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2020-11-18

### 911 LLC v. Rivera

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#### Recommended Citation

"911 LLC v. Rivera" (2020). *All Decisions*. 212.

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[\*1]

<b>911 LLC v Rivera</b>
2020 NY Slip Op 20310
Decided on November 18, 2020
Civil Court Of The City Of New York, Bronx County
Garland, J.
Published by <a href="#">New York State Law Reporting Bureau</a> pursuant to Judiciary Law § 431.
This opinion is uncorrected and subject to revision before publication in the printed Official Reports.

Decided on November 18, 2020

Civil Court of the City of New York, Bronx County

<p><b>911 LLC, Petitioner-Landlord,</b></p> <p><b>against</b></p> <p><b>Alberto Rivera, John Doe and Jane Doe, Respondents-Tenants.</b></p>
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L & T 44384/19

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Christel F. Garland, J.

RECITATION, AS REQUIRED BY CPLR 2219(A), OF THE PAPERS CONSIDERED  
IN THE REVIEW OF THIS MOTION BY PETITIONER TO EXECUTE ON WARRANT

PAPERS NUMBERED

Notice of Motion, Affidavits & Affirmation Annexed 1

## Answering Affidavits 2

UPON THE FOREGOING CITED PAPERS, THE DECISION/ORDER IN THIS MOTION IS AS FOLLOWS:

Petitioner commenced this summary nonpayment proceeding on or about October 11, 2019, seeking rent it alleged became due. Respondent, unrepresented at the time, interposed an answer and later retained counsel. After a couple of adjournments, on December 10, 2019 the parties entered into a stipulation of settlement pursuant to which Respondent agreed to pay the arrears due through that date and Petitioner agreed to make specified repairs. Later, alleging [\*2] Respondent's default, Petitioner moved for an order entering a final judgment and issuing a warrant of eviction in its favor. Respondent cross-moved in opposition and sought the issuance of an order to correct based on his allegation that the conditions in the apartment remained unaddressed. By stipulation of settlement dated March 4, 2020, Respondent consented to a final judgment of possession for the arrears due through that period, and Petitioner agreed to correct the conditions Respondent alleged continued to exist in the apartment. Per the stipulation, a judgment was entered in Petitioner's favor, but a warrant of eviction did not issue.

Petitioner now seeks an order directing that the warrant of eviction issue based on its claim that there are due rent arrears which total \$15,392.19 through September 2020.

In opposition, Respondent argues that Petitioner's motion was improperly noticed as it fails to indicate when the motion would be heard in violation of the requirements set forth in CPLR § 2214 (a). Specifically, Respondent argues that this court does not have the authority to waive statutory requirements such as the requirements contained in the CPLR. To allow the court to do so, Respondent argues, raises significant separation of powers concerns requiring that Petitioner's motion be denied.

This court has previously noted that although ordinarily an improperly noticed motion may be subject to denial, these are not ordinary times. On March 7, 2020, the Governor of the State of New York declared a state of emergency in the state of New York (*see* Executive Order "EO" 202). In an effort to curb the impact of the pandemic, the Governor has since then issued several other EOs. The declaration contained in EO 202 has been continued and at this time is still in effect (*see* EO 202.72). As it relates to the claims herein, EO 202.8, recognized

the Chief Judge's directive to limit court operations which has now been expanded to include nonessential matters, and tolled the time limits prescribed in the CPLR which were further tolled through November 3, 2020 (*see* EO 202.67). Although EO 202.8 speaks to the tolling of the provisions contained in the CPLR, it recognized the need for a change in the way the court handles its business during the pandemic. To that end, court directive ("DRP") 213 titled " Management of Pre-Pandemic Eviction Proceedings in the New York City Civil Court" which took effect on August 12, 2020, was issued to address proceedings pending in the Housing Court prior to the pandemic and specifically provides that it is anticipated that motions made pursuant to the directive would be heard remotely. In an effort to achieve this purpose, motions made pursuant to the directive are noticed for a time and date to be determined in the future so as to allow the court in discharging its operational functions to schedule the proceedings virtually given the limitations imposed on in person appearances. To the extent that there are any due process concerns relating to the notices of motion, following the filing of each motion made pursuant to DRP — 213, a letter is sent to each party that informs the party about the specific date on which the motion will be heard. The notice provides a telephone number to call for further details and/or questions as well as a telephone number to connect to counsel. In addition, once the motion is scheduled and the party does not appear, the motion is adjourned and a second letter mailed to the parties with a specific date and time for the next conference and warns that a default could be entered if the party once again does not appear.

This court further notes that by hearing motions noticed as mentioned above, it is not waiving the statutory requirements contained in the CPLR as a motion is still required. Instead, in dismissing this argument the court is balancing the court's need to discharge its administrative functions against the mandates of CPLR § 2214 (a) together with the mandates contained in CPLR § 104 which provides that the civil practice law and rules shall be liberally construed to [\*3]secure the just, speedy and inexpensive determination of every civil judicial proceeding and CPRL § 2001 which provides that at any stage in the action an omission or irregularity shall be disregarded especially in the absence of prejudice which was neither alleged nor established by Respondent.

Here, Petitioner's motion was made returnable to the location of this court, the room number and part were provided, but the date and time were left to be determined ("TBD") The motion is dated September 14, 2020 and was filed through the Electronic Document Delivery System ("EDDS") on September 29, 2020 A letter dated October 21, 2020 was

mailed to Respondent and counsels with the information noted above informing them that the motion had been calendared for November 13, 2020. A Spanish language version of the letter was also included.

Based on the foregoing, after taking the above into consideration, Petitioner's motion which is made pursuant to DRP-213 (1) (A) is GRANTED to the extent that the clerk of the court is directed to issue a warrant of eviction forthwith based on the previously issued judgment in Petitioner's favor. Once the warrant of eviction issues, it shall execute following service of a notice of eviction as required by law subject to, but not limited to, any court directives, administrative orders, executive orders and, but not limited to, legislation in effect at that time.

This constitutes the decision and order of the Court

A copy of this decision will be mailed/emailed to all

Dated November 18, 2020

Christel F. Garland, JHC

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