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### UNION AVE. ESTATES LLC v. RUSSELL

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

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UNION AVE. ESTATES LLC,

L&T Index No. 304522/22

Petitioner,

-against-

**DECISION/ORDER**

ALINA RUSSELL,

Respondent.

-----X

Present: Hon. OMER SHAHID  
Judge, Housing Court

Recitation, as required by C.P.L.R. § 2219(a), of the papers considered in the review of Petitioner’s Motion to Join Alex Reynolds as Distributee (Motion #1 on N.Y.S.C.E.F.) and Alex Reynolds’s Cross-Motion to Dismiss and for an Order Imposing Sanctions (Motion #2 on N.Y.S.C.E.F.):

<b>Papers</b>	<b>Numbered</b>
Notice of Motion (Motion #1 on N.Y.S.C.E.F.).....	<u>1</u>
Notice of Cross-Motion (Motion #2 on N.Y.S.C.E.F.).....	<u>2</u>
Affirmation in Opposition to Cross-Motion (Entry #26 on N.Y.S.C.E.F.).....	<u>3</u>
Reply Affirmation in Support of Cross-Motion (Entry #27 on N.Y.S.C.E.F.).....	<u>4</u>

Petitioner commenced the instant nonpayment proceeding alleging that Respondent Alina Russell is indebted to Petitioner in the amount of \$2,763.17, representing all rental arrears outstanding through February 28, 2022, pursuant to a lease agreement between the parties for the letting of 729 Union Ave., Apt. A4, Bronx, N.Y. 10455 (the “subject premises”). The subject premises is subject to the Rent Stabilization Law. The Petition and Notice of Petition were filed with the court on N.Y.S.C.E.F on February 23, 2022. Respondent thereafter filed a written answer with the court on March 9, 2022 and retained Mobilization for Justice as counsel on April 19, 2022.

Before the July 7, 2022 appearance, Respondent’s counsel filed a letter on N.Y.S.C.E.F. informing the court that Respondent passed away on May 19, 2022 and attached a death certificate as proof. On the July 7, 2022 appearance, the court dismissed the proceeding as to Alina Russell and adjourned the matter to August 12, 2022 for Petitioner to make a motion to implead and join. Petitioner filed the instant motion to add Alex Reynolds as the surviving spouse and closest distributee. Alex Reynolds, who retained Mobilization for Justice as counsel,

filed a cross-motion to dismiss the instant proceeding and to impose sanctions upon Petitioner and Petitioner's counsel. The fully briefed motions were marked submitted for decision on September 8, 2022.

Petitioner moves to add Alex Reynolds as the surviving spouse and closest distributee. Petitioner alleges that Alex Reynolds is the appropriate party to be substituted in the place of Respondent pursuant to R.P.A.P.L. § 711(2).

Respondent opposes the motion and cross-moves to dismiss the proceeding pursuant to C.P.L.R. § 3211(a)(10) for Petitioner's failure to name Alex Reynolds as a necessary party to this proceeding. The cross-motion also seeks an order imposing sanctions upon Petitioner and Petitioner's counsel pursuant to 22 N.Y.C.R.R. §§ 130-1.1 because Petitioner's motion is frivolous because it is not supported by existing law. Alex Reynolds maintains that R.P.A.P.L. § 711(2) does not authorize Petitioner to join Alex Reynolds and that the appropriate party to be substituted in should be Respondent's estate instead. Alex Reynolds maintains that this proceeding should be dismissed because he was not named in this proceeding and is a necessary party since Petitioner was aware of his existence and that he has independent possessory rights to the subject premises.

C.P.L.R. § 1015(a) provides that "[i]f a party dies and the claim for or against him is not thereby extinguished the court shall order substitution of the proper parties." C.P.L.R. § 1015(a). C.P.L.R. § 1021 also permits a motion to be made by any party if substitution is required due to the death of a party. See C.P.L.R. § 1021.

A lease does not terminate upon a tenant's death but becomes the property of the deceased tenant's estate. See Joint Props. Owners v. Deri, 113 A.D.2d 691 (1st Dep't 1986). Hence, if the tenant dies during the lease term, then the tenant's estate must be joined and made a party to the summary proceeding. See Westway Plaza Assoc. v. Doe, 179 A.D.2d 408 (1st Dep't 1992).

