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1920 Walton LLC v. Ruiz

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX: Housing Part K

1920 WALTON LLC,

L & T Index No. 2012/20

Petitioner,

Present:

Hon. Norma J. Jennings

-against-

RACQUEL RUIZ,

DECISION/ORDER

Respondent.

HON. NORMA J. JENNINGS:

Recitation, as required by CPLR 2219(A), of the papers considered in review of this motion by respondent to dismiss the proceeding:

PAPERS	NUMBERED
Notice of Motion and affidavits Annexed	1
Affirmation in Opposition	2
Affirmation in Reply	3

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

This nonpayment proceeding was commenced in February 2020 seeking rental arrears totaling \$18,899.51 for the period August 2018 through January 2020, at a monthly rent of \$1,053.53. The proceeding first appeared on the court's calendar on February 10, 2020, and was adjourned to March 17, 2020 for respondent to obtain counsel. The proceeding was adjourned several times due to the Covid-19 pandemic and for virtual settlement conferences. Respondent now moves, pursuant to CPLR §3211(a)(7), CPLR §3013, RPAPL §711(2), RPAPL §741, to dismiss the proceeding.

Respondent moves to dismiss based upon a failure to state a cause of action, pursuant to CPLR 3211(a)(7), CPLR §3013, RPAPL §711(2), and RPAPL §741 in that paragraph 7 of the petition incorrectly states the apartment is presently subject to Rent stabilization and is duly registered with the Division of Housing and Community Renewal ("DHCR"). Respondent also moves to dismiss, because the rent demand and petition seeks rent at \$1,053.53, however, there is a current rent reduction order which freezes the rent at \$1,025.15, thereby rendering the rent demand defective, and requiring dismissal of the proceeding. Respondent moves to dismiss the proceeding because petitioner failed to serve a "good faith" rent demand in violation of RPAPL §711(2), as the demand states that respondent owes \$35.97 for July of 2019 and \$1,053.53 per

month from August 2018 through December 2019 which is above the monthly rent, pursuant to the rent reduction order, issued in July 2018 that is still in effect.

Respondent also moves to dismiss, pursuant to CPLR §3211(a)(7), CPLR §3013, and RPAPL §741 for failure to state a cause of action as the petition fails to provide the respondent adequate notice of the claims against her. In this proceeding, respondent argues, paragraph 2 of the petition states the monthly rent is \$1,053.53, in violation of the rent reduction order, which limits the rent to \$1,025.15. The petition not only improperly lists the rent but paragraph 8 of the petition, incorporates the rent demand which is predicated on the improper rental amount of \$1,053.53, rendering the rent demand defective, and requiring dismissal of the proceeding. Further, paragraph 7 of the petition claims the subject premises are duly registered with DHCR but are currently not registered. The landlord's failure to properly plead the rent regulatory status and be in compliance with the appropriate statutes and codes, respondent argues, requires dismissal of the proceeding.

Petitioner's attorney in his affirmation in opposition, argues that respondent's motion to dismiss must be denied because the petition states a cause of action, and the rent demand is not defective as it gives a "good faith" approximation of the sums "ALLEGED" to be due, and the period for which said sums are ALLEGEDLY due. If there is any dispute, as to the arrears, petitioner argues, respondent may raise the defense at trial. The rent demand asserts that respondent failed to pay her monthly rent of \$1,053.53 for specific months and the total due, therefore, the rent demand is predicated upon the rent set forth in the lease agreement executed by both parties, and is a "good faith" approximation of the rent owed. Petitioner argues that respondent's reliance on the rent reduction order does not render the rent demand defective or that it was not made in "good faith" as it seeks arrears pursuant to a valid lease. Petitioner further argues that respondent is incorrect that it is barred from maintaining this proceeding because there is no current registration with DHCR, but acknowledges it is limited to recover the last registered rent. In addition, petitioner argues, due to the Covid-19 pandemic, state offices were closed and petitioner reduced its staff, resulting in delays in registering the subject premises with DHCR.

