2019-03-15

Sudimac v. Beck

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS: HOUSING PART E
MARICA SUDIMAC

Petitioner-Landlord,

-against-

Index No.: L&T 71333/18
DECISION & ORDER

ROBERT BECK

Respondent-Tenant,

"JOHN DOE" & "JANE DOE"

Undertenants.

Hon. Sergio Jimenez

Recitation, as required by CPLR §2219(a), of the papers considered in the review of this motion to dismiss and cross motion for summary judgment:

Papers	Numbered
Notice of Motion, Affirmation, Affidavit, & Exhibits	1
Notice of Cross Motion, Affidavit, Reply & Exhibits	2
Resp's. Reply	3

In this breach of lease holdover proceeding, petitioner seeks possession of the premises after allegedly terminating respondent's tenancy on September 1, 2018 by service of a Notice to Terminate. The premises involve a rent stabilized apartment wherein respondent has allegedly lived for 31 years. On or about June 25 2018 petitioner served a Notice to Cure on respondent alleging respondent had breached Clause7 of the lease which requires tenant to "obtain landlord's prior written consent to install any paneling, flooring...railings or make alterations... to the apartment". The Notice further allegess tenant was in violation of his "obligation to obey laws and regulations of your lease agreement known as Clause 16 which provides 'tenant must...promptly comply with all laws, orders, rules, requests and directions of all governmental authorities'". Specifically, the Notice to Cure alleges respondent had installed a sub floor above the main floor and altered the front door to fit over it creating a trip hazard without the written consent or permission of the landlord and without permits and approval from municipal authorities. Thereafter, the Notice to Terminate, dated July 15, 2018, was served alleging

respondent had failed to cure the violation. The Notice of Termination again cites the lease terms that were allegedly violated adding:

> "PLEASE TAKE FURTHER NOTICE that you have previously been served with a Notice to Cure dated June 25, 2018, which required you to cure the enumerated defaults under your lease by: July 14, 2018, a date which was a date at lease ten (10) days after the service of said notice upon you.
>
> PLEASE TAKE FURTHER NOTICE that you have failed to cure such defaults and as a consequence of which, your lease and your tenancy is hereby terminated as of: September 10, 2018, a date which is at lease ten (10) days from the date of the service of this notice upon you.
>
> PLEASE TAKE FURTHER NOTICE that you are hereby required to quit and surrender possession of the premises in default of which a proceeding under the statue will be commenced against you to recover possession of the premises from you together with the fair value of the use and occupancy of said premises."

Respondent, by his attorney, now moves to dismiss the proceeding pursuant to CPLR §3211(a)(2) and/or (7), alleging the Notice of Termination is insufficient because it does not allege any new instances of lease violations by respondent after the expiration of the cure period but merely mirrors the Notice to Cure. Additionally, respondent seeks leave to file a late answer. Petitioner opposes the motion in its entirety and cross moves for discovery, sanctions and summary judgment.

Rent Stabilization Code (hereinafter referred to as RSC) 2524.2(b) requires that "every notice to a tenant to vacate or surrender possession of a housing accommodation shall state the ground...upon which the owner relies for removal or eviction of the tenant, the facts necessary to establish the existence of such ground." A notice of termination which "merely recite[s] the legal ground for the eviction, but fail[s] to set forth any of the facts upon which the ensuing proceeding would be based," is insufficient and cannot serve as a predicate notice for an eviction proceeding. *Kaycee W.113th Street Corp. v. Diakoff*, 160 AD2d 573, 574, 554 NYS2d 216; See *Berkeley Assoc. Co. v. Camlakides,* 173 AD2d 193, 194, 569 NYS2d 629, *affirmed,* 78 NY2d 1098, 578 NYS2d 872, 586 NE2d 55; *First Sterling Corp. v. Zurkowski,* 142 Misc2d 978, 979, 542 NYS2d 899.

The Notice to Cure and the Notice of Termination are independent notices, both which must allege a legal ground for the claim *and* set forth sufficient facts to support that claim. *Bellstell 140 East 56th St., LLC. v. Layton,* 180 Misc.2d 25, 687 NYS2d 536. The Notice of Termination should include facts, as the Notice to Cure does, as to the specific description of the alleged violation in the apartment (illegal alterations). Additionally, the Notice should allege that the violation continued after the cure date and how petitioner discovered that. In the case at bar, the

Notice of Termination only partially mirrors the Notice to Cure in that it recites the legal grounds for the case but curiously leaves out the facts on which the claim is based. Further, the termination notice was issued on July 15, 2018, just one day after the cure date of July 14, 2018 and fails to allege how petitioner determined on the 15th that the breach was not cured by the 14th. A notice to cure is not a mere formality to a termination of a tenancy. *Hew-Burg Realty v. Mocerino,* 163 Misc.2d 639, 622 NYS2d 187. As in *31-67 Astoria Corp. v. Landaira,* 54 Misc3d 131(A), 52 NYS3d 248 and the plethora of cases cited by respondent's attorney, (See Resp's. Mot. paragraphs 13-20), a termination notice served just one day after the cure date that fails to set forth the relevant facts upon which the landlord relies for eviction is defective and gives the appearance of bad faith in its preparation. As such, the Notice of Termination is defective. Service of a valid termination notice is a prerequisite to commencement of a statutory holdover proceeding. *Chinatown Apts. V. Chu Cho Lam,* 433 NYS2d 86.

Accordingly, the petition is dismissed. The remaining relief requested by respondent is denied as moot. Likewise, petitioner's motion for summary judgment, discovery and sanctions, which was almost completely devoid of any legal authority supporting it, is denied as moot. Additionally, sanctions are not assessed to teach the law to an ignorant attorney (Pet's. Cross Mot. paragraph 15), but are imposed to punish frivolous conduct that may include merit-less claims, undue delay, harassment and malicious injury. Rules of the Chief Administrator Part 130-1.1. Petitioner failed to demonstrate respondent or their attorney engaged in any such conduct. On the contrary respondent and their attorney raised a valid defense on which they have clearly prevailed.

This constitutes the decision and order of the court.

March 15, 2019

Sergio Jimenez
Judge, Housing Court

Hon. Sergio Jimenez