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### DIEGO BEEKMAN MUTUAL HOUSING ASSOCIATION HOUSING DEVELOPMENT FUND CORP. v. TORRES

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

-----X  
DIEGO BEEKMAN MUTUAL HOUSING  
ASSOCIATION HOUSING DEVELOPMENT :  
FUND CORP.,

Petitioner,  
  
-against-

IRIS TORRES,

Respondent,

JOHN DOE; JANE DOE; JASON MELENDEZ,  
MAX RODRIGUEZ,

Respondents-Undertenants.

-----X  
Present:

Hon. HOWARD BAUM  
Judge, Housing Court

L&T Index No.  
72619/17  
  
Motion Seq. No. 1, 2 & 3

**DECISION/ORDER**

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of the motion by Petitioner Diego Beekman Mutual Housing Association Housing Development Fund Corporation and cross-motion by Respondent Iris Torres:

Papers	Numbered
Notice of Motion (seq. 1); Affirmation and Affidavits in Support; and Exhibit 1 .....	<u>NYSCEF Doc # 4</u>
Notice of Motion (seq. 2) with Warning! Notice; Affirmation and Affidavits in Support; and Exhibit 1 .....	<u>NYSCEF Doc # 5</u>
Notice of Cross-Motion; Affirmation in Opposition and in Support of Cross-Motion; Exhibits A through D .....	<u>NYSCEF Doc # 7</u>

After oral argument and upon the foregoing cited papers, the decision and order on these motions and cross-motion is as follows:

Diego Beekman Mutual Housing Association Housing Development Fund Corp. (“Petitioner”) commenced this holdover proceeding against Iris Torres (“Respondent”),<sup>1</sup> the tenant of the rent stabilized apartment that is the subject of this proceeding which, the petition asserts, is subject to a HOME subsidy written agreement and a regulatory agreement. The petition alleges Respondent has breached a substantial obligation of her lease by failing to cure defaults stated in a notice to cure served upon her including, failing to remove unauthorized occupants from the apartment that is the subject of this proceeding.

The proceeding was settled by stipulation of settlement, dated October 5, 2018. In the agreement Respondent consented to a 24-month probationary period during which she agreed to exclude Jason Melendez “from taking up residence in the apartment or staying in the apartment overnight;” to “permanently exclude her prior roommate, Max Rodriguez, from the subject apartment indefinitely; to “disclose the identity and income of all members of her household, including roommates, in her annual and in any interim recertifications;” and to have “any and all guest/occupants refrain from propping the door open, and will ensure the key fob is used to enter the building by herself and by any of her guests/occupants.” Further, Respondent agreed in the stipulation of settlement to provide access for Petitioner to inspect the premises for compliance with the terms of the agreement 8 times over the 24-month probationary period.

Moreover, the agreement states that upon the completion of the “probationary period, and if the proceeding is not restored before November 25, 2020, the proceeding shall be discontinued

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<sup>1</sup> John Doe, Jane Doe, Jason Melendez, and Max Rodriguez have also named as respondents in this proceeding, described as undertenants of Respondent, but they have not appeared in this proceeding.

without prejudice.” However, upon default, the agreement requires Petitioner to send Respondent’s counsel a 3-day notice to cure by e-mail and, if not resolved, Petitioner may move to restore the proceeding to the calendar for appropriate relief, including the entry of a judgment and issuance of a warrant of eviction.

Petitioner has moved, by notice of motion dated November 23, 2020 (motion seq. 1), to restore the proceeding to the court’s calendar asserting Respondent breached the stipulation of settlement. Further the motion seeks an order amending the petition to date; entering a possessory judgment against Respondent and the issuance of a warrant of eviction; and deeming the requirements of AO 160/20 and DRP-213 satisfied. Subsequently, by notice of motion dated November 25, 2020 (motion seq. 2), Petitioner filed a second motion seeking identical relief with identical supporting papers.

Respondent opposes the motions to restore the proceeding to the calendar and the other relief requested in Petitioner’s motions arguing the motions are time-barred and lack sufficient factual support. Respondent has also cross-moved, seeking leave to conduct discovery if the proceeding is not dismissed. Petitioner opposes the cross-motion.

