

140 Ash Assoc. LLC v Yu Wei Wang

2024 NY Slip Op 34650(U)

October 9, 2024

Civil Court of the City of New York, Queens County

Docket Number: Index No. L&T 304854/24

Judge: Clinton J. Guthrie

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This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS: HOUSING PART B

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140 ASH ASSOCIATES LLC,

Petitioner,

-against-

YU WEI WANG, LI LIU, YI LIN WONG, "JOHN
& JANE DOE,"

Respondents.
-----X

Present:

Hon. CLINTON J. GUTHRIE
Judge, Housing Court

Index No. L&T 304854/24

**AMENDED
DECISION/ORDER**

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of respondent’s motion for summary judgment:

Papers	Numbered
Notice of Motion & All Documents Annexed.....	<u>1 (NYSCEF # 11-17)</u>
Affirmation in Opposition & All Documents Annexed.....	<u>2 (NYSCEF # 19-22)</u>
Affirmation & Affidavit in Reply.....	<u>3 (NYSCEF # 23-24)</u>

Upon the foregoing cited papers, the decision and order on respondent’s motion is as follows:

PROCEDURAL HISTORY

This holdover proceeding predicated on a 60-day notice of termination was filed in March 2024. All respondents appeared through counsel on June 6, 2024, and an answer was interposed on their behalf on June 10, 2024. Thereafter, respondents, through counsel, made the instant motion for summary judgment, seeking dismissal of the petition because of an allegedly defective notice of termination. Petitioner opposed the motion and reply papers were filed. The court heard argument on the motion on October 8, 2024 and reserved decision.

DISCUSSION/CONCLUSION

Respondents seek summary judgment on the basis that the notice of termination expired on the 29th day of the month (February 29, 2024), rather than the 28th, which was the calendar day when their original lease expired (February 28, 2023). Respondents also state that according to a provision of their lease, the expiration was actually the 14th day of the month. Petitioner opposes the motion in all respects, asserting that the notice gave more than 60 days’ notice from service and terminated on the last day of the month, which happened to be February 29, 2024.

Under the prior version of Real Property Law (RPL) § 232-a, a month-to-month tenancy in New York City could be terminated where a notice in writing was given “to the effect that the landlord elects to terminate the tenancy and that unless the tenant removes from such premises *on the day on which his term expires* the landlord will commence summary proceedings under the statute to remove such tenant therefrom.” [emphasis added]. In 2019, as part of the Housing Stability and Tenant Protection Act (HSTPA), RPL § 232-a was amended and the relevant language regarding the notice changed to, “the landlord elects to terminate the tenancy and that unless the tenant removes from such premises *on the day designated in the notice*, the landlord will commence summary proceedings under the statute to remove such tenant therefrom.” [L 2019, ch 36, §1, part M, §§ 6, 29] [emphasis added]. While some courts have continued to require that a termination notice terminate the tenancy on the last date of the term (*cf. Oumadatt v. Ramchait*, 2024 NY Slip Op 33400[U] [Civ Ct, Queens County 2024]), this court does not read the plain language of the amended version of RPL § 232-a to require that the termination date fall upon the last day of the term (*see Ben Ami v. Ronen*, 79 Misc 3d 14, 17 [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2023]).

Here, the proof of service of the notice of termination states that service was complete on December 27, 2023. As the termination date in the notice was February 29, 2024, service was complete 64 days prior to the termination. Thus, as the initial lease started no earlier than March 1, 2022, adequate notice was given under RPL 232-a and 226-c that the tenancy would be terminated. Accordingly, Respondent's motion for summary judgment and for dismissal is denied.

This proceeding will be restored to the Part B calendar for trial transfer on October 23, 2024 at 9:30 AM. This Decision/Order will be filed to NYSCEF.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated: Queens, New York
October 9, 2024



HON. CLINTON J. GUTHRIE
J.H.C.

ORDERED - HON. CLINTON J. GUTHRIE