

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART D

X

ROOSEVELT ISLAND ASSOCIATES,

Petitioner,

-against-

GUY LONG,

Respondent,

JOHN DOE and JANE DOE,

Respondent-Undertenants.

Index No.

L&T 77514/14

Present:

Hon. Cheryl J. Gonzales

DECISION/ORDER

X

RECITATION, AS REQUIRED BY CPLR 2219(A), OF THE PAPERS CONSIDERED IN THE REVIEW OF THIS MOTION BY PETITIONER FOR RETROACTIVE USE AND OCCUPANCY

PAPERS

NUMBERED

Notice of Motion, Affidavits & Affirmation Annexed	1-3
Notice of Cross-Motion, Affidavits & Affirmation Annexed	6-9
Answering Affidavits	
Replying Affidavits & Affirmation Annexed	14
Exhibits	4-5, 10-13

UPON THE FOREGOING CITED PAPERS, THE DECISION/ORDER IN THIS MOTION IS AS FOLLOWS:

Petitioner commenced the instant summary holdover proceeding on or about September 10, 2014, seeking to recover possession of Apartment #17-H located at 20 River Road, New York, NY, on the ground that Respondent is occupying the apartment without the landlord's permission after the expiration of the lease between the parties.

The proceeding first appeared on the Court's calendar on September 24, 2014, and was adjourned. Petitioner then moved for an order directing Respondent to pay retroactive use and occupancy as well as use and occupancy *pendente lite*.

Respondent appeared by counsel, and made this pre-answer cross-motion to dismiss this proceeding based on his contention that Petitioner failed to name a necessary party, his wife Mary M. Dobbin. In support of his request to dismiss, Respondent states that he and Mary M. Dobbin moved into the subject apartment together in July 2010. According to Respondent, Petitioner is aware that Ms. Dobbin is his wife because she has met with the landlord on at least three separate occasions regarding a noise issue in the premises, there have been email exchanges between the parties, and because she has been the point person for all repair issues in the apartment. Moreover, Respondent states that the maintenance personnel as well as the concierge all know her, and that as a result of Petitioner's failure to name her in this proceeding the petition must be dismissed.

In addition, Respondent contends that Petitioner's motion for use and occupancy is moot since the Court does not have jurisdiction over this proceeding.

In opposition, Petitioner asserts that prior to moving into the subject apartment, Respondent submitted a rental application and later signed a lease along with subsequent renewals which did not indicate that Respondent was occupying the apartment with anyone else. In addition, Petitioner contends that its failure to name the Respondent's wife as a Respondent is not fatal as her right to occupy the apartment derives from her husband and she may be removed from possession under one warrant of eviction. Further, Petitioner asserts that there have been four prior nonpayment proceedings the parties in which Guy Long was the sole named Respondent, two of which resulted in final judgments in favor of Petitioner.

CPLR § 3211 (a) (10) requires dismissal of a proceeding in the absence of a person who should be a party¹.

"The traditional rule has been that household members who are not named on a lease and whose right to occupancy derives from the tenant do not need to be named as respondents in a proceeding brought to evict the household because their right to possession is exclusively subject to that of the tenant" (*see Scherer, Residential Landlord-Tenant Law in New York* § 7:97 [Note: online version]). There are exceptions to this principle such as where the occupant has independent possessory rights to the apartment (*Scherer* at § 7:97).

Here, although there is some indication that Petitioner had some communication with Ms. Dobbin, there is also evidence that Respondent did not disclose to Petitioner that she was occupying the apartment despite the lease and the subsequent renewals requiring such disclosure. Moreover, Ms. Dobbin has not shown that she has independent rights of possession to the subject

¹ Respondent moves pursuant to § 3212 which concerns motions for summary judgment, and would be premature at this point in this proceeding as issue has not joined yet.

apartment as this is not a regulated tenancy where she could have claimed succession rights. The Court notes that any rights to the apartment Ms. Dobbin may have derive from Mr. Long who was named here.

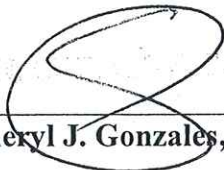
Based on the foregoing, Respondent's cross-motion to dismiss the instant proceeding is denied.

Petitioner's motion which seeks retroactive as well as ongoing use and occupancy is granted to the extent that Respondent is directed to tender to Petitioner all retroactive use and occupancy for the period of September 2014 through January 2015 at the rate of \$3,692 for a total of \$18,460 on or before January 30, 2015, and pay ongoing use and occupancy *pendente lite* by the 10th of each month beginning in February 2015 (*see* RPAPL §745 [2] [a]).

The proceeding is adjourned to February 17, 2015 at 9:30 a.m. for settlement or trial.

This constitutes the decision and order of the Court.

DATED: January 15, 2015



Cheryl J. Gonzales, J.H.C.