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2020-09-09

### Williams & Georgia Towers Hous. Dev. Fund. Corp. v. Barona-Mizell

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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF KINGS: HOUSING PART H

-----X  
WILLIAMS AND GEORGIA TOWERS HOUSING  
DEVELOPMENT FUND CORPORATION,

Index No. L&T: 78794-19

Petitioner-Landlord,

**DECISION/ORDER**

-against-

SANDRA BARONA-MIZELL, ALBERT PENNILL,

Respondents.  
-----X

Present:

Hon. Kevin McClanahan  
Judge, Housing Court

Recitation, as required by CPLR §2219(a), of the papers considered in the review of  
Respondent's motion

Papers	Numbered
Notice of Motion and Affidavits Annexed .....	1
Affirmation in Opposition .....	2
Affirmation in Reply.....	3

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

Petitioner commenced the instant nonpayment proceeding seeking monthly rent of \$25.00 through September 2019. Respondent appeared by counsel on November 25, 2019 and subsequently filed a motion to dismiss the petition pursuant to CPLR 3211(a)(1) and (7) alleging the predicate rent demand is defective as petitioner failed to provide a good faith approximation of the arrears and has failed to state the facts upon which this proceeding is based.

A predicate rent demand must inform the tenant of the approximate good faith sum of rent owed and the particular period for which rent is due. A proper rent demand must "fairly afford the tenant, at least, of actual notice of the alleged amount due and of the period of which such claim is made. At a minimum, the landlord or his agent should clearly inform the tenant of the particular period for which a rent payment is allegedly in default and of the approximate

good faith sum of rent assertedly due for each such period..." Schwartz v. Weiss-Newell, 87 Misc 2d 558 at 560 and 561 (Civ Ct, NY Co., 1976). A defective rent demand cannot be amended. See Chinatown Apartments v. Chu Cho Lam, 51 N.Y.2d 786 (1981).

The predicate rent demand for the instant proceeding is undated and begins with a lump sum of \$5,670.18 for which no specific time period is listed. Petitioner took control of the subject premises in June 2019 and petitioner's affiant admits that the previous management company initially would not turn over previous rent ledgers prior to commencing the instant proceeding. Based on the foregoing, there is no way for petitioner to make a good faith approximation of arrears. Respondent's motion to dismiss is granted and the proceeding dismissed without prejudice.

This constitutes the decision and order of the court.

DATED: 9/9/2020  
Brooklyn, NY

  
\_\_\_\_\_  
Kevin McClanahan, J.H.C

**Hon. Kevin McClanahan**