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NYSANDY3 NBP11 LLC v. Thompson

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

-----X

NYSANDY3 NBP11 LLC,

Index No. L&T 8645/20

Petitioner,

DECISION/ORDER

-against-

Motion seq no. 1

JUREA THOMPSON and J. DOE,

Respondents,

-----X

HON. KISHA L. MILLER:

Gutman, Mintz, Baker & Sonnenfeldt, LLP, for Petitioner.
Mobilization for Justice Inc., for Respondent.

Recitation, as required by C.P.L.R. § 2219(a), of the papers considered in review of this motion seeking leave to serve and file a late answer and to conduct discovery.

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	1
Answering Affidavits.....	2
Reply Affidavits.....	3

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

Petitioner commenced this holdover summary eviction proceeding to recover possession of the premises located at 3920 Bronx Boulevard, Apartment 6F, Bronx, New York. The “10 Day Notice to Terminate” alleges Respondent breached a substantial obligation of her tenancy and created a nuisance by causing loud noise and music to emanate from her apartment in violation of Rent Stabilization Code §2524.3(b)(d), the parties’ lease agreement, the house rules and regulations, and “the Apartment Standards Conduct.” The notice lists several incidents that occurred in 2019 where Respondent engaged in objectionable conduct. Respondent did not file an answer and failed to appear on the first court date in March 2020. The proceeding was adjourned for inquest but due to the COVID-19 pandemic where eviction proceedings were

stayed for several months, the proceeding was administratively adjourned then scheduled for a virtual appearance in February 2021. Respondent obtained counsel and filed the instant motion seeking leave to serve and file a late answer and to conduct discovery. The parties appeared before this court for argument on May 18, 2021. Petitioner opposes the motion.

Pursuant to RPAPL 743, the answer in a holdover proceeding may be asserted or filed “at the time the petition is to be heard.” Courts have routinely interpreted RPAPL 743 to mean that the time for a respondent to file an answer is extended by adjournment of the proceeding unless “arrangements to the contrary have been made” (*974 Anderson LLC v. Davis*, 53 Misc 3d 1220[A], 2016 NY Slip Op 51765[U] [Civ Ct, Bronx County 2016]); *Eugene Smilovic Hous. Dev. Fund Corp. v. Lee*, 61 Misc 3d 1216[A], 2018 NY Slip Op 51534[U] [Civ Ct, Bronx County 2018]; *In Town Shopping Ctrs. Co. v. DeMottie*, 17 Misc 3d 134[A], 2007 NY Slip Op 52200[U] [App Term, 2d Dept 2007] [adjournment to obtain counsel implicitly extends tenant’s time to answer]). Under CPLR 3012(d), the court has discretionary power to extend the time to appear or plead, or compel the acceptance of an untimely pleading “upon such terms as may be just,” provided there is a showing of reasonable excuse for the delay. In determining whether a party should be granted leave to file a late answer, various factors are considered by the court, including the length of the delay, the excuse offered for the delay, the absence of willfulness, the possibility of prejudice, the potential merits of the defenses, and the public policy favoring the resolution of disputes on their merits (*ArtCorp Inc. v Citirich Realty Corp.*, 140 AD3d 417 [1st Dept 2016]; *Emigrant Bank v Rosabianca*, 156 AD3d 468 [1st Dept 2017]).

Petitioner’s argument that Respondent should not be permitted to file a late answer since the proceeding has been pending for over a year ignores the devastating impact of the COVID-19 global pandemic which greatly affected court proceedings. For several months, in-person

appearances were prohibited, pending eviction proceedings were administratively adjourned, and case filings in Housing Court were limited to “HP Proceedings” and illegal lockout petitions. Any delay in the proceeding is not attributable to Respondent. Once the proceeding was re-calendared by the court, Respondent promptly obtained counsel and there was minimal delay in filing the instant motion. Given the lack of prejudice suffered by Petitioner, the potentially meritorious defenses raised in the proposed answer, including the claim that Petitioner failed to provide a reasonable accommodation based on Respondent’s mental disability, and the public policy favoring resolution of disputes on the merits (*see Chevalier v 368 E. 148th St. Assoc., LLC*, 80 AD3d 411 [1st Dept 2011]), Respondent’s motion to serve and file a late answer is granted.

