


CIVIL COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
HOUSING PART F, RM. 830

Index No. 70910/07
Motion Seq.: 004 & 005

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215 WEST 88TH STREET HOLDINGS LLC,

Petitioner,

- against -


Respondent,
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DECISION/ORDER

Present:

JOSEPH CAPELLA
Judge, Housing Court

The petitioner commenced the instant holdover proceeding based upon the expiration of the respondent's month-to-month tenancy. At the present time, both sides seek summary judgment on whether the respondent is protected from eviction under General Business Law 352-eeee ("Martin Act"). There is no dispute that the respondent's unregulated lease expired on July 31, 2004, and that since then the parties continued their landlord and tenant relationship on a month-to-month basis. On March 12, 2007, a condominium offering plan for the subject building was accepted for filing by the New York State Attorney General. By notice dated March 1, 2007, the petitioner terminated the respondent's month-to-month tenancy as of April 30, 2007. According to the petitioner's affidavit of service, a copy of the aforementioned termination notice was affixed to the respondent's door on March 16, 2007, which is four days after the offering plan was accepted for filing. And in a letter to the respondent dated April 20, 2007, the petitioner's sales agent for the condominium conversion wrote "as an existing Tenant, you have a wonderful opportunity to purchase your unit, for a brief period, at a discounted price reflected in the Offering Plan for tenant purchasers."

There is no dispute that since August 2005, a landlord and tenant relationship in the form of a month-to-month tenancy existed between the parties, (*see* RPAPL § 711; New York Real Property Law § 232-a), and according to the termination notice, said relationship was to continue through April 30, 2007. Nor does the petitioner dispute that the respondent was actually using and in possession of the subject apartment at the time

the offering plan was accepted for filing. Given the recent Appellate Term, First Department, decisions in *MH Residential v Barrett*, (22 Misc3d 25 [2008]), and *322 v Penhurst*, (21 Misc3d 142(A)), this court is satisfied that the respondent was a tenant in occupancy at the time the offering plan was accepted for filing. Therefore, the respondent's cross-motion for summary judgement and dismissal of the proceeding is granted, and the petitioner's motion is denied as moot.

This constitutes the decision and order of this court, copies of which are being mailed by the court to the parties' attorneys.

3/17/09
Date


Judge Joseph Capella
HON. JOSEPH CAPELLA
Housing Court