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WOODY HEIGHTS LLC v. JAMES

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX: HOUSING PART I

WOODY HEIGHTS LLC

L&T Index No.: 20398/2019

Petitioner,

DECISION/ORDER

-against-

PEACHEZ JAMES

Respondents.

Recitation, as required by C.P.L.R. § 2219(a), of the papers considered in review of this motion.

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	1-21
Order to Show Cause and Affidavits Annexed.....	
Answering Affidavits.....	
Replying Affidavits.....	
Exhibits.....	
Other.....	

After oral argument and upon the foregoing cited papers, the decision and order on this motion is as follows:

BACKGROUND & PROCEDURAL POSTURE

The Petitioner, Woody Heights LLC, (“Petitioner”), commenced this holdover proceeding against Peachez James, (“Respondent”), based on alleged termination of Respondent’s Section 8 subsidy. The Notice to Cure (“Notice”) dated January 18, 2019 states that Respondent must certify with NYCHA and be reinstated retroactively by February 20, 2019. The Notice of Termination dated February 25, 2019, (“Termination Notice”), expired thirty-one (31) days after the date of the Notice. Both sides are represented by counsel in this proceeding.

The Termination Notice alleges that Respondent is in violation of §2524.3(a) of the Rent Stabilization Code, the HAP contract, Federal Rules, and Lease Agreement. The Notice of Termination alleges in pertinent part, that the Respondent was/is the recipient of a Section 8 rental subsidy administered by the NYCHA and that Respondent failed to truthfully file her

annual income certification in full with the NYCHA. As a result, NYCHA Section 8 terminated Respondent the tenant from the NYCHA Section 8 program, citing fraud.

Respondents move to dismiss the nuisance allegations pursuant to CPLR §3211 (a)(7) for failure to state a cause of action. Respondent also moves to dismiss on the grounds Petitioner has failed to comply with the Williams Consent Decree.

Failure to Comply with Williams Consent

The Williams Consent Decree establishes the guidelines and rules governing Section 8 tenancies that are administered by the NYCHA. (*See Williams v New York City Housing Authority*, 975 F Supp 317 [SDNY 1997]). Pursuant to paragraph 4 of the Williams Consent Decree, good cause is necessary for the eviction of Section 8 tenant even after the Section 8 lease and Housing Assistance Payment (HAP) contract has expired or been terminated. Generally, when an eviction proceeding arises out of Section 8 issues related to the termination or suspension of the subsidy the Williams Consent requires a landlord notify the NYCHA via service of a Certificate of Basis of eviction.

The Williams Consent Decree requires that in a holdover that does not arise out of the termination or suspension of the Section 8 subsidy or termination of the HAP contract, the NYCHA must be served the Petition and Notice of Petition as the state law required or by overnight mail. Specifically, it requires the landlord to, “upon commencement of the proceeding, serve a copy of the Notice of Petition and Petition on the Authority or send a copy of said documents to the Authority by overnight mail.” (Williams Consent Decree, Paragraph (6)(b)(2); *Johnson v Woods*, NYLJ, Sep 6, 2017 at 33 [Civ Ct, Queens County 2017]).

“The NYCHA must be served the petition and notice of petition as the state law requires or by overnight mail (See paragraph 6(b)(2) of the Williams consent decree.) The order makes no other method of delivery available to the private landlord.” (*Alawlaqi v Kelly*, 175 Misc 2d 570, 571, 1998 NY Slip Op 98076 [Civ Ct, Kings County 1997]). In the instant proceeding, Petitioner’s Affidavit of Service notes that the Petition and Notice of Petition were served “on 4/26/2019 additional mailing by regular and Certified Mail to: NYCHA Section 8 – 250 Broadway.” Petitioner has failed to oppose Respondent’s motion and points to no evidence that

the Notice of Petition and Petition in the instant proceeding were served pursuant to the requirements as set forth in the Williams Consent Decree.

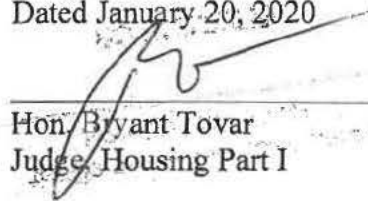
Accordingly, the Respondent's motion to dismiss is granted. Petitioner fails to provide any basis in law under which strict compliance with Williams Consent service may be disregarded. The court need not reach the other grounds for dismissal

Conclusion

Respondent's motion to dismiss is granted to the extent that Petition is dismissed without prejudice. Petitioner failed to serve NYCHA Section 8 in accordance with the Williams Consent Decree, and such failure requires dismissal.

This constitutes the Decision and Order of this Court. Copies will be mailed to the parties.

Dated January 20, 2020



Hon. Bryant Tovar
Judge, Housing Part I