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310 12th St. Assoc. LLC v Disla
2023 NY Slip Op 50201(U)
Decided on March 14, 2023
Civil Court Of The City Of New York, Kings County
Jimenez, J.
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Decided on March 14, 2023

Civil Court of the City of New York, Kings County

<p>310 12th St. Associates LLC, Petitioner,</p> <p>against</p> <p>Daniel Disla, JOHN DOE and JANE DOE, Respondents-Occupants.</p>

Index No. L&T 317653/22

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Sergio Jimenez, J.

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of Respondent's motion for dismissal pursuant to CPLR §3212, attorneys fees and any other relief as the court may deem proper:

Papers Numbered

Notice of Motion and Affidavits Annexed 1 (NYSCEF No.7-13)

Answering Affirmations/Affidavits 2 (NYSCEF #14-16)

Upon the foregoing cited papers, the decision and order on Respondent's motion is as follows:

Petitioner, 310 12th Street Associates, LLC, commenced the underlying nonpayment summary eviction proceeding in August 2022 alleging a balance of \$7,109.98 due through the date of the petition. As a result of these alleged debts, petitioner is seeking possession of the rent stabilized apartment located at 310 12th Street, Apt. 14, in Brooklyn, New York 11215. Respondent Daniel Disla, through counsel, now seeks dismissal of the proceeding. After the motion was fully briefed by both sides, the Court heard argument on the motion on March 6, 2023 and reserved decision.

Respondent moves for summary judgment dismissing the petition because the rent demand is not a good faith approximation of the rent owed. Respondent claims that three (3) of the seven (7) months in the 14-day notice were incorrect because they did not follow RGB Order 53 and, as such, seek illegally overcharged rent. Petitioner opposes on the bases that respondent has not met their burden under CPLR §3212 for failing to provide appropriate evidences in admissible form for summary judgment and that the rent demand survives this type of scrutiny as any errors made are *de minimus* and should not negate the predicate notice as required by RPAPL §711(2).

To obtain summary judgment the movant bears the burden of proving, by competent admissible evidence, that no material and triable issues of fact exist (*Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]). The Appellate Division, however, has instructed lower courts to overlook technical admissibility defects when making determinations on dispositive motions (see [Rosenblatt v. St. George Health & Racquetball Assoc.](#), 119 AD3d 45 [App. Term 2d Dep't, 2014]). This is tempered by further instruction that even in situations where the non-moving party has not opposed at all, the burden of proof remains on the movant, and the court may deny summary judgment ([Rivera v. State of New York](#), 34 NY3d 383 (2019); [Exit Empire Realty v. Zilelian](#), 137 AD3d 742 [App Div 2d Dep't 2016]).

Predicate notices cannot be amended (*Chinatown Apts. v. Chu Cho Lam*, 51 NY2d 786, 788 [1980]). Therefore, the petitioner must abide by their own rent demand. The Appellate Courts mandate that even threshold notices be given "the same liberal construction as papers in civil litigation generally" (*Brusco v. Miller*, 167 Misc 2d 54, [App Term, 1st Dept, 1995]). In light of the rule that a rent demand need only state "the approximate good faith sum or rent assertedly due" (*Schwartz v. Weiss—Newell*, 87 Misc 2d 558, [Civ Ct New York County, 1976]; [*Westhampton Cabins & Cabanas Owners Corp. v. Westhampton Bath & Tennis Club Owners Corp.*, 62 AD3d 987](#) [App Div 2d Dep't, 2009]), so long as the demand sufficed to fairly apprise the tenant of the periods and amounts for which rent is alleged due, minor inaccuracies in the amounts sought therein should be disregarded (*10 Midwood LLC v. Hyacinth*, 2003 WL 21004996 [App Term 2d Dep't, 2d and 11 Jud Dists, 2003]; *London Terrace Gardens v. Stevens*, 159 Misc 2d 542 [Civ Ct, New York County, 1993]; *Zenila Realty Corp. v. Masterandrea*, 123 Misc 2d 1 [Civ Ct, New York County, 1984]; *10 Midwood LLC v Hyacinth*, 2003 NY Slip Op 50789[U][App Term 2d Dep't 2nd & 11th Jud Dists, 2003]).

Here, the respondent does not deny that the amount is the correct amount in total and that four (4) of the seven (7) months are correct. It is also not in dispute that the difference in the incorrect three (3) months amounts to less than \$40 and is around \$12 difference per month. While petitioner's counsel stated on the record that the difference was caused by petitioner's agent inability to use a computer and added a "credit" in the rent demand itself in order to make the amount correct, the court will not consider this explanation as it was not supported by petitioner's papers. This decision is limited to these set of facts, as it is possible that an accidental [*2] *de minimus* difference between the rent demand and the legal regulated rent could constitute bad faith.

The court notes that there are no allegations of missed payments or of a "magnitude of inaccuracies" sought in the predicate notice ([*see EOM 106-217th Corp v. Severine*, 62 Misc 3d 141](#)[A][App Term, 2d Dep't, 2d, 11th and 13th Jud Dists, 2019]). The parties agree that there is one small mistake repeated three or four times which does not affect the ultimate amount requested. The rent sought could not have surprised the respondent as the total amount is not in dispute, neither are the months being sought. As such there was no inability to respond to the demand, formulate defenses, and avoid litigation or eviction (*J.D. Realty Assocs. v. Jorrin*, 166 Misc 2d 175 [Civ Ct, New York County, 1995]). Of particular note, the respondent did not articulate any prejudice or inability to prepare defenses. As such, under these facts, the rent demand constitutes material compliance with the statute.

The motion is denied as the rent demand notice, under these particular facts, is a good faith approximation. Respondent's request for attorneys' fees is likewise denied as they have not prevailed in their motion. The proceeding is restored to the calendar on April 4, 2023 at 9:30am, Part E, room 504 for all purposes. This constitutes the Decision and Order of the Court.

March 14, 2023
Brooklyn, New York
Hon. Sergio Jimenez

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