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### 29 Cornelia LLC v. Antonella

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

Motion Seq. # 2

29 CORNELIA, LLC,

Petitioner-Landlord

L&T Index # 74195/18

-against-

**DECISION/ORDER**

CARMELA ANTONELLA  
29 Cornelia Street, Apt. 8  
New York, New York 10014

Respondent-Tenants

Hon. Clifton A. Nembhard

“JOHN DOE” and/or “JANE DOE”  
Undertenants-Occupants

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of respondent’s motion for an order pursuant to CPLR 3211(a)(1) and/or (a)(7) dismissing the proceeding or in the alternative pursuant to CPLR 3212 granting summary judgment in her favor.

<b>Papers</b>	<b>Numbered</b>
Notice of Motion and Affidavits Annexed .....	_____ 1 _____
Order to Show Cause and Affidavits Annexed .....	_____ _____
Answering Affidavits .....	_____ 2 _____
Replying Affidavits .....	_____ 3 _____
Exhibits .....	_____ _____

Upon the foregoing papers, the Decision / Order on this motion is as follows:

*Background*

Petitioner commenced the instant nonprimary residence holdover proceeding to recover possession of apartment 8 located at 29 Cornelia Street, New York, New York. Prior to commencement petitioner served a 30 Day Notice terminating respondent’s rent controlled tenancy effective September 30, 2018. Respondent interposed an answer denying the allegations in the pleadings and alleging, inter alia, that the predicate notice was defective. Respondent then served petitioner with a Demand for a Verified Bill of Particulars and petitioner responded. Finding the response insufficient respondent moved for, among other things, an order directing petitioner to comply with its Demand. The Court granted the motion and directed petitioner to

serve a Supplemental Bill of Particulars. Respondent now moves to dismiss the proceeding on the ground that the termination notice is defective. In the alternative, respondent seeks summary judgment on the ground that she has maintained the apartment as her primary residence.

### *Discussion*

Every notice alleging nonprimary residence in a rent controlled dwelling “must state the facts necessary to establish the existence of such ground”. 9 NYCRR § 2204.3(b); *London Terrace Gardens, L.P. v. Heller*, 40 Misc 3d 135(A) [App Term 1<sup>st</sup> Dept 2009]. A satisfactory notice must include case specific allegations that support the nonprimary residence claim. *Second 82nd Corp. v. Veiders*, 34 Misc 3d 130(A) [App Term 1<sup>st</sup> Dept 2011]. A notice that parrots the grounds for non-renewal of the lease is inadequate. *Berkeley Assoc. Co. v. Camlakides*, 173 AAD2d 193 [1<sup>st</sup> Dept 1991]. In addition, it is not enough to simply state an alternate address where the tenant was supposedly living without other specific allegations that make out the cause of action. *Mak v. Yun Pan Lee*, 12 Misc 3d 142(A) [App Term 1<sup>st</sup> Dept 2006]. The termination notice here does not satisfy this criteria set forth in 9 § NYCRR 2204.3(b).

The notice states in pertinent part that:

- 1) The tenant of record ... has not resided at the subject premises for a substantial amount of time and has resided at 665 South Country Road, East Patchogue, NY for a substantial amount of time and has maintained her permanent residence in such alternate locations.
- 2) The Landlord’s belief that you do not reside in your apartment is based upon evidence that indicates that you reside at said alternate location and have not resided in the subject apartment since having relocated to said alternate location.
- 3) Additionally, the Landlord, the Landlord’s employees and/or its agents have not seen you coming and going to and from your apartment for a substantial amount of time. You have not been seen at the subject premises for a substantial amount of time.
- 4) The landlord has spoken to your neighbors and they have informed the landlord they have not seen you in the subject premises for a substantial period of time.

The allegations regarding respondent’s absence are not specific, especially with respect to the time frame (“substantial period of time”) and the identities of the landlord’s agents and the neighbors. While petitioner argues that the predicate notice “goes over and above the standards employed by the courts of this State in determining sufficiency of a predicate notice”, the only specific allegation in the notice is that respondent allegedly resides in East Patchogue. The court in *325 Third Ave. LLC v. Vargas*, 52 Misc3d 564 [Civ Ct NY 2016] was faced with a similar notice. In finding it insufficient the court opined that the predicate did not include any factual support to petitioner’s claim that the respondent resided at the alleged New Jersey address. The

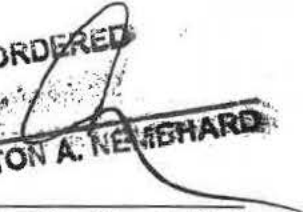
*Vargas* court further noted that the allegations that respondent had not been seen at the subject premises “are precisely the type of generic and conclusory allegations that have been held inadequate by the Appellate Term [in *London Terrace Gardens*]”. The allegations in the notice at issue here are similarly unparticularized and general.

*Conclusion*

Based on the foregoing, the motion is granted and the petition dismissed. The Court need not reach the merits of the second branch of the motion.

This constitutes the decision and order of the Court.

Date: February 7, 2020  
New York, New York

SO ORDERED  
  
HON. CLIFTON A. NEMBARD  
Hon. Clifton A. Nembhard, JHC