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N.Y. Hous. Auth. v. Destin

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

-----X
NEW YORK HOUSING AUTHORITY
(SURFSIDE GARDENS HOUSES),

Index No.: 18864/2019

Petitioner,
-against-

JAHSIAH DESTIN,
“JOHN DOE” and “JANE DOE”,
Respondent.

DECISION/ORDER

-----X
Present:

Hon. BRUCE E. SCHECKOWITZ
Judge, Housing Court

Recitation, as required by the CPLR § 2219(a), of the papers considered in the review of this motion to dismiss.

PAPERS	NUMBERED
Notice of Motion & Affidavits Annexed.....	<u>1</u>
Notice of Cross-Motion & Affidavits Annexed	<u> </u>
Answering Affidavits	<u>2</u>
Replying Affidavits.....	<u> </u>
Exhibits	<u> </u>
Memorandum of law.....	<u> </u>

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

In this holdover proceeding, the petitioner, New York City Housing Authority Surfside Garden Houses (“NYCHA” or “Petitioner”) seeks to recover possession of the premises located at 2949 West 28th Street, Apt. 1415B, Brooklyn, New York 11224 (“Premises”) on the ground that Jahsiah Destin (“Respondent”) is a licensee whose right to occupy the Premises has expired.

Respondent now moves, in this pre-answer motion, to dismiss the proceeding pursuant to CPLR §§ 3211(a)(1), (a)(2), (a)(4), (a)(7), (a)(8) and RPAPL § 741. Respondent also seeks to

strike the notice of petition and petition as a nullity as they do not comply with the requirements of CPLR § 2101, 22 N.Y.C.R.R § 208.42(c), and Administrative Order 163/19.

The court first addresses the branch of Respondent's motion which seeks to strike the petition. Respondent asserts that Petitioner failed to include mandatory language in its notice of petition and such a failure requires that the notice of petition and petition be stricken. Petitioner opposes and avers that no such mandate exists, and even if one did, Respondent suffered no prejudice as he is now represented by counsel.

Under previous iterations of 22 N.Y.C.R.R. § 208.42 landlords were expected to abide by the spirit and intent, but not the exact language and format, of the sample notice of petition included. *Chalfonte Realty Corp. v. Streator, Inc.*, 142 Misc.2d 501, 502 (Civ. Ct. N.Y. County, 1989). However, on September 16, 2019, pursuant to Administrative Order 163/19, the Hon. Lawrence K. Marks, Chief Administrative Judge of the Courts, amended 22 N.Y.C.R.R. § 208.42. to include "a form notice of petition for **mandatory** use in eviction proceedings involving residential property under Article 7 of the Real Property Action and Proceedings Law..." 22 N.Y.C.R.R. § 208.42(b) *emphasis added; see also* Judiciary Law § 212(2)(d). The Administrative Order further directed that use of the form notice was optional through and including September 30, 2019, but mandatory after that date. The instant proceeding was commenced on November 1, 2019 and Petitioner did not use the form notice of petition. The court notes that though the additional, now mandatory, language of the notice of petition does reference the availability of free legal counsel, it also makes reference to other resources available to respondents in summary proceedings and this court is unpersuaded by Petitioner's argument Respondent was not prejudiced simply because he has retained counsel. Further, though there is presently no decisional authority on the mandates imposed by this specific administrative order, the Court of Appeals has

consistently rejected the argument that actual notice is a substitute for compliance with statutory prescriptions. *See, e.g. Parker v. Mack*, 61 N.Y.2d 114, 118-19 (1984); *see also, e.g. Smalley v. Hutcheon*, 296 N.Y. 68, 72 (1946). Accordingly, the branch of Respondent's motion to strike the notice of petition and petition based upon Petitioner's failure to use the form promulgated under 22 N.Y.C.R.R. § 208.42(b) is granted.

The instant petition is dismissed without prejudice. As the petition is dismissed on procedural grounds, this court does not reach the balance of Respondent's motion.

This constitutes the decision and order of this court.

Dated: Brooklyn, New York
September 15, 2020



HON. BRUCE E. SCHECKOWITZ
J.H.C.