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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS: HOUSING PART A
KANIZ & ASSOCIATES, LLC.,

Petitioner-Landlord

Index No. L&T 56378/20
DECISION/ORDER

-against-

AUDREY FELIX & ANTHONY WHITE,
Respondent-Tenants,
JOHN DOE & JANE DOE,
Respondent-Undertenants.

Hon. Jeannine Baer Kuzniewski, J.H.C.

Recitation, as required by CPLR 2219(A), of the papers considered in the review of this Notice of Motion:

PAPERS	NUMBERED
NOTICE OF MOTION, AFFIRMATION & AFFIDAVIT ANNEXED	<u>1</u>
ANSWER AFFIRMATION	<u>2</u>
REPLYING AFFIRMATION	<u>3</u>
EXHIBITS NYSCEF NO. 10	<u>4</u>
STIPULATIONS	_____
OTHER	_____

Upon the foregoing cited papers, the Decision/Order in the respondent’s motion for dismissal in this holdover proceeding is as follows:

The petitioner commenced this proceeding seeking possession of the premises at 702 Beach 19th Street, 1st floor, Far Rockaway, NY. The pleadings allege that a Ninety Day Notice to Terminate Monthly Tenancy was served upon the respondents at 702 Beach 19th Street, Far Rockaway, NY 11691, 1st floor by personal service upon Audrey Felix and substituted service of Anthony White. The respondents do not deny receipt, however, the motion seeks dismissal arguing that the description of the premises is invalid in both the Petition and Notice of Termination. The respondent, Audrey Felix appears by the Legal Aid Society. The petitioner opposes.

Specifically, the movant argues that there are three separate apartments in the building and she resides on the first floor. In support of the argument photographs are attached. It is argued:

“The subject premises has two front doors at the 1st Floor level. The left door has ‘702’ on the door with no additional markings. The right door has no markings on it whatsoever. In between these two doors is a number ‘2’ without any other

markings. Furthermore, in between both doors are two doorbells, which are also not marked. None of these doorbells are for Respondent’s apartment. There is a joint mailbox at the sidewalk for the premises, however, there are multiple mailbox slots, each labeled from 1-12 without any other markings. Respondent’s apartment is accessed through the right door on the 1st Floor level. To be clear, the left door, which is not Respondent’s door, is also on the 1st floor level. This left door leads to the 2nd floor tenant and the 3rd floor tenant.”¹

There is no dispute that the exterior of the premises presents as two doors side by side. One door, the door to the right, accesses the respondents’ apartment. The door to the left apparently opens to a staircase which proceeds upstairs to the second-floor apartment and continues up to the third-floor apartment. The movant argues that the pleadings are defective for failure to describe which door leads to her apartment. The photograph of the exterior of the premises, which was not rebutted, simply shows two doors side by side with no markings to distinguish which apartment or apartments, the different doors access. The argument asserts that a marshal, in the event of an eviction, would not know where to go to effectuate the eviction.

RPAPL §741(3) requires that every petition “[d]escribe the premises from which removal is sought.”

“To satisfy the statutory requirement, the petition must accurately describe the exact location of the premises in sufficient detail to allow a marshal executing a warrant to locate the premises in issue and effect an eviction without additional information (*Empire State Building Co., LLC v. Progressive Catering Services, Inc.*, 2 Misc 3d 545, 547, 769 N.Y.S.2d 691 [Civ. Ct. N.Y.C., NY Co., 2003]; *Vornado Two Penn Property, LLC v. XLPC, Corp.*, 18 Misc 3d 1119[A], 856 N.Y.S.2d 503, 2008 NY Slip Op 50138[U] [Civ. Ct. N.Y.C., NY Co., 2008]).”²

The petitioner opposes the motion arguing that the respondents know that they live on the first floor of the premises and the Notice of Termination and petition accurately describe the premises as being on the first floor of the building.

“Much like when the process server went to the subject premises to serve the papers they were able to serve the proper apartment, when the Marshall appears at the subject property to evict Respondent, they will certainly know that if they entered the left door, and the only apartments they could evict are up the stairs on the second and third floor, and thus, they would know they were not in the correct apartment and they would go to the other door.”³

1 See Affirmation In Support paragraphs 4 – 10.

2 [Sixth St. Community Ctr., Inc. v Episcopal Social Servs.](#), 19 Misc 3d 1143[A], 1143A, 2008 NY Slip Op 51151[U], *2 [Civ Ct, New York County 2008]

3 See Affirmation in Opposition paragraph 26.

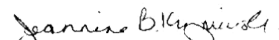
The Court disagrees with the argument in opposition. This assertion would have allowed for a marshal to have already broken the locks and entered into the premises before being able to determine if they had entered the premises for which the warrant had been issued. While the petition and notice of petition describes the premises as being on the first floor, which is accurate, given the specific layout of this building, the description does not provide a way to discern how to obtain access to the premises for this petition or a potential warrant that may issue if the petitioner is determined to be the prevailing party. The intent is not just to protect these tenants from an eviction, but to protect the other tenants in the building from an improper eviction due to a marshal's mistake. It is not rebutted that there are two doors, side by side, that do not have markings describing which apartment the different doors lead too.⁴

"... a vague or incomplete description that is not accompanied by a diagram or plans of the floor showing the tenant's exact location will result in a dismissal. ... the court found the description of the premises as "(a)ll rooms, store # 1, 2 and 3 in a building located at a certain address" insufficient, since the uncertainty as to the location of respondents' premises "risks evictions of other enterprises, unassociated with respondent, operating at one of more of the other three store locations" and thus ordered that the petition be dismissed. *Id* at 373."⁵

Under the facts of this proceeding and the layout of the exterior of the premises, the Court grants the motion and dismisses the proceeding, without prejudice.

"It is well settled that 'the petition must contain a proper description of the premises involved, so that they may be identified properly and with certainty. Clearly, if the warrant is to be executed properly, the premises must be identified properly, and with certainty, so that the officer executing the warrant will be enabled to locate the premises from such description' (3 Dolan, Rasch's Landlord and Tenant -- Summary Proceedings § 41:14, at 25 [4th ed])."⁶

Dated: December 12, 2022


Hon. Jeannine Baer Kuzniewski, J.H.C.
So Ordered

Hon. Jeannine Baer Kuzniewski, J.H.C.

⁴ See NYSCEF exhibit 10.

⁵ [217 Malcolm X Blvd LLC v Naughton Bros. Funeral Home Inc.](#), 43 Misc 3d 1214[A], 1214A, 2014 NY Slip Op 50597[U], *5 [Civ Ct, Kings County 2014]

⁶ [US Airways, Inc. v Everything Yogurt Brands, Inc.](#), 18 Misc 3d 136[A], 136A, 2008 NY Slip Op 50279[U], *2 [App Term 2008]