DECISION:

On a motion to dismiss, pursuant to CPLR §3211, the court must afford the pleadings a liberal construction, accept all facts as true and determine only whether the alleged facts fit within any cognizable legal theory. *Leon v. Martinez*, 84 NY2d 83 (1991). The sole criteria in a motion to dismiss is whether the pleading states a cause of action, and if from the four corners, factual allegations are discerned which taken together manifest any cause of action cognizable at law. *Guggenheimer v. Ginzburg*, 43NY2d 268 (1977). A landlord must allege in the petition that the apartment is subject to the New York City Rent and Rehabilitation Law, Administrative Code §26-401. The landlord must also allege that it is a member in good standing of the Rent Stabilization Association and in compliance with the Rent Stabilization Law and Code. Failure to make the required allegation will not deprive the court of jurisdiction, as the petition may be amended, *Birchwood Towers #2 Assoc. v. Schwartz*, 98 AD2d 699 (2nd Dept. 1993), however, the need to plead the rent regulatory status and codes, and to actually be in compliance, is necessary

for a court to order the requested relief. *251 E. 199th St. Tenants Assoc v. Torres*, 125 Misc.2d 279 (Civ.Ct. NY County 1984).

Owners of rent stabilized apartments are required to file annual rent registration statements with DHCR listing, among other things, the name of the tenant in each regulated apartment along with the current rent on the registration date. Administrative Code §26-517, Rent Stabilization Code §2528.3. An owner's failure to file a "proper and timely" annual registration statement bars the owner from collecting "any rent in excess of the legal regulated rent in effect on the date of the last preceding registration statement" until such time as a proper registration is filed. Where an owner fails to file a "proper and timely" registration, until such registration is filed, the rent is frozen at the legal regulated rent listed in the preceding registration statement. *Jailek v. Abart Holdings, LLC*, 72AD3d 529 (1st Dept. 2010).

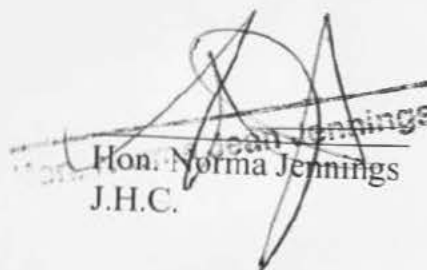
In this proceeding, respondent has annexed a DHCR rental history for the subject premises which indicates the last registered rent for the apartment was in 2018 at \$1,025.15. Petitioner's counsel, in his affirmation in opposition argues due to the Covid-19 pandemic state offices were closed and petitioner's office staff was reduced resulting in delays in the processing of annual rent registrations with DHCR. However, the pandemic, and closures began in March 2020, the missing registration years are for 2019 and 2020. In addition, there is no affidavit from anyone from petitioner's office to attest to whether the registrations were filed or that they have been filed but not processed by DHCR. Therefore, when this proceeding was commenced, the subject premises were not registered with DHCR, and petitioner was not in compliance with Administrative Code §26-517(e) and Rent Stabilization Code §2522.8.

Further, respondent argues the rent demand is defective because, petitioner was not properly registered and seeks rent above the amount of the rent set by the rent reduction order. Where DHCR determined that an owner has failed to maintain services, such owner shall not be entitled to a rent restoration until he or she has made application and DHCR issues an order restoring the rent. RSC §2523.4(a)(1); *Atsiki Realty LLC v. Munoz*, 48 Misc.3d 33,35 (Appt. Term 1st Dept. 2015). The calculation of rent due must take into account the rent reduction order, *Matter of Cinron v. Calogero*, 15 NY3d 347 (2010). Here, the rent reduction order froze the rent at \$1,025.15. It is undisputed that the rent reduction order, despite petitioner's attempts to have it restored, has not been restored and the rent continues to be frozen at \$1,025.15. Despite the rent reduction petitioner commenced a nonpayment proceeding against respondent seeking a monthly rent of \$1,053.53, based upon a signed lease between the parties. The renewal lease was executed by the parties, however, it does not negate the rent reduction order which froze the rent at \$1,025.15. The rent demand seeks the higher amount, and petitioner is aware that there is a rent reduction order which barred petitioner from collecting rent in excess of the reduced rent of \$1,025.15 until DHCR restores the rent to the higher amount. As petitioner sought and demanded rent at the higher rental amount, the rent demand was made in the absence of good faith, and is therefore, defective. A defective rent demand cannot be amended and requires dismissal of the proceeding. *Chinatown Apts, Inc. v. Chu Cho Lam*, 52 NY2d 786 (1980).

Accordingly, respondent's motion to dismiss the proceeding is granted, and the proceeding is dismissed without prejudice, to petitioner's claims to the reduced rent.

This constitutes the decision and order of this court. The court will email a copy of this decision to both sides.

Dated: December 24, 2020
Bronx, New York


Hon. Norma Jennings
J.H.C.

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