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FIBBER REALTY, LLC v. ZAMAM

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CIVIL COURT of the CITY of NEW YORK
BRONX COUNTY
HOUSING COURT: PART C

-----X
FIEBER REALTY, LLC,
Petitioner,

L & T Index No. 19/29495

-against-

KHASRU ZAMAM,
Respondent.

Decision & Order

-----X
Hon. Brenda S. Spears, J., H.C.:

Recitation, as required by CPLR 2219(A), of the papers considered in the review of the respondent's motion to dismiss

| <u>Papers</u> | <u>Numbered</u> |
|--------------------------------|-----------------|
| Notice of Motion..... | 1 |
| Affirmation in Opposition..... | 2 |
| Replying Affirmation..... | 3 |

Upon the foregoing cited papers, the decision and order in this motion is as follows:

The petitioner seeks to regain possession of the subject rent stabilized apartment, alleging that the respondent failed to cure a violation of the lease as set forth in the predicate notice. Specifically, the petitioner claims that the respondent violated a substantial obligation of the tenancy by failing to make timely payment requiring the petitioner to bring numerous summary proceedings. The predicate notice lists fourteen index numbers, with various dates listed alongside the index numbers; these dates could indicate the date the case appeared on the court calendar.

The respondent appeared and obtained legal representation. He filed a verified answer, raising four affirmative defenses.

The respondent has now moved to dismiss the petition pursuant to CPLR 3211(a)(7) and 9 NYCRR §§2524.2(b) and 2524.3(a) on the grounds that the Notice of Termination fails to state a cause of action based upon chronic rent delinquency. The petitioner has opposed this motion. For the reasons set forth herein, the respondent's motion to dismiss is granted.

In order to terminate a tenancy before the end of the lease term, a landlord must serve a notice of termination that sets forth the basis of the termination. Chinatown Apartments, Inc. v. Chu Cho Lam, 51 N.Y. 2d 786, 433 N.Y.S. 2d 86, 412 N.E.2d 1312 (1980); Ma Cedonia Towers v. Gainey, 6/12/2009 N.Y.L.J. 1, col. 6 (App. Term 2nd Dep't). A notice that fails to set forth specific facts and merely sets forth legal conclusions is inadequate. 3528 Broadway Corp. v. Cepin, 12/11/91 N.Y.L.J. 25, col. 3 (Civ. Ct. N.Y. Co.). Moreover, if the notice is inadequate, the petition must be dismissed. Chinatown Apartments v. Chu Cho Lam, *supra*; Morris v. Cole, 2/22/1989 N.Y.L.J. 23, col. 4 (Civ. Ct. N.Y. Co.).

The petitioner herein has alleged that the respondent has breached a substantial obligation of his lease by failing to pay his rent on time; the notice of termination does not set forth a specific lease provision.

It is well-settled that a landlord can maintain a chronic nonpayment holdover proceeding against a rent stabilized tenant on the grounds that the repeated chronic late payment is a violation of the lease. Solow v. Pegushin, 3/26/92 N.Y.L.J., 25, col.1 (App. Term 1st Dep't). In order to maintain such a proceeding, the petitioner must establish that it was required to commence frequent nonpayment proceedings in a relatively short period of time and that the tenant's nonpayment was willful, unjustified, without explanation or accompanied by an intent to harass a landlord. Adam's Tower Lt. Partnership v. Richter, 186 Misc. 2d 620, 825 (App. Term 1st Dep't 2000); 25th Realty Assoc. v. Griggs, 150 A.D. 2d 155, 540 N.Y.S. 3d 434 (1st Dep't 1989).

Moreover, as set forth in Westminster Properties, Ltd. v. Kass, 163 Misc. 2d 773, 624 N.Y.S. 2d 738 (App. Term 1st Dep't 1995), since the petitioner is bound by the statute of limitations concerning contract disputes, the petitioner cannot rely on nonpayment proceedings commenced more than six years before the commencement of the holdover proceeding as a basis to support a chronic nonpayment holdover proceeding.

In the instant proceeding, eight of the non-payment cases listed in the notice of termination and relied upon by the petitioner were commenced more than six years before the commencement of this case. Thus, these cases cannot form the basis for a chronic nonpayment case. Westminster Properties Ltd.v. Kass, *supra*.

There are six cases listed that are not barred by the statute of limitations. The Notice of Termination provided no information with respect to these matters, other than an index number and a date to the right of each index number.

The respondent has maintained that the petitioner did not pursue any of these cases. When a petitioner has failed to pursue a nonpayment proceeding, the petitioner cannot rely on that case to substantiate a claim for chronic rent delinquency. Chama Holding Corp. v. Taylor, 37 Misc. 3d 70, (App. Term 1st Dep't 2015).

The respondent states that in L & T Index Nos. 14/68586 and 17/17588, there were no court appearances. With respect to the remaining four proceedings, final judgments were entered on the initial court dates. There was no subsequent activity on any of the cases.

The courts have also held that in establishing a chronic rent holdover, a petitioner cannot rely upon a case where the respondent has raised warranty of habitability claims in an answer or signed a stipulation requiring the petitioner to make repairs. See, Chama Holding v. Taylor, *supra*. See also, 601 West Realty LLC v. Chapa, 3 WL 1907145 (N.Y. App. Term 2003), holding that a holdover petition based on chronic nonpayment should not be sustained where there are bona fide claims that an apartment was in need of repair; Green v. Stone, 160 A.D. 2d 367, 553 N.Y.S. 2d 421 (1st Dep't 1990). Thus, since repairs were an issue in these four proceeding, these cases cannot support a chronic nonpayment holdover proceeding.

The petitioner does not dispute any of the respondent's contention. And, the petitioner provides no information with respect to the particular of this case, including any reference to the lease provision that the respondent has allegedly breached.

Thus, the court finds that the termination notice fails to set forth a sufficient basis to maintain a chronic nonpayment proceeding. Thus, the petition is dismissed.

This constitutes the decision and order of this court.



Brenda S. Spears, J.

HON. BRENDA SPEARS

Dated: Bronx, New York

January 16, 2020

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