The court agrees with Alex Reynolds that Petitioner's reliance upon R.P.A.P.L. § 711(2) to add him to this proceeding is misplaced. Petitioner cites to the previous incarnation of R.P.A.P.L. § 711(2). Prior to its amendment by the H.S.T.P.A., R.P.A.P.L. § 711(2) provided that "[w]here a tenant dies during the term of the lease and rent due has not been paid and no representative or person has taken possession of the premises and no administrator or executor has been appointed, the proceeding may be commenced after three months from the date of death of the tenant by joining the surviving spouse or if there is none, then one of the surviving issue or if there is none, then any one of the distributees." That provision of the R.P.A.P.L. now provides that "[w]here a tenant dies during the term of the lease and rent due has not been paid and the apartment is occupied by a person with a claim to possession, a proceeding may be commenced naming the occupants of the apartment seeking a possessory judgment only as against the estate. Entry of such a judgment shall be without prejudice to the possessory claims of the occupants, and any warrant issued shall not be effective as against the occupants." R.P.A.P.L. § 711(2).

Petitioner is not authorized to join Alex Reynolds pursuant to R.P.A.P.L. § 711(2) because that provision of the law relates to the commencement of a proceeding if the lease is in effect and the tenant dies owing rent. Even if the court authorized Petitioner to join Alex Reynolds pursuant to R.P.A.P.L. § 711(2), that provision of the law expressly provides that any possessory judgment entered and warrant issued against the estate will not be effective against Alex Reynolds and the only relief Petitioner may have against him is to commence a licensee proceeding. Hence, the only proper party to be joined in substitution due to Respondent's death, while the lease has not been terminated, is her estate.

In the reply papers, counsel for Alex Reynolds attaches an executed lease between Petitioner and Alex Reynolds that commenced on September 1, 2022. Since Petitioner has recognized Alex Reynolds as a tenant for the subject premises and recognizes him as a successor due to the death of Respondent, his wife, the possessory interest of Respondent's estate has hereby been extinguished. The court is only authorized to award a possessory judgment against the estate due to Respondent's nonpayment of rent and while the lease has not been terminated. When the lease terminated due to the recognition of Respondent's husband as successor and Petitioner executed a lease with him to that effect, any possessory interests of Respondent's estate lapsed and, hence, need not be joined. See Ellis v. Disch, 17 Misc. 3d 126(A) (App. Term, 1st Dep't 2007).

Alex Reynolds also cannot be joined to this proceeding since he, as a successor, is not obligated to pay any rental arrears owed by Respondent. See Edelstein & Son, L.L.C. v. Levin, 8 Misc. 3d 135(A) (App. Term, 1st Dep't 2005). Petitioner's only recourse would be to pursue these arrears against Respondent's estate in a plenary action. See id.

Hence, Petitioner's motion is denied in its entirety and the proceeding is hereby dismissed without prejudice to Petitioner's claim against Respondent's estate in a plenary action for rental arrears owed by Respondent. The branch of Alex Reynolds's cross-motion which seeks a dismissal of this proceeding pursuant to C.P.L.R. § 3211(a)(10) is denied as moot due to the dismissal.

The court also denies the portion of Alex Reynolds's cross-motion which seeks an order imposing sanctions upon Petitioner and its counsel pursuant to 22 N.Y.C.R.R. §§ 130-1.1. Alex Reynolds argues that Petitioner's motion is frivolous because it has no basis in existing law. The court agrees that Petitioner's reliance upon R.P.A.P.L. § 711(2) is misplaced because it does not permit Petitioner to substitute Alex Reynolds in place of the deceased tenant of record, as recited above, and that the proper avenue would have been to substitute in Respondent's estate instead. However, although stated in a footnote, Petitioner's motion also seeks to stay the proceeding pending substitution of the Respondent's estate in her place if the court does not permit the joining of Alex Reynolds to this proceeding. Such a stay has a basis in the law. See C.P.L.R. §§ 1015(a) & 1021. See also Dugger v. Conrad, 189 A.D.3d 478 (1st Dep't 2020). At the time when the motion was filed, Respondent's lease was still in effect and the estate could be substituted in as it still had a possessory interest in the subject premises which now has lapsed. Hence, the motion was not entirely without merit in the law. See 22 N.Y.C.R.R. §§ 130-1.1(c)(1).

Based upon the foregoing, both Petitioner's motion and Alex Reynolds's cross-motion are denied in their entirety. The matter is hereby dismissed without prejudice for the reasons stated above.

The foregoing constitutes the decision and order of the court.

Dated: October 11, 2022  
Bronx, N.Y.



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Omer Shahid, J.H.C.