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2021-03-31

### N.Y. Hous. Auth. Univ. Ave. Rehab Houses v. Lee

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

NEW YORK HOUSING AUTHORITY  
UNIVERSITY AVENUE REHAB HOUSES

Petitioners,

Index No. 25271/19

- against -  
-

TIANNA LEE,

RESPONDENT,

-----X

Present: Hon. David J. Bryan  
Judge, Housing Court

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

-----X

**Papers**

Respondent’s Notice of Motion, Affirmation in Support, Memorandum of Law, Affidavit, Exhibits 1

Petitioner’s Affirmation in Opposition, Exhibits 2

-----X

Petitioners are represented by: Kraus & Kraus

Respondent is represented by: Mobilization for Justice

-----X

Upon the foregoing cited papers, the Decision and Order on this Motion are as follows:

Respondent moves to preclude petitioner from producing any evidence any information or documents requested in the Demand for Documents and Interrogatories. In the alternative respondent moves for an Order requiring petitioner to produce information and documents requested in the Demand for Documents and Interrogatories. Respondent also moves for an Order compelling petitioner to comply with the Demand for a Bill of Particulars. For the reasons stated and to the extent noted herein the motion is GRANTED, the matter is adjourned to May 18, 2021 at 10:30 am for all purposes including trial.

On March 5, 2020 this Court granted respondent’s motion for discovery. Discovery in this case seeks information in two broad areas, warranty of habitability and setting of rent. The Court’s reasoning was that ample need was demonstrated by the respondent requiring the information to substantiate the warranty of habitability claim and to determine the accurate amount of rent owed. Among other rent impairing allegations respondent contends that she has been without sufficient heat during the heating season since 2014. Respondent alleges and petitioner has not disputed that the Department of Housing Preservation and Development (DHPD)<sup>1</sup> will not perform inspections in city owned buildings. This refusal deprives respondent of the DHPD records normally used to prove violations of the Housing Maintenance Code (HMC) at trial. Respondent has also sought utility information regarding the subject premises

<sup>1</sup> DHPD is the inspector and enforcer of the Housing Maintenance Code (HMC) in New York City residential buildings.

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from Con Edison through a subpoena. Respondent states that Con Edison is unable to provide this information without an account number for respondent's building. Respondent also seeks information as to her portion of rent from November 2014 to the present by a Demand for a Bill of Particulars.

The Court notes that the proper response to an objection to discovery or a Bill of Particulars is not to refuse disclosure or to rely upon picayune semantic interpretation but to move the Court for a protective Order. This failure along with counsel's inability to substantiate the contention that disclosure was improper during oral argument troubles the Court. While the Court DENIES the motion to preclude as premature at this point, continued refusal to provide reasonable discovery authorized by the Court may compel reconsideration of preclusion.

Petitioner has responded to the Bill of Particulars requiring an accounting showing respondent's share of the subsidized rent by indicating that the demand is "overly broad, beyond the scope of the pleading, and palpably improper." During oral argument petitioner's counsel noted that respondent must periodically go through a recertification process to determine her share of the rent. When the Court asked petitioner's counsel to explain why the rent varied at several different points no satisfactory explanation was provided. It is axiomatic that petitioner must justify their demand for the rent owed and respondent is entitled to this information with specificity in response to the Bill of Particulars. Respondent's request to "amplify the pleadings" by stating with specificity the amounts owed cannot be dismissed as "overly broad, beyond the scope of the pleading, and palpably improper."

Petitioner shall answer the Bill of Particulars with specificity noting what factors and calculations were used to calculate the initial rent in November 2014 and each subsequent change in the rent. The bill of particulars, interrogatories and document demands are to be provided by 20 days from the date of this Order.

This is the decision of the Court and copies will be mailed to the attorneys for the petitioner, each of the respondents and made available in the Courtroom.

Date: March 31, 2021



David J. Bryan,  
Housing Judge, Civil Court