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Stratford Hous. Dev. Fund Corp. v. Bartell

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX; HOUSING PART B

-----X
STRATFORD HOUSING DEVELOPMENT FUND
CORPORATION,

Petitioner-Landlord,

L&T Index No. 2114/20

DECISION/ORDER

-against-

PAULA BARTELL ET AL,

Respondents-Tenants,

JOHN DOE & JANE DOE

Respondents-Occupants.
-----X

Present:

Hon. ARLENE H. HAHN
Judge, Housing Court

Recitation, as required by CPLR 2219(a), of the papers considered in the review of respondent's motion for leave to conduct discovery and inspection of documents.

Numbered	Papers
Notice of Motion & Affidavits Annexed.....	<u>1</u>
Answering Affidavits	<u>1</u>
Replying Affidavits.....	<u>1</u>
Exhibits	---
Memorandum of law.....	---

Stratford Housing Development Fund Corporation ("Petitioner") commenced the instant holdover proceeding against Paula Bartell, Christopher Bartell, Astra Bartell, Jerome Dyson, and Maurice Bartell ("Respondents"), and "John Doe" and "Jane Doe", seeking to regain possession of 1168 Stratford Avenue, Apartment 309, Bronx, NY ("Premises"), on the grounds that

Respondent Paula Bartell and occupants were month to month tenants. Petitioner served a Thirty Day Notice of Termination dated October 10, 2019, which under its terms expired November 30, 2019. The petition was filed on January 14, 2020. The proceeding first appeared on the court's calendar on January 31, 2020, on which date it was adjourned to March 6, 2020. Respondent obtained Mobilization For Justice as Counsel, who filed a Notice of Appearance on March 6, 2020. By a two attorney stipulation, the matter was then adjourned to May 1, 2020, for Petitioner to respond to Respondent's motion to dismiss and for possible reply.

On March 16, 2020, AO/68/20 was issued by th Chief Administrative Judge of the Courts suspending all eviction proceedings in response to the COVID-19 pandemic. That order was later amended , and pursuant t AO/160A/20, a matter commenced prior to March 17, 2020 may proceed, after a virtual conference, to assess the status of a matter and determine whether it conformed with all federal and state laws. This matter has had virtual conferences on July 22, 2020, August 5, 2020, August 26, 2020, September 15, 2020, September 22, 2020, September 24, 2020, and October 2, 2020. As the parties were unable to finalize a possible settlement, oral argument was heard regarding the motions herein, and decision was reserved.

Respondent's motion seeks to dismiss the Petition pursuant to CPLR 3211(a)(7). First, it should be noted that the challenge of a predicate notice is not one for lack of subject matter jurisdiction, but one that is jurisdictionally based. "Proof of compliance with statutory notice requirements is more properly characterized as as element of the landlord's *prima facie* case, waivable by the tenant, than as part of the subject matter jurisdiction of the Court." *Priel v Priel*, NYLJ 3/5/93 25:3 (ATJ) citing *Cucun v. Weitzner*, NYLJ, 2/9/84, (ATJ). Therefore, even though a motion may seek to dismiss for lack of subject matter jurisdiction, the Court will treat it as one

challenging the veracity of the predicate notice.

“A summary proceeding is a special proceeding governed entirely by statute and it is well established that there must be strict compliance with the statutory requirements to give the court jurisdiction.” *MSG Pomp Corp v. Jane Doe*, 185 AD2d 798,799-800 (1st Dept. 1992).

Without a valid predicate notice, a landlord cannot maintain a summary proceeding. The right to terminate a tenancy is dependent upon the service of an adequate notice. *Chinatown Apts. v Chu Cho Lam*, 51 NY2d 786,787 (1980). Service of a valid termination notice is not itself a pleading but a prerequisite to the commencement of a statutory proceeding. *Kaycee West 113th St. Corp. v Diakoff*, 160 AD2d 573 (1st Dept 1990). A predicate notice is not itself a pleading, but a prerequisite to a proceeding, and is not amendable.

Here, the predicate notice clearly alleges that the Respondent is a month to month tenant. No other reasons are alleged to terminate the tenancy. The Petition, in paragraph seven, states that the apartment is NOT subject to Rent Stabilization.

The issue before this court is whether to construe the terms of the written lease in favor of the landlord or the tenant. It is uncontested the Petitioner offered and executed a Rent Stabilized lease with the Respondent, including riders. Exhibit I of Respondent’s motion contains a copy of the full lease. Paragraphs B.1 and B2 of the last page of that lease clearly state that the tenant or other lawful occupants “can not be evicted or your tenancy terminated for other than good cause...”. Though the apartment itself may not be rent stabilized, this particular tenancy IS, under the terms of the lease. The Petitioner therefore would have been obligated to offer Respondent lease renewals. The last lease between the parties expired on February 28, 2019, and Petitioner elected not to offer a lease renewal. The predicate notice is also devoid of any allegation of “good

cause” as to why the tenancy is being terminated. It has long been the rule that ambiguities in a contractual instrument will be resolved *contra proferentem*, against the party who prepared or presented it. *151 West Associates v Printiples Fabric Corp.*, 61 N.Y.2d 732 (1984) quoting *Taylor v United States Cas. Co.*, 269 N.Y. 360,364 (1936). Case law therefore dictates that the discrepancy in the lease should be resolved against the Petitioner.

Accordingly, under the facts and circumstances presented to this court, and under Rent Stabilization, the Thirty Day Notice, and the Petition, are defective.

Respondent’s Motion is granted. Proceeding dismissed.

This constitutes the decision and order of this Court.

Dated: October 6, 2020
Bronx, New York



HON. ARLENE H. HAHN
J.H.C.