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Sanchez v. Zerezghi

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CIVIL COURT CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART D

ALTAGRACIA SANCHEZ,

Index No.: LT-50027-22/NY

Petitioner,

Motion Seq. No.: 001 & 002

DECISION/ORDER

-against-

BETHEL H ZEREZGHI,

Respondent.

Recitation, pursuant to CPLR § 2219(a), of the papers considered in review of this Motion to dismiss and Cross-motion for use and occupancy

PAPERS	NUMBERED
Notice of Motion, Affirmation/Affidavit & Exhibits Annexed	1
Notice of Cross-motion and Affirmation/Affidavit Annexed	2 [NYSCEF #3-5]
Answering and Replying Affirmation/Affidavit	3 [NYSCEF #6]
Other:	

FERDINAND. J.:

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

This summary holdover proceeding was commenced seeking possession of the premises known as “Second Room the left from the entrance and any common areas” in apartment 71 in the building known as 251 Fort Washington Avenue, New York, New York. Petitioner commenced this proceeding pro-se but retained counsel after the first court appearance.

The proceeding is predicated on a Notice of Termination dated February 3, 2022, stating that the petitioner is electing to terminate respondent’s tenancy held by monthly/weekly hiring and requiring respondent to vacate and surrender the premises by March 5, 2022.

The Petition states in pertinent part:

“2. Respondent is petitioner’s roommate in the premises and entered into possession by oral rental agreement made on or about August 26, 2020, between Respondent and Petitioner, in which Respondent promised to pay \$200 weekly, starting August 26, 2020 ending March 5, 2022.

...

4. The term for which said premises were rented by the respondent expired on March 5, 2022.”

Respondent, represented by counsel, interposed an Answer, and now moves to dismiss arguing, *inter alia*, that the Notice of Termination is fatally defective insofar as respondent was in occupancy for approximately 18 months at the time the Notice of Termination was served and was therefore entitled to a 60-day notice pursuant to Real Property Law (“RPL”) §232-a and 236-c. The Respondent fails to state the basis for dismissal, but the Court will treat the motion as based upon CPLR §3211(a)(7), failure to state a cause of action.

Petitioner opposes and moves for an award of use and occupancy. Petitioner urges the Court to “evaluate the nature of the agreement between the Petitioner and Respondent” to determine the sufficiency of the Notice.

The Notice of Termination clearly states that petitioner is electing to terminate respondent’s tenancy. The Petition clearly pleads that respondent took occupancy pursuant to an oral rental agreement commencing August 26, 2020, with a term expiring March 5, 2022. It is undisputed that the respondent had occupied the premises for approximately eighteen months at the time the Notice was served.

It is petitioner who has defined the relationship as a tenancy. Petitioner’s in her opposition concedes that she is proceeding on the basis that respondent is a month-to-month tenant.¹ As a tenant in occupancy for more than one year but less than two years, respondent was entitled to at least sixty days’ notice, not thirty as provided herein.

Service of a proper Notice of Termination is an essential pre-requisite to commencement of a summary proceeding, and failure to comply with the condition

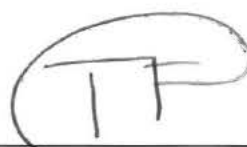
¹ Affirmation in opposition and support of cross-motion para. 24.

precedent warrants dismissal. *Chinatown Apts., Inc. v Chu Cho Lam*, 51 NY2d 786 [1980].

Accordingly, respondent's motion to dismiss (Seq. #001) is granted and the proceeding is dismissed without prejudice. The Court declines to address respondent's remaining arguments and petitioner's cross-motion (Seq.#002) is denied as moot.

This constitutes the Decision and Order of this Court.

Dated: September 13, 2022
New York, New York

A handwritten signature in black ink, consisting of the letters 'TF' enclosed within a large, loopy oval shape.

TRACY FERDINAND, J.H.C.