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6555 Realty Realty LLC v. Balkin

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

-----X
6555 REALTY REALTY LLC,

Petitioner-Landlord,

against-

JEFFREY BALKIN,

Respondents-Tenants.
-----X

L&T Index No. 57263/19

Motion Seq. Nos. 003 & 004

DECISION/ORDER

Present:

Hon. ARLENE H. HAHN
Judge, Housing Court

Recitation, as required by CPLR 2219(a), of the papers considered in the review of Petitioner's motion for vacating or modifying Respondent's Demand for a Bill of Particulars, pursuant to 3042(e), and Respondent's cross-motion to compel, pursuant to CPLR 3041(a).

Numbered	Papers
Notice of Motion & Affidavits Annexed.....	<u>1</u>
Notice of Cross-Motion & Affidavits Annexed	<u>2</u>
Answering Affidavits	<u>3</u>
Replying Affidavits.....	<u>4</u>
Exhibits	---
Memorandum of law.....	---

In this nuisance holdover proceeding, Respondent has served a Demand for a Verified Bill of Particulars upon Petitioner, dated October 16, 2020. In the instant motion, Petitioner now seeks an order vacating or modifying that Demand, alleging that the Demand is improper and/or overly burdensome, and therefore should be vacated in its entirety. Respondent, in its cross-

motion to compel opposes Petitioner's motion in its entirety. Respondent did withdraw its demand for a witness list while on the record.

Previously, this Court denied Respondent's motion to dismiss by the Order dated September 15, 2020, finding that the Notice to Cure in this proceeding described in detail the apartment conditions and its ramification, as incorporated into the Notice of Termination, has the required specificity described in CPLR 3211(a)(7), NYCRR2524.2(b) 2524.3(a), for Respondent to prepare and raise defenses to this Collyer Hold-Over proceeding. Case law holds that even where a Court has made such a determination, a tenant may still demand a bill of particulars, because "more specific information concerning the nature, dates, and times...[is] properly the subject of a bill of particulars." *Pinehurst constr. Corp. v. Schlesinger*, 12 Misc3d 26, 28, 816 N.Y.2d 818 (App. Term 1st Dep't 2006, *aff'd* 38 A.D.3d 474 (App. Div. 1st Dep't 2007); *City of New York v. Valera*, 216 A.D.2d 237238, 628 N.Y.S.2d 695 (App Div. 1st Dep't 1995); *Gracie Gardens Owners Corp. v. Goldfarb*, 189 Misc.2d 620, 621, 735 N.Y.2d 349, 350 (App. Term 1st Dep't 2001); *D.K Prop. v. Mekong Rest. Corp.*, 187 Misc.2d 610, 612, 723 N.Y.S.2d 823 (App. Term 1st Dep't 2001). Even facts that may amplify a landlord's allegation that a tenant failed to cure are also properly the subject of a demand for a bill of particulars. *Chelsea 19 Assoc. v. Coyle*, 220 Misc.3d 1409(A), 2009 N.Y. Slip Op. 5043(U) (App. Term 1st Dep't 2009).

A bill of particulars is an instrument to amplify the pleadings, thereby limiting the proof needed and preventing surprise at trial. *Harris v. Ariel Transp. Corp.*, 37 A.D.3d 308, 309 830 N.Y.S.2d 121 [2007]; *Twiddy v. Standard Mar. Transp. Servs.*, 162 A.D.2d 264, 265, 556 N.Y.S.2d 622 [1990].


Accordingly, Petitioner's motion is denied. Respondent's cross-motion is granted to the

following extent: Petitioner is directed to produce all requested information in Respondent's demand to Respondent's attorney, within 30 days of receipt of a copy of this decision and order.

This proceeding is adjourned for settlement or trial to January 6, 2021.

This constitutes the decision and order of this court.

Dated: Bronx, New York
November 27, 2020



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