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2022-06-13

### BOSTON TREMONT HOUSING DEVELOPMENT FUND CORPORATION v. GARCIA

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

BOSTON TREMONT HOUSING DEVELOPMENT  
FUND CORPORATION,

PETITIONER,

Index No.18120-19

- against -

CARMEN GARCIA AND JUSTO GARCIA

RESPONDENT-TENANTS,

“JOHN DOE” & “JANE DOE”

RESPONDENT-OCCUPANTS,

PREMISES: 1016 Bronx Park S, #4C  
Bronx, NY 10460

-----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.  
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**Papers**

Respondent Carmen Garcia’s Notice of Motion, Affirmation, Affidavits, Memo of Law, Exhibits	1
Respondent Justo Garcia’s Notice of Motion, Affirmation, Affidavit, Memo of Law, Exhibits	2
Petitioner’s Affirmation in Opposition to Justo Garcia’s Motion, Exhibits	3
Petitioner’s Affirmation in Opposition to Carmen Garcia’s Motion, Exhibits	4
Respondent Carmen Garcia’s Affirmation in Reply, Memo of Law	5
Respondent Justo Garcia’s Affirmation in Reply, Memo of Law	6

-----X  
Petitioner is represented by: Jason D. Boroff & Associates

Respondent Carmen Garcia is represented by: Mobilization for Justice, Inc.

Respondent Justo Garcia is represented by: The Legal Aid Society

Respondents’ “John Doe” and “Jane Doe”  
appear: *Pro Se*

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

In this residential nuisance holdover, respondent Carmen Garcia moves by notice of motion for summary judgment pursuant to CPLR §3212 to dismiss the petition. In the alternative respondent Carmen Garcia seeks leave to engage in pretrial discovery pursuant to

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CPLR §§408 and 3101, for petitioner to pay any and all costs associated with production of discovery pursuant to CPLR §3103, leave to file an amended answer pursuant to CPLR §3025(b) and such other and further relief as this Court deems just and proper. Respondent Justo Garcia moves by notice of motion to dismiss this proceeding pursuant to CPLR §3211(a)(7) and/or CPLR §3212; and in the alternative seeks to interpose an amended answer and have it deemed served and filed *nunc pro tunc* pursuant to CPLR §3025(b), leave to conduct limited discovery pursuant to CPLR §408 and/or CPLR §3101, and for such other and further relief as the Court may deem just and proper. Petitioner opposes both motions in all respects. The motions are consolidated for disposition and decided as follows.

Respondent Justo Garcia seeks dismissal of this proceeding pursuant to CPLR §3211(a)(7). On a motion to dismiss a petition for failure to state a cause of action pursuant to CPLR §3211(a)(7), the question is whether “the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law a motion for dismissal will fail.” 12 E. 88th LLC v Fox, 72 Misc 3d 1221[A], 2021 NY Slip Op 50815[U] [Sup Ct, NY County 2021] *quoting*, Guggenheimer v Ginzburg, 43 NY2d 268, 275 [1977]. The Court must construe the pleadings liberally, accepting its factual allegations as true and affording the benefit of every possible inference to the petitioner. CPLR §3026; Leon v Martinez, 84 NY2d 83, 87-88 [1994].

To determine the adequacy of a predicate notice, the standard is one of “reasonableness in view of the attendant circumstances.” 75 Monroe St. LLC v Moy, 12 Misc 3d 1175[A], 2006 NY Slip Op 51238[U] [Civ Ct, New York County 2006] *quoting*, Hughes v Lenox Hill Hosp., 226 AD2d 4 [1st Dept 1996]. An adequate predicate notice is a required condition precedent to a holdover eviction proceeding and a defective predicate notice requires dismissal. *See*, Chinatown Apts., Inc. v Chu Cho Lam, 51 NY2d 786 [1980]. While there is no absolute requirement to provide dates and times of alleged incidents in a predicate notice, failing to do so is a relevant consideration. 297 Lenox Realty Co. v Babel, 19 Misc 3d 1145[A], 2008 NY Slip Op 51168[U] [Civ Ct, Kings County 2008]. Respondents cannot reasonably be expected to frame a defense to a predicate notice that is plead in an overly broad, vague, and conclusory manner. Bruckner by the Bridge LLC v J.M., 68 Misc 3d 1206[A], 2020 NY Slip Op 50872[U] [Civ Ct, Bronx County 2020]; *See also*, Site 15 Affordable Assoc. LLC v Merkinson, 2021 NY Slip Op 32040[U] [Civ Ct, New York County 2021].<sup>1</sup>

Here, petitioner’s predicate notice makes two general allegations of material non-compliance with the terms of the lease agreement. First, petitioner contends that respondents have several dogs and that their “constant barking” “since on or about May 2017” violates paragraph 23(d) of the lease and paragraph 8 of the House Rules and Regulations. Second, petitioner contends that the dogs “are causing a foul odor to emanate from your apartment” in violation of paragraph 23(d) of the lease and paragraph 8 of the House Rules and Regulations.

Both respondents assert that the notice of termination is insufficient as it lacks the specificity required to mount a defense, thereby rendering it defective and makes this proceeding ripe for dismissal. Both respondents contend that the lack of more specific allegations is required here because *assuming arguendo* that the conduct occurred, it was not respondent that committed

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<sup>1</sup> The court found it unreasonable to expect that a tenant can fashion a defense based on vague claims of nuisance behavior without dates/times of alleged acts, who committed the acts, and without factual allegations of where the offending behavior occurred.

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these actions, rather the dogs at issue committed the objectionable behavior. Therefore, the failure to provide details such as date, time, what allegedly occurred and number of incidents, do not permit respondents to defend themselves because those details are not within the respondents' own memories.<sup>2</sup> Given the pervasive nature of the allegations, the Court finds that petitioner should have provided a more detailed description of the alleged disturbances and the dates and times when they allegedly occurred within the Notice of Termination, and the failure to do so has deprived the respondents the ability to mount a defense to the allegations.

For the reasons stated herein, respondent Justo Garcia's motion is GRANTED, respondent Carmen Garcia's motion is denied as moot. The petition is hereby dismissed without prejudice. As the Court dismisses this matter based upon the insufficiency of the predicate notice respondent's other reliefs are not considered.

This is the decision of the Court and shall be uploaded to NYSCEF.

Date: June 13, 2022

David J. Bryan,  
Housing Judge, Civil Court

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<sup>2</sup> See, University Towers Assoc. v. Gibson, 18 Misc.2d 349, 846 N.Y.S.2d 872 (Civ. Ct. Kings Cty. 2007) (Rent stabilized dog holdover based upon the allegation that "a pit bull, which is a known dangerous animal" dismissed for failure to specify how the dog menaced anyone other than the perception of the dog's dangerous propensities.), see also 2328 Newkirk Ave Corp. v. Dames, 2015 NYLJ Lexis 5877 (Civ. Ct. Kings Cty. 2015).