

Fordham Law School

FLASH: The Fordham Law Archive of Scholarship and History

All Decisions

Housing Court Decisions Project

2023-03-03

GLEN OAKS VILLAGE OWNERS INC. v. SELHORN

Follow this and additional works at: https://ir.lawnet.fordham.edu/housing_court_all

Recommended Citation

"GLEN OAKS VILLAGE OWNERS INC. v. SELHORN" (2023). *All Decisions*. 875.
https://ir.lawnet.fordham.edu/housing_court_all/875

This Housing Court Decision is brought to you for free and open access by the Housing Court Decisions Project at FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in All Decisions by an authorized administrator of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS: HOUSING PART B

GLEN OAKS VILLAGE OWNERS INC.

Petitioner-Lessor

-against-

JOHN SELHORN
255-49B 75th Avenue, Unit GV31B122
Glen Oaks, New York 11004

Respondent-Lessee

“JOHN DOE” AND/OR “JANE DOE”

Respondents-Undertenants

L&T Index No.: 301434/20

DECISION/ORDER

Hon. Clifton A. Nembhard

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of respondent’s motion.

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	1
Order to Show Cause and Affidavits Annexed	
Answering Affidavits	2
Replying Affidavits	3
Exhibits	

Upon the foregoing cited papers, the decision/order on this motion is as follows:

Background

Petitioner commenced this holdover proceeding by notice of petition and petition. Prior to commencement petitioner served a Thirty Day Notice to Cure followed by a Ten Day Notice of Termination. Petitioner then moved for an inquest based on respondent’s failure to appear and a money judgment for unpaid use and occupancy. On the return date respondent appeared by counsel. The Court granted the motion to the extent of directing respondent to pay ongoing use and occupancy and to file an answer. Respondent interposed an answer alleging, inter alia, that the predicate notices are defective. Respondent then moved to dismiss the petition arguing that the notice to cure is vague, that the petition fails to substantiate the claim that he failed to cure

and that the court lacks personal jurisdiction over him. Respondent also seeks an award of legal fees.

Discussion

A proper notice to cure must specifically apprise the tenant of the alleged defaults in its obligations under the lease and the conduct required to prevent eviction. *Filmtrucks Inc. v. Express Indus. & Term. Corp.*, 127 AD2d 509 [1st Dept 1987]. A notice that fails to apprise the tenant of the condition the landlord wishes to have cured or fails to reference the specific section of the lease in relation to the condition is insufficient. *Chinatown Apts. v. Chu Cho Lam*, 51 NY2d 786 [Ct App 1980]. A termination notice must adequately apprise the tenant of the grounds upon which the termination is based. *323 3rd St. LLC v. Ortiz*, 13 Misc3d 141(A) [2nd Dept 2006]. To ensure that the proceeding is not speculative or frivolous, the notice must contain factual allegations that the course of conduct complained of continued beyond the cure period. *Hew-Berg Realty v. Mocerino*, 163 Misc2d 639 [Civ Ct Kings 1994]. The test for determining the sufficiency of a termination notice is whether it is reasonable in view of the attendant circumstance. *Hughes v. Lenox Hill Hospital*, 226 AD2d 4 [1st Dept 1996]. A substantive defect in a predicate notice renders the entire notice deficient. *542 Holding Corp. v. Prince Fashions, Inc.*, 46 AD3d 309 [1st Dept 2007].


The notice to cure here states that respondent is violating a substantial obligation of his proprietary lease and the house rules. The grounds for this claim is that the subject premises is completely cluttered with boxes, trash, junk, clothing and debris and is therefore a fire hazard. In addition, an obnoxious odor permeates the entire apartment. The notice concludes that if respondent fails to cure the violations by August 21, 2020, his tenancy will be terminated. The notice of termination states that respondent has failed to comply with the notice to cure. It goes on to restate the allegations in the earlier notice and adds that on October 2, 2020, respondent did not provide petitioner's agents with access when they attempted to verify that he had complied with the notice to cure.

Both notices are insufficient to act as proper predicates to a summary holdover proceeding. The Notice to Cure does not cite the lease clause(s) and house rule(s) allegedly violated by respondent. Additionally, it fails to specify how petitioner can cure the alleged default to avoid termination of his lease. The Notice of Termination does not provide specific facts to establish that the complained of behavior is continuing. The fact that petitioner was unsuccessful in its attempt to gain access to the apartment does not suffice.

Conclusion

Based on the foregoing, the motion is granted and the case dismissed. The Court does not reach the merits of respondent's claim that petitioner failed to properly serve the pleadings. The branch of the motion seeking legal fees is denied as the Court did not reach the merits of petitioner's allegations.

This constitutes the decision and order of the Court.

SO ORDERED

HON. CLIFTON A. NEMBHARD

Date: March 3, 2023
Queens, New York

Hon. Clifton A. Nembhard, JHC