Respondent also seeks leave to conduct discovery pursuant to CPLR 408. In summary proceedings, discovery must be sought by leave of court and may only be granted upon a showing of ample need (*New York University v. Farkas*, 121 Misc 2d 643 [Civ Ct, NY County 1983]). As stated in *Farkas*, the factors a court considers in determining whether discovery should be granted is whether petitioner has stated a cause of action; whether the information sought is directly related to the cause of action; whether the requested disclosure is carefully tailored and is likely to clarify the disputed facts; whether prejudice will result from granting the request; whether the prejudice can be diminished or alleviated; and whether the court should structure the discovery, particularly where there are pro se litigants.

Respondent seeks, among other things, identification of the individuals who either heard or “observed” the loud noise and music, and copies of any writings or documents concerning Respondent’s conduct, including non-emergency 311 complaints. Respondent argues the predicate notice omits specific information about the complainants and the substance of the complaints, thereby depriving Respondent of the ability to adequately prepare a defense. In

opposing Respondent's request, Petitioner argues that the allegations are specific and unequivocal, and clearly apprise Respondent of the grounds upon which this proceeding is based. Petitioner further argues that the requests are overbroad and unduly burdensome and seeks information that is not relevant to the proceeding or in Petitioner's possession. Petitioner also claims that Respondent has first-hand knowledge of the incidents and does not need further information through discovery.

To prevail on a nuisance claim, a landlord must claim or show the alleged objectionable conduct affected other building residents (*Roxborough Apts. Corp. v. Kalish*, 22 Misc 3d 130[A] [App Term, 1st Dept 2009]; *Domen Holding Co. v. Aranovich*, 1 NY3d 117 [2003] ["to constitute a nuisance the use of property must interfere with a person's interest in the use and enjoyment of land"]). The gravamen of Petitioner's claim is that Respondent's conduct has threatened the comfort and safety of other building residents which must be proven at trial. The names of those witnesses who have complained or were harassed by Respondent are discoverable so Respondent may prepare a defense for trial (*Hoffman v. Ro-San Manor*, 73 AD2d 207 [1st Dept 1980] [in "keeping with the trend towards greater liberality of disclosure," the names and addresses of potential witnesses are discoverable]; see also *Clinton-178 Towers LLC v. Chapple*, 58 Misc 3d 198, 2017 NY Slip Op 27332 [Civ Ct, Bronx County 2017]).

The notice of termination lists four instances of behavior in violation of the lease agreement and eighteen instances of alleged conduct in violation of the Rent Stabilization Code but is devoid of the names of those individuals affected by Respondent's behavior. It is unclear if some of the incidents were observed by other building residents or by building employees. Respondent's requests are directly related to the cause of action and carefully tailored, and this court finds no prejudice will result from granting discovery. Respondent's failure to include an

affidavit of merit does not warrant denial of discovery since the verified answer, which disputes Petitioner's allegations, may serve as a substitute for the affidavit (CPLR 105[u]; *A&J Concrete Corp v. Arker*, 54 NY2d 870 [1981]).

Accordingly, it is

ORDERED that the portion of Respondent's motion seeking leave to serve and file a late answer is granted. The proposed answer is deemed served and filed *nunc pro tunc*; it is further

ORDERED that the portion of Respondent's motion seeking leave to conduct discovery is granted. Petitioner is ordered to respond to the Interrogatories and to the Demand for Documents and Inspection to the extent such documents are in Petitioner's possession within 60 days of service of this decision/order with notice of entry; it is further

ORDERED that the proceeding shall be marked off calendar pending completion of discovery.

This constitutes the decision and order of the court.

Dated: July 9, 2021

KM

KISHA L. MILLER, J.H.C.