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550 E 182 LLC v. Quattlebaum

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

----------X L&T Index # 72257/2017

550 E 182 LLC,

Petitioner,

-against-

DECISION & ORDER

[redacted] QUATTLEBAUM,
[redacted]
Bronx, NY 10457

Respondent (Tenant).

----------X

Hon. Diane E. Lutwak:

Recitation, as required by CPLR Rule 2219(A), of the papers considered in the review of Respondent's Order to Show Cause for Leave to Interpose an Amended Answer:

Papers	Numbered
Order to Show Cause with Supporting Affirmation & Exhibits A-F	1
Affirmation, Affidavit & Exhibits A-H in Opposition	2
Affirmation in Reply	3

Upon the foregoing papers, and for the reasons stated below, Respondent's motion for leave to interpose an amended answer, brought on by order to show cause, is decided as follows.

PROCEDURAL HISTORY & FACTUAL BACKGROUND

This is a nonpayment eviction proceeding brought by petitioner-landlord 550 E 182 LLC against Rent Stabilized respondent-tenant [redacted] Quattlebaum. The petition, dated December 8, 2017, seeks rent arrears of $2704.78, comprised of a monthly rent of $640.82 for the months of September 2017 through December 2017 plus a balance of $141.50 due for August 2017. The petition states that the rent was demanded by a written three-day notice, a copy of which is attached to the petition with proof of service.

Respondent answered the petition on December 29, 2017, using the Court's form "Answer in Person" (CIV-LT-91 rev'd Oct 2014) on which he checked off as defenses payment/partial payment and a general denial and wrote in, "Holding rent due to lack of repairs" in the "Other counterclaim(s)" section. The Court assigned an initial court date of

January 10, 2018 at 9:30 a.m. in Part K/Room 350, on which date respondent retained legal representation through the City's Universal Access to Counsel program and the parties through their attorneys signed a handwritten stipulation adjourning the proceeding to March 6, 2018 "for Respondent to meet with newly retained counsel" and further providing that an "Amended answer will be accepted without motion within 10 days."

On March 6, 2018 the parties' attorneys signed a second stipulation, this one apparently typed up in advance by respondent's attorney, which adjourned the proceeding to April 10, 2018 for settlement or trial and scheduled four access dates in the interim for petitioner to inspect and repair a list of eighteen conditions in respondent's apartment. Paragraph "2" of this agreement, which was crossed out but left readable, stated, "Petitioner consents to Respondent's amended answer being served and filed *nunc pro tunc*".

On March 22, 2018 respondent's attorney submitted, and the Court signed, the Order to Show Cause seeking leave to file an amended answer which is now to be decided. It is supported by an Attorney's Affirmation; the pleadings; the proposed Amended Answer; a Renewal Lease dated 03/25/2014 with both respondent and "Levon Quattlebaum" listed as tenants at the top of the page; a rent registration history for the subject premises dated 12/28/2015 from the New York State Division of Housing and Community Renewal ("DHCR") listing respondent as the tenant in every year from 2003 through 2015 and also listing Levon Quattlebaum as a tenant in the years 2008 through and including 2014; a printout from the New York City Department of Housing Preservation and Development's ("HPD") website dated 2/28/2018 showing two violations for the subject premises – a "C" level violation for excessively hot water issued on 1/26/2018 and a "B" level violation for mice issued on 8/11/2014; and copies of three court stipulations, the two referenced above and a third dated 12/23/15 from a prior proceeding (L&T Index # 47832/15).

The proposed Amended Answer, verified by respondent on March 6, 2018, includes three defenses, all pertaining to the propriety of the rent demand; five[1] affirmative defenses (partial rent payment; laches; failure to name a necessary party; improper lease renewal; breach of warranty of habitability); and three counterclaims (two arising from the alleged breach of the warranty of habitability and one for attorney's fees). Respondent's attorney asserts that she brought this proposed Amended Answer to court with her on March 6, 2018, the first adjourned date, but petitioner's attorney refused to accept it. Respondent asks the Court to allow interposition of the proposed Amended Answer because there is no prejudice to petitioner and CPLR R 3025(b) mandates that such leave "be freely given upon such terms as may be just."

[1] While the proposed Amended Answer contains six affirmative defenses, two of them – the first and fourth – are identical.

In opposition, petitioner by its attorney and by its agent Batuhan Capin argues that the proposed Amended Answer should be rejected as untimely and prejudicial to petitioner. Petitioner also contests the factual underpinnings of each of respondent's proposed defenses and counterclaims and asserts, through its agent's affidavit, opposing facts.

