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721-735 Walton/Gerard LLC v Marrero

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

----- X
721-735 WALTON/GERARD, LLC.,

Petitioner,

Index No. 002564/2016

-against-

DECISION/ORDER

██████ MARRERO,

Respondent(s),

----- X
HON. EVON M. ASFORIS:

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

<u>Papers</u>	<u>Numbered</u>
Notice of Appearance & Notice of Motion.....	<u> 1 </u>
Memorandum of Law in Support of Motion.....	<u> 2 </u>
Affirmation in Opposition.....	<u> 3 </u>
Affirmation in Reply.....	<u> 4 </u>

Upon the foregoing cited papers, the Decision/Order on this motion, is as follows:

Petitioner commenced this holdover proceeding against respondent, ██████ Marrero, by service of a Ten-Day Notice to Cure (“Notice to Cure”) dated November 19, 2015. In the Notice to Cure, petitioner alleges that respondent has engaged in conduct that is in breach of her lease agreement, constituting a nuisance and this conduct severely interferes with the comfort, rights and safety of the residents in the building.

Petitioner then served a Ten-Day Notice to Terminate (“Notice to Terminate”) dated December 14, 2015. The Notice to Terminate states in part, that the landlord elects to terminate your tenancy on the grounds that you have breached §2524.3(b) of the Rent Stabilization Code, the lease agreement between the parties, dated March 8, 1989, and unless you move from the premises by January 10, 2015, the date on which your tenancy expires, the landlord will commence a proceeding against you.

Petitioner subsequently served respondent with a Notice of Petition and Petition dated January 11, 2016.

Respondent retained counsel and now moves to dismiss the petition pursuant to CPLR 3211(a)(1)(2)(7). Respondent argues that the Notice to Cure is defective because it fails to cite with specificity what the lease provision was violated. Ms. Marrero also argues that the Notice to Cure is ambiguous and unclear and fails to provide her with an adequate method to cure the alleged breach. The Notice to Cure alleges Ms. Marrero and her guests, on a regular and daily basis leave the building door ajar, which reduces the building security. However, the Notice to Cure states, "...you are hereby directed to cure the afore-said conduct by removing the portable air conditioner unit no later than December 10, 2015 or the Landlord will be forced to terminate your tenancy..."

Respondent also argues that the Notice of Termination is defective because the termination date is ambiguous and confusing. The termination of tenancy date stated is January 10, 2015, a date eleven months prior to the date of the notice. Respondent further contends the Notice lacks facts that the objectionable conduct continued beyond the cure date. Respondent seeks discovery in the alternative.

Petitioner opposes respondent's motion and argues that in a pre-answer motion, the pleadings are to be afforded a liberal construction and the facts as alleged in the complaint shall be accepted as true and any favorable inference should be given to the pleadings. Petitioner argues the Notice to Cure is not defective, as it specifies the lease provision violated and it provides explicit instructions on how to cure. Petitioner argues that respondent is not entitled to discovery because respondent has not shown ample need and her request for discovery is a fishing expedition and prejudicial to petitioner because of the time delay.

Discussion

Rent Stabilization Code ("RSC") 2524.3(a) establishes that a tenant is violating a substantial obligation of his or her tenancy if the tenant has failed to cure the violation after written notice by the owner that the violation cease within 10 days. Additionally, RSC 2524.2(b) mandates that, "[e]very notice to a tenant to vacate or surrender possession of a housing accommodation shall state the ground under section 2524.3 . . . upon which the owner relies for removal or eviction of the tenant, the facts necessary to establish the existence of such ground, and the date when the tenant is required to surrender possession."

