

Riverbay Corp. v Ryan
2011 NY Slip Op 30500(U)
March 4, 2011
Civil Court of the City of New York, Bronx County
Docket Number: 26000/09
Judge: Sabrina B. Kraus
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX: HOUSING PART B

RIVERBAY CORPORATION

X

Petitioner-Landlord

-against-

DECISION & ORDER
Index No.: L&T 26000/09

HON. SABRINA B. KRAUS

MARIE RYAN
VICTORIA RYAN
920 CO-OP CITY BOULEVARD, APT 21A
BRONX, NEW YORK 10475

Respondents-Tenants

X

BACKGROUND

This summary holdover proceeding was commenced by **RIVERBAY CORPORATION** (Petitioner) seeking to recover possession of Apartment **21A** at **920 CO-OP CITY BOULEVARD, BRONX, NEW YORK 10475** (Subject Premises) based on the allegation that **MARIE RYAN** and **VICTORIA RYAN** (collectively “Respondents”), the proprietary lessees of record had failed to maintain the premises in a sanitary condition, and that there was excessive accumulation and clutter in the Subject Premises creating a fire hazard, and that this constitutes a breach of Respondents’ obligations under the occupancy agreement.

PROCEDURAL HISTORY

The proceeding was commenced by service of a Notice of Termination, dated April 8, 2009, terminating respondents’ tenancy as of May 5, 2009. The Notice reads in pertinent part:

You have caused or permitted an extremely unsanitary and hazardous condition to exist in your apartment. You have permitted an excessive accumulation of garbage, paper, books, and refuse top be strewn throughout the apartment. This has caused a condition of extreme clutter in your apartment that prevents the proper ingress and egress throughout the apartment and constitutes an immediate health and fire hazard. The convectors in each room are covered and prevents(sic) the landlord's maintenance personnel from servicing the units in the event of a leak. The landlord is unable to effectuate necessary repairs in your apartment due to its cluttered and unsanitary condition. The landlord has requested that you cure this condition since June 2008 and you were issued a community complaint for poor housekeeping on October 3, 2008.

(4/8/09 Notice of Termination).

The Notice of Petition and Petition issued on May 7, 2009, and the proceeding first appeared on the Court's calendar on May 26, 2009. On May 26, 2009, both respondents appeared in Court, and the parties stipulated to adjourn the proceeding to June 24, 2009 for Respondents "to make efforts to make apt in a condition contrary to Notice of Termination. Resps to contact LL for inspection." The proceeding was adjourned again by stipulation from June 24, 2009 to July 21, 2009.

On July 21, 2009 Marie Ryan (Ryan) entered into a stipulation and the proceeding was adjourned to August 19, 2009. The stipulation provided that the adjournment was for a referral to Adult Protective Services (APS) and all other purposes. Ryan further agreed to provide Petitioner access on August 12, 2009 for an inspection to determine if Ryan had removed the clutter and effectuated a cure of the conditions alleged.

It appears from the file that the Court originally made an APS referral on June 24, 2009. APS closed the case after the initial referral because they had attempted to contact Ryan by

visiting the Subject Premises and sending her letters and had received no response.¹ The file also indicates that Judge Halprin re-referred the matter to APS. The original referral form provides that Ryan suffered from “torn brain tissue” and “Jacksonian Epilepsy” and that Ryan need to rest “nerve overcharge” and was taking “Dialanton Topril.”

There are two letters in the file from APS, dated July 14, 2009 and January 13, 2010. Both state that Ryan is ineligible for protective services, neither states the reason for that finding. The proceeding was further adjourned to September 2, 2009 for inquest (presumably because Ryan failed to appear on August 12, 2009, and then it was adjourned again to September 22, 2009.

On September 22, 2009, Ryan and Petitioner entered into a stipulation settling the case. Ryan represented in the stipulation that Marie Ryan, her daughter, no longer resides in the Subject Premises. Ryan also stipulated to remove the clutter and cure the conditions by November 30, 2009, and to an inspection on December 4, 2009, and then to maintain the Subject premises in a sanitary condition for the next 18 months, during which time Petitioner’s agents could inspect the Subject Premises twice a month on 72 hours notice. In the event of default, Petitioner was entitled to move for a judgment. The stipulation was so ordered by Judge Halprin.

On or about January 21, 2010, Petitioner moved to restore the proceeding to the calendar, asserting that Ryan had breached her obligations under the Stipulation and seeking entry of a judgment of possession. The motion was returnable on February 4, 2010. Petitioner

¹ At the time the case was commenced Judge Halprin was sitting in Part B and made the referral. The information regarding this is taken from a copy of the referral and notes made on the referral which remain in the file.

asserted that an agent went to the Subject Premises on December 14, 2009, and that the Subject Premises remained in the same cluttered condition. Petitioner annexed to the moving papers photographs taken on that date. The photographs depict very bad clutter conditions in the Subject Premises.

The motion was adjourned to March 4, 2010, pursuant to a stipulation between the parties which provided that Ryan would allow access on March 2, 2010, so Petitioner could inspect for a cure.

