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305 WEST 97th ASSOCIATES LP v. Lonesome

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART H

-----X
305 WEST 97TH ASSOCIATES LP,

L&T Index No. 302484-21

Petitioner-Landlord,

DECISION/ORDER

against

TIMOTHY LONESOME,

Respondent(s)-Tenants.

-----X
HON. EVON M. ASFORIS

Recitation, as required by CPLR 2219(a), of the papers considered in the review of Respondent’s motion to dismiss the Petition pursuant to CPLR § 3211:

<u>Papers</u>	<u>Numbered</u>
Notice of Motion, & Affidavits Annexed.....	1
Answering Affirmation, and Exhibits.....	2
Reply Affirmation, and Exhibits.....	3
Sur-reply Affirmation, and Exhibits.....	

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

Relevant Procedural History

305 West 97th Associates LP (“petitioner”) commenced this alleged nuisance holdover proceeding against Timothy Lonesome (“respondent”) to recover possession of Apartment 7P located at 305 West 97th Street, New York, New York (“subject premises”). Petitioner served a Notice to Cure dated September 25, 2020, on respondent. The Notice to Cure alleges that respondent has engaged in criminal conduct, endangered residents, and staff of the subject building, interfered with the other residents’ quiet enjoyment of the building, and caused a nuisance. On March 26, 2021, petitioner served a Notice to Terminate asserting that respondent failed to cure the alleged breaches and is still engaging in criminal conduct, interfering with the other residents’ quiet enjoyment of the building, and causing a nuisance. Petitioner also served NYCHA with the Notice to Cure and Notice to Terminate. Upon expiration of the Notice to

Terminate, petitioner served respondent with a Notice of Petition and Petition dated April 30, 2021.

Respondent retained counsel and moved by notice of motion dated October 15, 2021, to dismiss the Petition pursuant to Civil Practice Law and Rules (“CPLR”) §§ 3211 (a)(1), (7) and (10). Respondent argues in his pre-answer motion, that petitioner failed to serve the New York City Housing Authority (“NYCHA”) pursuant to the *Williams consent decree* (see, Williams v. New York City Housing Authority, 81 Civ. 1801 (SDNY, Feb. 2, 2005)). Respondent argues that petitioner failed to serve a copy of the Notice of Petition and Petition by overnight mail or pursuant to Real Property Actions and Proceedings Law (“RPAPL”) on NYCHA and therefore the proceeding must be dismissed.

In opposition, petitioner argues that although the *Williams consent decree* normally requires service of the Notice of Petition and Petition by overnight mail, due to the impact of the Covid-19 pandemic, NYCHA permitted service upon its agency by an alternate method. Petitioner argues it served NYCHA pursuant to the rules posted by NYCHA during the nationwide pandemic. Petitioner asserts that NYCHA permitted service of process during the pandemic by email and regular mail. Petitioner argues that the Notice of Petition and Petition were served on NYCHA by regular mail as per NYCHA’s notice. In the alternative, petitioner asks the court to add NYCHA as a necessary party instead of outright dismissal of the Petition. The court notes that the portion of respondent’s motion claiming petitioner was required to serve the Notice to Cure on NYCHA is withdrawn by respondent’s counsel.

This case first appeared in resolution Part H on October 20, 2021, for a conference and was adjourned several times for an Adult Protective Services (“APS”) referral and the appointment of an Article 12 GAL as requested by APS. On December 23, 2021, the court

appointed Thomas Giles as GAL for respondent and the matter was adjourned to January 11, 2022, for oral argument on the motion.

Motion to Dismiss

Respondent seeks dismissal of the Petition pursuant to CPLR § 3211(a)(1), (a)(7) and (a)(10) for petitioner's failure to serve NYCHA pursuant to the *Williams consent decree*. Respondent argues that petitioner's failure to properly serve the Notice of Petition and Petition by overnight mail renders this holdover proceeding fatally defective. As set forth by the *Williams consent decree*, there are numerous procedural steps for landlords to follow prior to and in the course of commencing an eviction proceeding, including the manner of service of the required eviction notices on NYCHA (see, Williams v New York City Housing Authority, 81 Civ. 1801 (SDNY, Feb. 2, 2005); Clinton-178 Towers LLC v Chapple, 58 Misc3d 198 (Civ Ct, Bx Cty 2017); 433 West Assoc. v Murdock, 276 AD2d 360 [1st Dept, 2000]; 24 CFR 982.310). Respondent relies on the language of the *Williams consent decree* and current case law in support of his motion. More specifically, paragraph 6(b)(2) of the decree states, "[w]ith regard to eviction proceedings to which the certification procedure does not apply, the landlord shall: (2) upon commencement of the proceeding, serve a copy of the Notice of Petition and Petition on the Authority or send a copy of said documents to the Authority by overnight mail."