### Discussion

Respondent argues Petitioner did not “properly file” a motion to restore before November 25, 2020, as required by the stipulation settling the proceeding. Respondent acknowledges Petitioner’s motion (sequence 1) was timely filed but asserts it did not comply with the requirements of DRP-213 by not containing the “Warning!” notice prescribed by DRP-213(A). *See*, DRP-213, Exhibit A. Further, Respondent argues that although Petitioner’s second motion

(sequence 2) contains the requisite notice, it was not filed until November 25th, and is therefore beyond the date permitted by the stipulation of settlement.

Respondent's argument is misplaced. DRP-213 is one of the Civil Court Directives issued after the onset of the COVID-19 pandemic to serve as a safeguard to ensure that tenants received proper notice that evictions proceedings to which they were a party were moving forward. Based, on the plain language of DRP-213(A), the "Warning!" notice is only required in motions requesting the issuance of a warrant of eviction pursuant to a judgment of possession issued before March 17, 2020. Here, no judgment was previously issued in this proceeding. Therefore, Petitioner was not required to include the "Warning!" notice with its motion.<sup>2</sup>

Respondent also argues Petitioner's motions are defective because they do not allege a default on the stipulation after service of a 3-day notice to cure, served by e-mail on Respondent's attorney. Unless public policy is violated, parties to litigation may chart their own procedural course by which a proceeding is resolved (*Mitchell v. New York Hosp.*, 61 NY2d 208 [1984]; *Kass v. Kass*, 235 AD2d 150 [2d Dept 1997]) as was done in the stipulation settling this proceeding.

Here, the parties agreed upon a specific procedure to be followed for this proceeding to be restored to the calendar by Petitioner for the relief sought in this motion. Paragraph 12 of the stipulation states, in pertinent part,

"Upon default, Petitioner agrees to send Respondent's counsel a 3-day notice to cure via e-mail...and if unresolved, may serve an 8-day notice of motion to restore the proceeding to the calendar for all appropriate relief, including a judgment and warrant. Respondent shall not be entitled to a notice to cure in the

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<sup>2</sup> Further, considering Petitioner has not stated a reason for the filing of the second motion to restore (motion sequence 2), and the motions are identical except for the inclusion of the "Warning!" notice with the second motion, the second motion is denied as moot.

event of subsequent breaches of the same nature as the prior conduct alleged in the cure notice, as Petitioner may instead restore the case by 8-day notice of motion upon alleged subsequent breaches.”

Based on this language in the stipulation, the e-mailing of the 3-day notice to cure is a required predicate to this motion for the proceeding to be restored to the calendar. Further, pursuant to the notice to cure scheme stated in the stipulation, Petitioner is required to assert in its motion that the default alleged in the 3-day notice was e-mailed, the nature of the default asserted in a 3-day notice, and that the alleged default was unresolved, or, that an initial default was resolved but that the motion was based on a second default of the same nature for which a 3-day notice was not required.

Petitioner has not made any assertions of this nature related to its compliance with the notice to cure requirements of the stipulation settling the proceeding.<sup>3</sup> As a result, Petitioner has not demonstrated it has fulfilled the predicate requirements contained in the stipulation for this proceeding to be restored to the calendar and for it to be permitted to obtain a final judgment and warrant against Respondent.

For these reasons, Petitioner’s motion is denied. Further, considering the time period for Petitioner to restore this proceeding has long expired, Respondent’s cross-motion seeking an order dismissing the proceeding is granted and this proceeding is dismissed.<sup>4</sup>

Respondent’s other claims for relief are denied as moot.

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<sup>3</sup> The only factual assertion related to a 3-day notice to cure is Respondent’s statement that Respondent’s attorney received an e-mailed notice to cure and responded that the issue had been cured.

<sup>4</sup> It is noted that paragraph 10 of the stipulation of settlement states that, “Upon Respondent’s completion of [the] 24-month probationary period, and if the proceeding is not restored before November 25, 2020, the proceeding shall be discontinued without prejudice.

This constitutes the decision and order of the court.

Dated: Bronx, New York  
December 14, 2022

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**HON. HOWARD BAUM, J.H.C.**