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### 1200 C LLC v. Drucillia

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

-----X  
1200 C LLC,

L&T Index # 12207/2020

Petitioner (Landlord),

-against-

**DECISION & ORDER**

DRUCILLIA RALPH,

Respondent (Tenant).

-----X  
Hon. Diane E. Lutwak:

Recitation, as required by CPLR Rule 2219(A), of the papers considered in the review of Respondent’s Motion for Summary Judgment and Dismissal:

<u>Papers</u>	<u>NYSCEF DOC #</u>
Notice of Motion	10
Attorney’s Affirmation in Support	11
Exhibits A-K in Support	12-22
Respondent’s Affidavit in Support	23
Attorney’s Affirmation in Opposition	24
Exhibits A-B in Opposition	25-26
Attorney’s Affirmation in Reply	27
Answer	6

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**PROCEDURAL HISTORY & FACTUAL BACKGROUND**

This is a nonpayment eviction proceeding brought against a Rent Stabilized tenant. The Petition, filed on March 12, 2020, is dated March 6, 2020, alleges there to be a lease between the parties with a monthly rent of “\$977.5” (Petition at ¶ 2) and seeks rent arrears of \$2641.94, comprised of the following (Petition at ¶ 6):

February 2020	\$27.45
January 2020	\$27.45
December 2019	\$13.00
November 2019	\$13.00
October 2019	\$13.00
September 2019	\$13.00

December 2018	\$1,472.20
November 2018	\$420.72
October 2018	\$420.72
September 2018	\$221.40

The Petition is based on a 14-day Rent Demand, annexed to and incorporated in the Petition, which demanded the same alleged rent arrears as are stated in the Petition.

Due to the COVID-19 pandemic, there was a delay in the calendaring of this proceeding. After the court approved Petitioner's request for the case to proceed as an e-filed case on March 15, 2021, Respondent retained counsel who filed a Notice of Appearance and Answer on March 31, 2021. The case was then placed on the court's "NonPayment Administrative Calendar" and eventually calendared in Resolution Part C for an initial conference on May 31, 2022. The case was then adjourned on consent first to July 26, 2022 and then, when settlement negotiations were unsuccessful, to September 20, 2022 with a motion briefing schedule.

Now before the court is Respondent's motion for summary judgment under CPLR R 3212, seeking dismissal and arguing that there are no material issues of fact and Respondent is entitled to judgment as a matter of law. Respondent asserts that the Rent Demand and Petition improperly seek a monthly rent that is more than her tenant share under the Section 8 rent subsidy program and, as evidenced by documents submitted in support of the motion, including certified documents from the New York City Department of Housing Preservation and Development's Division of Tenant Resources/Section 8 Program (HPD), that she did not owe any rent when Petitioner commenced this proceeding, does not owe any rent now and instead should have a credit in her rent account due to an inadvertent overpayment made on her behalf in 2018 by the City's Human Resources Administration (HRA).

Petitioner opposes the motion solely with its attorney's affirmation, a copy of the Notice of Petition, Petition and Rent Demand and Petitioner's rent records for Respondent's account. Petitioner argues that the rent demand is not defective because it asserts a good faith claim for rent due and, under the standard for a motion to dismiss under CPLR R 3211, it has sufficiently stated a claim.

On reply, Respondent points out that Petitioner's argument is based on an incorrect analysis, as this is a motion for summary judgment under CPLR R 3212, not a motion to dismiss under CPLR R 3211, and that Petitioner has failed to address the key arguments in Respondent's motion papers.

## DISCUSSION

It is well-settled that a landlord may not seek to recover alleged rent arrears in excess of a Section 8 tenant's share of the rent in a nonpayment proceeding. *MPlaza, LP v Corto* (35 Misc3d 139[A], 953 NYS2d 551 [AT 1<sup>st</sup> Dep't 2012]); *Licht v Moses* (11 Misc3d 76, 813 NYS2d 849 [AT 2<sup>nd</sup> Dep't 2006]); *Prospect Place HDFC v Gaildon* (6 Misc3d 135[A], 800 NYS2d 355 [AT 1<sup>st</sup> Dep't 2005]).

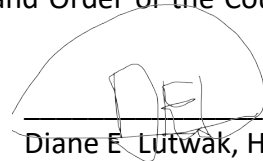
Here, the key facts, evidenced by unrefuted documents, are that Respondent's rent has been subsidized by HPD's Section 8 program since August 1, 2018, when her share of the rent was set at \$0 (see HPD Confirmation Notice, NYSCEF Doc # 12); that Respondent had a rent credit as of September 1, 2018 of \$495, as her arrears through July 31, 2018 were \$2118 (see court-ordered stipulation settling L&T Index # 27588/18, NYSCEF Doc # 18) and Petitioner acknowledged receipt of HRA checks totaling \$2613 on August 10, 2018 (see Petitioner's rent ledgers, NYSCEF Doc ## 20 and 26); that, whereas the Petition seeks alleged rent arrears of \$221.40 for September 2018, \$420.72 per month for October and November 2018, \$1472.20 for December 2018, \$13 per month for September through December 2019 and \$27.45 per month for January and February 2020, in fact Respondent's Section 8 tenant share of the rent was \$0 for the four months of September through December 2018 (see HPD Notices, NYSCEF Doc ## 12 and 13) and \$13 for the six months of September 2019 through February 2020 (see HPD Notice, NYSCEF Doc # 14).

The proponent of a summary judgment motion under CPLR R 3212 must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence in admissible form to demonstrate the absence of any material issues of fact. *Winegrad v New York Univ Med Center* (64 NY2d 851, 476 NE2d 642, 487 NYS2d 316 [1985]); *Zuckerman v New York* (49 NY2d 557, 404 NE2d 718, 427 NYS2d 595 [1980]). Once this showing has been made, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action; mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient. *Alvarez v Prospect Hospital* (68 NY2d 320, 324, 501 NE2d 572, 508 NYS2d 923, 925-926 [1986]); *Zuckerman v New York* (49 NY2d at 562, 427 NYS2d at 598).

Respondent has presented sufficient evidence to meet her initial burden on this summary judgment motion to demonstrate that Respondent owed nothing for the period sued for. In opposition, Petitioner completely fails to address Respondent's claims, merely arguing, inappositely, that the rent demand is sufficient on its face to state a good faith claim for rent arrears. As nothing in Petitioner's opposition papers creates a triable issue of fact, Respondent is entitled to judgment as a matter of law and dismissal of this proceeding with prejudice.

**CONCLUSION**

For the reasons stated above, Respondent's motion is granted and the Petition is dismissed with prejudice. This constitutes the Decision and Order of the Court, which is being uploaded on NYSCEF.

  
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Diane E. Lutwak, H.C.J.

Dated: Bronx, New York  
October 2, 2022

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