It is well settled that a notice to terminate must be unequivocal, unambiguous and sufficiently detailed to establish the grounds for the landlord to recover possession. Chinatown Apts. v Chu Cho Lam, 51 NY2d 786 (1980), Spivack Realty Co., Inc. v Svobodny, 21 Misc 3d 1147 (Dist. Ct 2008), 297 Lenox Realty Co. v Babel, 19 Misc 3d 1145 (New York County 2008), 69 E.M. LLC v Mejia, 49 Misc 3d 152 (App.Term 2015)(the substantial, impermissibly vague allegations in the notice of termination "render [] the entire notice deficient"). The notice must be definite and unequivocal and the tenant must be able to understand the specific claims to be able to present a defense. Similarly, a notice to cure must be sufficiently specific to inform the tenant of the behavior sought to be corrected and it must inform the tenant of the specific lease provision prohibiting the behavior. Cosmopolitan Broadcasting Corp. v Miranda, 143 Misc 2d 1 (NY City Civ. Ct 1989), Perle v Ross, 150 Misc 2d 20 (App Term 1991).

The Court notes that respondent is a senior citizen who has lived in this rent regulated apartment for more than 26 years and currently lives alone. The subject building has 119 units and two entrance doors to the building, one on Walton Avenue and one on Gerard Avenue. In this pre-answer motion to dismiss, the Court has afforded the pleadings liberal construction and has assessed the allegations as true, however, the Court still finds that there are problems with both the Notice to Cure and the Notice of Termination herein.

The Notice to Cure fails to adequately inform respondent of how to cure the alleged objectionable conduct in violation of her lease. Petitioner alleges that respondent on a regular and daily basis, at various hours of the day especially into the evening and overnight hours “props open” the entrance door to the subject building which keeps the front door ajar and unable to lock throughout the night. However, the Notice to Cure states,

PLEASE TAKE FURTHER NOTICE that you are hereby directed to cure the aforesaid conduct by removing the portable air conditioner unit no later than December 10, 2015, or the Landlord will be forced to terminate your tenancy, and demand possession, or commence an action in a court of proper jurisdiction, seeking your removal from the subject apartment.

It is unclear from the language of the Notice to Cure how removing the portable air conditioner will cure the alleged objectionable behavior of leaving the entrance door ajar.

Additionally, the Notice of Termination is also ambiguous and confusing. The Notice to Terminate states that, “[s]ince at least October 1, 2014, and on daily and regular basis prior to and since said date, and as recently as November 14, 2015, November 25, 2015 and December 6, 2015, you have engaged in conduct that is in breach of your lease agreement . . .” The Notice refers to dates prior to December 10, 2015 (the cure date) and the November 14, 2015 date, is a date prior to the date of the Ten Day Notice to Cure.

The Notice of Termination also states that “unless you move from the above premises by January 10, 2015, the date on which your tenancy expires, the landlord will commence summary proceedings under the statute to remove you therefrom.” The January 10, 2015 date, is incorrect, as it is a date eleven months prior to the Notice to Cure. The Notice of Termination fails to properly inform respondent when the tenancy will be terminated and the notice also fails to state that respondent is in breach of the Notice to Cure.

The RSC requires that notices state facts necessary to establish the existence of the cause for termination. RPAPL 741 also requires the petition to state facts upon which the proceeding is based to confer the Court with subject matter jurisdiction. The predicate notices herein are defective. Defects in predicate notices cannot be amended. Chinatown Apts. v Chu Cho Lam, 51 NY2d 786 (1980), Spivack Realty Co., Inc. v Svobodny, 21 Misc 3d 1147 (Dist. Ct 2008), Caiado v Bischoff, 140 Misc 2d 1014 (City Ct 1988).

Based on the foregoing, respondent's motion to dismiss is granted and the petition is dismissed without prejudice to petitioner's claims and respondent's remaining defenses.

This constitutes the decision and order of the Court.

Dated: Bronx, New York
January 23, 2017


EVON M. ASFORIS
JUDGE HOUSING COURT

TO: Todd Rothenberg, Esq.
Attorney for Petitioner
271 North Avenue, Suite 115
New Rochelle, New York 10801
914-235-7234

Legal Services NYC - Bronx
Bianca Cappellini, Esq
Attorneys for Respondent
349 East 149th Street, 10th Floor
Bronx, New York 10451
718-928-2883