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Jackson v. Anderson

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

-----X
PAMELA JACKSON FOR YOLANDA JACKSON,

L&T Index No. 050069-21

Petitioner,

DECISION/ORDER

-against-

**KATRINA ANDERSON,
VICTOR ANDERSON,**

Respondents.

-----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:

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

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

Pamela Jackson (“petitioner”) commenced this holdover proceeding against Katrina Anderson and Victor Anderson (collectively “respondents”), to recover possession of Apartment 10C located at 40 West 115th Street, New York, New York (“subject premises”). Petitioner commenced this proceeding on behalf of her sister Yolanda Jackson as her lawful guardian because Yolanda Jackson is an individual who is unable to act on her own behalf. Petitioner alleges respondent Katrina Anderson is in possession of the subject premises pursuant to an oral agreement made on or about January 1, 2020, wherein respondent promised to pay \$100.00 weekly starting January 1, 2020, and ending November 2, 2021.

Petitioner served respondents with a Thirty-Day Notice of Termination dated November 2, 2021. The Notice of Termination states that respondents are required to vacate and surrender possession of the subject premises on or before December 2, 2021. Upon expiration of the Notice of Termination, petitioner served respondents with a Notice of Petition and Petition dated December 3, 2021.

Respondent, Victor Anderson has not appeared in this proceeding. Respondent, Katrina Anderson, retained the Legal Aid Society (“LAS”) as counsel, and now moves by Notice of Motion dated March 15, 2022, to dismiss the proceeding pursuant to Real Property Law (“RPL”) §§ 232-a and 226-c. Respondent argues that the Petition must be dismissed because the Notice of Termination is defective. Respondent asserts she has occupied the subject premises since 2000 and she is entitled to a ninety-day notice and therefore, the court lacks jurisdiction over respondent. Additionally, respondent argues that the affidavit of service for the Notice of

Termination is also defective in that the process server, Gary Kirkland alleges service on himself and not respondent.

In opposition, petitioner argues that the 30-day Notice of Termination is correct because the respondent has not lived in the subject premises for twenty years and that respondent is not on the lease. Petitioner further argues that both respondents are a threat to her and her sister, Yolanda Jackson. Respondent concedes that the person who served Respondents with the Notice of Termination “made a mistake by signing his name in the wrong spot on the petition.”

“On a motion to dismiss pursuant to CPLR § 3211, the pleading is to be afforded a liberal construction (see, CPLR § 3026). We accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (Leon v Martinez, 84 NY2d 83, 87 [1994]; see also, Morone v Morone, 50 NY2d 481, 484; Rovello v Orofino Realty Co., 40 NY2d 633, 634). “However, allegations consisting of bare legal conclusions, as well as factual claims inherently incredible or flatly contradicted by documentary evidence are not entitled to such consideration” (Caniglia v Chicago Tribune-N.Y. News Syndicate, 204 AD2d 233, 233 - 234 [App Div, 1st Dept 1994]; see also Skillgames, LLC v Brody, 1 AD3d 247, 250 [App Div, 1st Dept 2003]).

Real Property Law (“RPL”) § 232-a provides that “no monthly tenant, or tenant from month to month, shall hereafter be removed from any lands or buildings in the city of New York...unless pursuant to the notice period required by [226-c(2)] of this article.” RPL § 226-c(2) requires that “if the tenant has occupied the unit for more than two years or has a lease term of at least two years, the landlord shall provide at least ninety days’ notice.”¹

In this case, respondent asserts she moved into the subject premises in the year 2000. Petitioner disputes this date, however, petitioner in her own affidavit states that her sister invited respondent Katrina Anderson into the apartment in 2015. Based on this assertion it is undisputed that respondent has resided in the subject premises for more than two years and is therefore, entitled to a ninety-day notice of termination. Consequently, the court finds that the Notice of Termination is defective, and a defective predicate notice requires dismissal of the proceeding (Chinatown Apts. V Chu Cho Lam, 51 NY2d 786, 787 [App Term 1st Dept 1980]; Second & E. 82 Realty v. 82nd St. Gily Corp., 192 Misc 2d 55, 56-57 [Civ Ct, NY County 2002, Billings, J.]).

Consequently, the court finds that the Notice of Termination is insufficient, and the proceeding must be dismissed.

The court notes that petitioner is an unrepresented litigant attempting to assist her sister with regaining possession of her apartment. However, a summary proceeding is statutory in nature and the pleadings must comply with the provisions of the statutes. Accordingly, respondent’s motion to dismiss is granted and the Petition is dismissed without prejudice to petitioner’s claim for possession and the commencement of a new proceeding with the proper predicate notice.

This constitutes the decision and order of the court.

¹ RPL §§ 232-a and 226-c effective as of October 12, 2019, pursuant to the Housing Stability and Tenant Protection Act (“HSTPA”).

Dated: New York, New York
September 9, 2022


EVON M. ASFØRIS
JUDGE HOUSING COURT

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