


Civil Court of the City of New York
County of New York
Part: Part F, Room: 830
Date: September 17, 2018


Index #: LT-061452-18/NY
Motion Seq #: 1

Decision/Order

41 Tenants Corp
Petitioner(s)
-against-
Karin Werthheim; "John" "Doe"; "Jane" "Doe"
Respondent(s)

Present: Daniele Chinaea
Judge

Recitation, as required by CPLR 2219(A), of the papers considered in the review of this Motion for: **Summary Judgment**

PAPERS	NUMBERED
Notice of Motion and Affidavits Annexed	1
Order to Show Cause and Affidavits Annexed	_____
Answering Affidavits	2
Replying Affidavits	3
Exhibits	_____
Stipulations	_____
Other _____	_____
_____	_____

Upon the foregoing cited papers, the Decision/Order in this Motion is as follows:

Motion granted. Petitioner awarded a judgment of possession with a warrant of eviction to issue forthwith, execution stayed 30 days from the date of this order to provide respondent an opportunity to remove her possessions in an orderly manner.

Respondent fails to raise a triable issue of fact. In her opposition, she admits the conduct alleged by the petitioner, admits that she was warned about her conduct prior to the board terminating her tenancy, admits that she sublet the apartment even after the warning without seeking board approval, and she admits a board meeting was convened, she was informed and did not attend.

Her defense is that the petitioner wrongfully terminated her proprietary lease because the are unfairly singling her out for conduct in which other shareholders engage without penalty. Specifically, she alleges two other shareholders have guests in their units when the shareholder is not present without prior board approval. Respondent includes email communications with the Board president who was presiding when the unapproved sublet issue was first addressed with respondent in 2016. In those emails, respondent points out the president's admissions regarding others engaging in the same behavior. Respondent also set forth the same arguments made here regarding the reasons she felt she could not and should not have to comply. The Board president responded with explanations for the rules and the "sublet" fee associated with allowing others to stay in a unit when the shareholder is not present, even if the "sublettor" is not subject to a formal sublease or paying rent.

Respondent indicated she would not pay the requested sublet fee and would not comply with the Board's requests because she believe them to be unfair and burdensome.

Petitioner provides affidavits from all board members setting forth the reasons for lease termination and why it was good business judgment to have the sublet rules and to enforce them. Petitioner points out that this is a seven unit cooperative, which places even greater importance on shareholders respecting the rules and each other for the corporation to function. The two shareholders allegedly engaging in similar conduct without penalty provide affidavits in which they explain why they have avoided penalty. One admitted conduct similar to respondent's, but stated that he stopped when the Board requested he do so and he now follows the Board rules, which is corroborated by an affidavit from the current Board president and was explained to respondent in 2016, as set forth in the emails attached to respondent's opposition. The other shareholder explained that the person staying in her unit is her mother, and parents are except from the sublet rules because they are a family member permitted to occupy the premises for dwelling purposes. The proprietary lease is attached to petitioner's motion; paragraph 14 specifically gives permission parents to reside in the unit. The Board members provided affidavits corroborating that the person occupying that unit is the shareholder's mother.

Respondent's self-serving and uncorroborated allegation of improper treatment is not enough to challenge the business judgment of the Board, which is the standard of review in these cases. *See 40 W. 67th St. Corp. v Pullman, 100 NY2d 147 (2003)*. In *Pullman*, the court stated, "[t]o trigger further judicial scrutiny, an aggrieved shareholder-tenant must make a showing that the board acted (1) outside the scope of its authority, (2) in a way that did not legitimately further the corporate purpose or (3) in bad faith." *Id. at 155*. The petitioner has sufficiently established to this court that it acted within its business judgment to terminate respondent's lease for objectionable conduct in violation of the cooperative's rules and the proprietary lease. Respondent provides no basis to disturb the Board's decision or to look behind it to assess whether respondent's conduct was sufficiently objectionable to warrant termination of her lease.

Date: January 28, 2019

Judge, Civil/Housing Court
HON. DANIELE CHING
JUDGE, HOUSING COURT