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Payano v. de Veras

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART S

-----X
MIGUEL ENCARNACION PAYANO

Petitioner

Index No. LT # 305655/20

- against -

DECISION/ORDER

FIOR SANCHEZ DE VERAS
JOSE VERAS
JOHN DOE AND JANE DOE
490 ESSEX STREET, APT 1
BROOKLYN, NEW YORK 11208

Respondent

-----X

HON. HANNAH COHEN:

Recitation, as required by CPLR 2219(a), of the papers considered in the review of respondent's motion to dismiss pursuant to CPLR 3211 and RPAPL 741(4) and ensuing opposition and reply.

<u>Papers</u>	<u>Numbered</u>
Notice of Motion	1
Opposition	2
Reply	3

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

Petitioner commenced this holdover proceeding predicated on an expiration of a lease and lease violations ranging from loud music, yelling and screaming to failure to recycle and damages to walls, counters and other areas of the premises. Petitioner served a 10 day notice to cure and a notice to quit. Respondent appeared with counsel and now seeks dismissal pursuant to CPLR 3211 and RPAPL 741(4). The premises are not subject to any rent regulation.

Respondent seeks dismissal pursuant to CPLR 3211 in that the notice to quit was not clear

and unequivocal. Respondent argues that as respondents entered into a one year lease, they were entitled to a notice of termination, not a notice to quit. Additionally, respondent argues that the language in the notice to quit states “should you fail, refuse or neglect to cure the breach or vacate said premises on or before September 30, 2020, Landlord will take legal action as the law required to evict you from the premises.” Respondent argues that the notice to quit did not unequivocally terminate respondent’s tenancy as it seemed to permit the respondent an opportunity to cure again, the alleged breach(s) by September 30, 2020.

Respondent seeks dismissal based upon the above pursuant to CPLR 3211 for failure to state a cause of action.

Petitioner opposes said motion and argues that the notice to quit is clear and is not ambivalent and that the title of the document states “notice to quit, vacate and deliver.” Petitioner also submits again copies of the notice to cure, notice to quit, photos of alleged nuisance/lease violations and a copy of respondent’s lease.

In reviewing the sufficiency of predicate notices in summary proceedings, the test is one of reasonableness in view of the attendant circumstances (See *Hughes v Lenox Hill Hospital*, 226 AD2d 4 [1st Dept 1996]). Courts further look to whether the notice could “have materially misled or confused the tenant or hindered the preparation of his defense.”(See *Oxford Towers Co. LLC v Leites*, 41 AD3d 144 [1st Dept 2007]); *Great Jones St Realty Corp. v Chimsanthia*, 67 Misc.3d 136[A] [App Term 1st Dept 2020]).

Petitioner cites to paragraph 15 of the lease which provides that landlord may give 5 days written notice to tenant to correct a default, and if the tenant fails to correct the default, landlord may cancel the lease by giving the tenant a written 3 day notice stating the date the term will end. On that date, the tenant’s rights under this lease automatically end.

Herein, the notice to quit is headed with the term “notice to quit, vacate and deliver.” additionally the notice states “you are hereby requested to quit, vacate and deliver possession thereof to the undersigned on or before September 30, 2020.” The notice then reiterates the specifics of the alleged breach that occurred. The last paragraph however reads as follows” Please take further notice: should you fail, refuse or neglect to cure the breach *or* vacate said premises on or before September 30, 2020, Landlord will take legal action as the law required to evict you from the premises....”

Here, the notice to quit may have misled the respondent and was not reasonable under the attendant circumstances to allow respondent to defend the proceeding. Read as a whole the notice to quit did not unequivocally terminate the tenancy but rather gave the option of once again curing the alleged breach. Respondents motion to dismiss based upon a defective notice to quit is granted. This is without prejudice to petitioner’s rights to commence a new proceeding.

This constitutes the decision and order of this court.

Dated: May 25, 2021
Brooklyn, New York

Hannah Cohen, J.H.C.