On March 4, 2010, the Court held a status conference, and the parties agreed to adjourn it to April 5, 2010 for a further cure. On April 5, 2010, the motion was resolved pursuant to a stipulation of settlement. Pursuant to the stipulation Respondents consented to a Final Judgment of Possession. Issuance of the warrant was stayed for Respondents to cure the unsanitary and uncluttered condition by May 31, 2010, and Respondent consented to a one year period of probation to run through April 2011. In the event of default, Petitioner was entitled to move for permission from the Court for issuance of the warrant.

THE PENDING MOTION

On December 1, 2010, Petitioner moved for issuance of the warrant asserting that Respondents had breached the terms of the April 2010 stipulation. Petitioner asserted that on September 9, 2010, two agents inspected the Subject premises and found that the apartment was still in an unsanitary and cluttered condition. Petitioner took the position that Respondent was either unwilling or unable to cure the condition. Again the motion was supported by photographs taken on September 9, 2010.

The motion was returnable on December 21, 2010. Ryan filed written opposition. Ryan

states in her opposition that she keeps a clean home, that is generally odor free, and when there is an occasional issue with odors, she uses a spray. Ryan states that she moved to Coop City in 1981, and has lived there since, and that she has strong family ties to Coop City.

Ryan blames part of the clutter problem on an issue with her Kitchen Cabinets. She states that her Kitchen Cabinets had been removed by Petitioner in August, because they were coming off the wall, and that they were not replaced by Petitioner until October. She states that many of the items depicted in the pictures would have been stored in the Kitchen Cabinets. Ryan also states that she was not given 72 hours notice of the inspection, as the stipulation required, but was only advised of the inspection 20 minutes prior to the arrival of Petitioner's agents.

Ryan states that she had retained a professional, Lisa Williams of All In Place Inc. To work with her to "... remove what others saw as clutter that I could not see as such." Ryan stated that her work with Ms. Williams was significantly delayed because of the situation with the Kitchen Cabinets.

Ryan stated she had acquired storage space from April, and that she had a number of boxes of personal items packed up and removed from the Subject Premises, and states she did not realize how many books she had in the Subject Premises. Ryan request an extension to comply with the stipulation, arguing that she was entitled to it because Petitioner had caused the delay by not timely providing Kitchen Cabinets. At the conclusion of oral argument, the Court granted Petitioner's motion to the extent of setting a date for the Court to go to the Subject Premises and view the condition.

THE INSPECTION

The Court set an inspection date for January 26, 2011. On January 26, 2011, the inspection was cancelled by the Court due to a snow storm. The inspection was rescheduled with the parties for March 2, 2011. On March 2, 2011, the court confirmed the inspection with both parties and agreed that the inspection would take place at 3pm on that afternoon.

At 3pm, the Court, and court staff, Petitioner's counsel, and three of Petitioner's agents, and Ryan met in the lobby of the Subject Building. The inspection of the Subject Premises lasted less than fifteen minutes. The Subject Premises remains in a very cluttered condition. The Subject Premises is a two bedroom, one bathroom apartment, with a Kitchen and a Living Room. Each room was filled with stacks of items, boxes, papers, and storage bins.

It was possible to physically walk into each room, but the amount of items that were in each room, precludes the room from its intended use. For example, in the Master Bedroom in addition to boxes and stacks of items around the room, there is a double or queen size bed, also stacked with various items and objects, including the top of a table. Respondent stated that she did not use the Master Bedroom for sleeping purposes. Similarly the apartment has one bathroom. The bathroom was filled with items, including the shower, which is being used as a closet with a hanging rod for clothing, and bins filled with items stored in the tub below the hanging clothes.

The means of egress were blocked in the Kitchen and Living Room creating what appears to be a fire hazard. The hallway between the rooms was passable, but only by turning sideways, there were boxes and items making it difficult to pass through the hallway.

The Subject Premises is in disrepair, the paint is peeling, there are holes in the walls in

some places, and the Subject Premises has not been maintained by Respondent. The amount of items and the disarray in which the Subject Premises is maintained would make it difficult, if not impossible, for necessary maintenance to be done to the apartment, such as repairing the holes, and painting and plastering. It also would make it impossible for large portions of the premises to be cleaned on a regular basis.

DISCUSSION

Respondent believes that the Subject Premises is in acceptable condition and that any breach has been cured. Respondent does not see the condition of the Subject Premises in the same light as the Court or Petitioner. It is hard to imagine that this is the condition the Subject Premises was in after months of clean up, the assistance of a professional organizer, and removal of several boxes of storage items as Respondent asserts. It is clear to the Court that Respondent has failed to comply with the stipulation of settlement and that Respondent has failed to cure the breach and eliminate the nuisance. Moreover, it does not appear that there is any basis to further extend Respondent's time to cure. This proceeding has been pending since May 2009. Respondent has repeatedly been given an opportunity to cure, by eliminating the excessive clutter in the Subject Premises but has failed to do so.

Based on the foregoing, Petitioner's motion is granted. The warrant of eviction may issue forthwith. Execution of the warrant is stayed through April 30, 2011, to afford Respondent an opportunity to voluntarily vacate the Subject Premises, or to appeal this order if so advised. Warrant may execute after a new and additional notification to Adult Protective Services, and after April 30, 2011.

This constitutes the decision and order of this Court.

SABRINA B. KRAUS

Dated: Bronx, New York
March 4 , 2011

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