DISCUSSION

It is well-settled that, pursuant to CPLR R 3025(b), leave to amend pleadings is to be freely given absent prejudice or surprise to the opposing party. *McCaskey, Davies & Assoc v New York City Health & Hosps Corp* (59 NY2d 755, 450 NE2d 240, 463 NYS2d 434 [1983]). In the absence of surprise or prejudice, it is an abuse of discretion, as a matter of law, for a trial court to deny a party leave to amend an answer during or even after trial, *Pensee Assocs v Quon Shih-Shong* (199 AD2d 73, 605 NYS2d 35 [1st Dep't 1993]), unless the proposed pleading is palpably insufficient or patently devoid of merit, *325 E 118th St, LLC v Roach Bernard, PLLC* (2017 NY Misc LEXIS 3079, 2017 NY Slip Op 31697[U][Civ Ct NY Co 2017]), *citing and quoting Lucido v Mancuso* (49 AD3d 220, 851 NYS2d 238 [2nd Dep't 2008]). In evaluating the merits of the amended pleading, the court's purpose is not to resolve disputed factual issues, but simply to ensure that the amended allegations establish a *prima facie* cause of action. *Digital Broadcast Corp v Ladenburg, Thalmann & Co, Inc* (19 Misc3d 1130[A], 866 NYS2d 91 [Sup Ct NY Co 2008]). Liberal amendment of pleadings furthers the State's preference for disposition of cases on their merits. *Cf. Fromartz v Bodner* (266 AD2d 122, 698 NYS2d 142 [1st Dep't 1999]).

As an initial matter, it is appropriate to allow that portion of the proposed Amended Answer to stand which provides the factual details and legal standards for a defense and counterclaims arising out of the assertion respondent *pro se* made in his original Answer that he was "holding rent due to lack of repairs". The proposed amendment provides greater notice of respondent's breach of warranty of habitability defense and counterclaims, and how such amplification is prejudicial to petitioner, as opposed to beneficial at this stage of the proceeding, has not been articulated by petitioner.

The other defenses and counterclaims – defective rent demand; partial rent payment; laches; failure to name a necessary party; improper lease renewal; attorneys fees - are standard in nonpayment proceedings such as this one and arise out of documents, copies of which are attached to the motion papers, which were in petitioner's possession or easily accessible to petitioner prior to the commencement of this proceeding and which typically are reviewed when drafting a nonpayment petition. Accordingly, petitioner cannot claim to be surprised or prejudiced by these defenses, none of which is palpably insufficient or patently devoid of merit. Petitioner can serve a demand for a bill of particulars to the extent it believes respondent has provided insufficient factual support for any of his defenses and counterclaims, and petitioner's contrary version of the facts as articulated in its agent's affidavit should be saved for trial or a dispositive motion.

Petitioner's claim that respondent has delayed "over four (4) months after the commencement of this action" in proffering the proposed Amended Answer and that such delay is "highly prejudicial" is factually incorrect and conclusory. It was less than three months after the case was commenced in late December 2017 that respondent's attorney first proffered and petitioner's attorney rejected the proposed Amended Answer. And while respondent's counsel did not meet the agreed-upon ten-day deadline for proffering the Amended Answer without filing a motion, she did proffer it on March 6, 2018, the first adjourned date, and petitioner does not explain what prejudice was caused by this six-week interlude following the original ten-day period petitioner consented to. Petitioner's complaints about delay are undercut by the fact that the bulk of the delay in this proceeding is now due to its own decision to reject the proposed Amended Answer on March 6, 2018 and to instead proceed with this motion practice, especially given that well-established case law supports liberal amendment of pleadings, even on the eve of trial and despite delay where no significant prejudice has been shown. *See, e.g., Edenwald Contr Co v City of New York* (60 NY2d 957, 459 NE2d 164, 471 NYS2d 55 [1983]).

As the Appellate Division, First Department has explained, prejudice means, "some special right lost in the interim, some change of position or some significant trouble or expense that could have been avoided had the original pleading contained what the amended one wants to add." *Barbour v Hospital for Special Surgery* [169 AD2d 385, 386, 563 NYS2d 418 [1st Dep't 1991]); *Sass v Mack Trucks, Inc* (158 AD2d 332, 551 NYS2d 21 [1st Dep't 1990]). Petitioner has asserted no rights lost, no change of position or any other significant trouble or expense that could have been avoided had respondent's attorney served the Amended Answer within ten days of January 10, as opposed to on March 6, 2018.

CONCLUSION

For the reasons stated above, respondent's Order to Show Cause is granted, the proposed Amended Answer is deemed duly served and filed and this proceeding is restored to the Court's calendar for settlement or trial on July 5, 2018 at 9:30 a.m. Copies of this Decision & Order will be provided to the parties' respective counsel in the Part.

Diane E. Lutwak, H.C.J.

Dated: Bronx, New York
May 29, 2018

HON. DIANE E. LUTWAK
Judge, Housing Court

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