiration of said term."). The petition does not contain any claims about the length of the term of the lease. Although the fact is not alleged in the petition, it is undisputed that Respondent has resided at the hotel for over a year. See Goldstein Aff. dated June 5, 2024 at ¶ 6 ("Tenant has resided with Landlord for over a year"); Condon Aff. in Opp. ¶ 5 ("The tenant has stayed at the Petitioner's hotel on a day to day basis for over a year.").

The parties only appear to disagree about the validity of the predicate notice. Petitioner argues that the sixty day notice provision does not apply in this case because Respondent is actually a tenant at will per RPL § 228, which requires only a thirty day notice to terminate a tenancy. Petitioner argues that the recently enacted statute RPL § 226-c(2)(c) does not supersede the older statute, RPL § 228. Respondent argues that RPL § 226-c(2)(c) applies to this tenancy and Petitioner was required to give Respondent at least sixty days notice when terminating her tenancy because it is conceded that she has resided in the premises for more than one year.

A tenancy at will is created when a person "is given the right to exclusively occupy the premises, irrespective of whether rent was paid." Barbara Schwimmer 40th St. LLC v. Santos, 2022 NYLJ LEXIS 2725, NYLJ, Feb. 8, 2023 at p.17, col.3, *14-15 (Civil Ct. Kings Co. 2022). The permission to occupy the premises without any obligation to pay rent is the *sine qua non* of a

¹ This allegation appears to be in error, as the affidavit of service included with the petition as Exhibit A states that Petitioner was personally served with the Thirty Day Notice.

tenancy at will. See Larned v. Hudson, 60 N.Y. 102, 104 (1875) (“The defendant was in possession, holding for no particular time, paying no rent, making no compensation for the use of the land, but made agreement to surrender the premises whenever the landlord should require the possession. He was clearly a tenant at will. As such tenant at will the defendant was entitled to one month's notice to quit and surrender the premises.”) (quoting Barns v. Bryant, 31 N.Y. 453 (1865)); see also Donnelly v. Neumann, 170 A.D.3d 597, 598 (1st Dept. 2019) (“Since plaintiffs did not pay rent after termination of their tenancy of indeterminate duration, they became tenants at will.”); Rodriguez v. Greco, 31 Misc.3d 136(A) (App. Term 2d Dept. 2011) (ex-wife who occupied the former marital residence while divorce was proceeding is tenant at will, not licensee); City of New York v. Utsey, 185 Misc. 2d 715 (App. Term 2d Dept. 2000) (distinguishing between squatter, who never had permission to occupy, and tenant at will, who is in possession with express consent of owner). Cf. Fischer v. Queens Park Realty Corp., 41 A.D.2d 547, 549 (2d Dept. 1977) (“tenant in possession under an invalid lease is a tenant at will and is entitled to the notice requirements by section 228 of the Real Property Law before he can be removed.”). But see, Jewish Bd. of Family & Children's Servs., Inc. v. Sabater, 82 Misc.3d 1241(A), *6 (Civ Ct. Bronx Co. 2024) (“While the acceptance of rent on a monthly basis creates, at a minimum, a monthly tenancy, Stauber v. Antelo (163 A.D.2d 246, 248 (1st Dept. 1990)), it could become a ‘tenancy at will’, depending on the other facts and terms of the parties’ agreement.”).

The verified petition, which is treated as an attorney affidavit per CPLR § 105(u), did not allege that Respondent was a tenant at will. It does not allege that Respondent was not required to pay rent or that she was in possession for an indefinite term. To the contrary, the petition claims that Respondent has “continue[d] in possession . . . after the expiration of said term.” Therefore, even according Petitioner the benefit of every favorable inference, there is nothing in the pleading


upon which it could be concluded that Respondent is a tenant at will who is only entitled to a thirty day notice pursuant to RPL § 228.²

Instead, reading the petition with every inference in Plaintiff's favor, the petition alleged a holdover after a tenancy of some term that has expired. In that case, RPL § 226-c applies, and based on the undisputed fact that Respondent has resided in the Hotel for over one year, a sixty day notice of termination was necessary. Therefore, commencement of a summary proceeding could not occur until the date sixty days after service of the notice. The notice was served on April 12, 2024, making June 13, 2024, the first date for filing of the petition. This petition was filed on May 24, 2024, so it must be dismissed for failure to comply with a condition precedent.

The remaining arguments are dismissed as moot.

ORDERED that Respondent's Motion to Dismiss the Petition is GRANTED.

Dated: New City, New York
August 8, 2024


HON. AIMEE POLLAK
Clarkstown Town Justice

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² Neither party addressed whether a tenant at will can be subject to a summary eviction proceeding under RPAPL Article 7.