It is undisputed respondent is a participant of the Section 8 program administered by NYCHA, and petitioner failed to serve its Notice of Petition and Petition on NYCHA or send them a copy by overnight mail. However, petitioner argues that due to the nationwide pandemic caused by Covid-19 last year, NYCHA permitted service upon its agency by an alternate method. Petitioner argues that it served a copy of the Notice of Petition and Petition pursuant to the terms of service posted by NYCHA. NYCHA posted on its web page that service on its office during

the pandemic may be accomplished by several means, including but not limited to email or regular mail. Petitioner argues its service should be deemed sufficient because it served the Notice of Petition and Petition, by regular mail on May 22, 2021, pursuant to NYCHA's notice.

The Notice of Service of Process for NYCHA specifically states:

Starting on Thursday, November 5, 2020, the NYCHA Law Department will accept service of process at the service window, 90 Church Street, New York, 11th floor. The window will be open on Tuesdays and Thursdays from 9 AM to 5 PM.

Service of process on NYCHA will also be accepted via email: ServiceECF@nycha.nyc.gov. This email address may be utilized for service of papers for NYCHA such as Orders to Show Cause, Notices of Claim, Summonses, Subpoenas, and other legal papers that may be served at the service window at 90 Church Street, 11th floor, New York, NY 10007. Service of process on individuals should continue to proceed in the manner required by applicable law.

Service of papers may also be effectuated by mailing to:

NYCHA Law Department
90 Church Street, 11th floor
New York, NY 10007
Attn: Law Department/Service

Additionally, NYCHA also posted on its web page a Notice from the Leased Housing Department ("Notice") to all Section 8 Landlords. Petitioner's counsel attaches the Notice to and refers to it in her motion papers to support petitioner's argument the Notice to Cure was timely served on NYCHA, as it was served with the Notice of Termination (*see, Affirmation of Candace C. Carponter, Para. 17*). The Notice specifically states, "Judge Ward signed the Second Partial Consent Judgment in *Williams v New York City Housing Authority (NYCHA)* on February 14, 1995. . . .Under the terms of this Consent Judgment, when you wish to commence eviction proceedings against a NYCHA Section 8 tenant, you are required to..."

For Holdover Proceedings, only those that are based on termination or suspension of Section 8 subsidy require the use of these forms. If

Holdover Proceedings are brought for any other reason, you are merely required to mail to the New York City Housing Authority's Eviction Review Unit a copy of the Notice to Vacate on the same date that it has been served on the tenant. **You will then be required to deliver by overnight mail a copy of the Notice of Petition and Petition.** (Emphasis added).

Although petitioner fails to focus on the requirement of delivery by overnight mail in its argument it is still a requirement, nonetheless. "A summary proceeding is a special proceeding governed entirely by statute [citations omitted] and it is well established that there must be strict compliance with the statutory requirements to give the court jurisdiction [citations omitted]" (MSG Pomp Corp v Doe, 185 AD2d 798 [1st Dept App Div 1992]). The failure to strictly comply with the statutes governing summary proceedings deprives the court of jurisdiction and mandates dismissal. Herein, it is also well established that a landlord must abide by the terms of the *Williams consent decree*, the statutory guidelines, to maintain a proceeding against a NYCHA Section 8 tenant, such as respondent. Petitioner failed to abide by the terms of the NYCHA guidelines.

Moreover, the court is not persuaded by petitioner's argument that an alternate method of service was available. Although NYCHA provided guidelines for additional means of service because of the pandemic, this additional method did not replace service pursuant to the *Williams consent decree*. Even so, petitioner failed to comply with the alternate method of service by mailing the Notice of Petition and Petition to the 9th floor instead of the 11th floor as required by the notice.

While the court recognizes the serious allegations in this case are compelling and sympathetic, the court has a duty to ensure that the law and its requirements are upheld prior to addressing the merits of the case. The *Williams consent decree* further requires that if a landlord fails to notify NYCHA properly and join them as a necessary party, this shall require dismissal

of the proceeding without prejudice. Here, the court finds that petitioner's service of the Notice of Petition and Petition was not in accordance with the statutory guidelines for commencing a proceeding against a NYCHA Section 8 tenant and therefore, the proceeding must be dismissed.

Conclusion

Accordingly, respondent's motion to dismiss is granted and the Petition is dismissed.

The dismissal is without prejudice to petitioner's claims for possession.

This constitutes the decision and order of this court.

Dated: New York, New York
March 21, 2022


EVON M. ASFORIS
JUDGE HOUSING COURT

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