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2023-04-10

### WASHINGTON 2302 PLAZA ASSOCIATES, L.P. v. RIVERA

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"WASHINGTON 2302 PLAZA ASSOCIATES, L.P. v. RIVERA" (2023). *All Decisions*. 877.  
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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF BRONX: HOUSING PART B

-----X  
WASHINGTON 2302 PLAZA ASSOCIATES, L.P.,

L&T Index No. 331531/22

Petitioner,

-against-

**DECISION/ORDER**

JOSE RIVERA,  
"JOHN" "DOE,"  
"JANE" "DOE,"

Respondents.

-----X

Present: Hon. OMER SHAHID  
Judge, Housing Court

Recitation, as required by C.P.L.R. § 2219(a), of the papers considered in the review of Respondent’s Motion to Dismiss (Motion #1 on N.Y.S.C.E.F.):

<b>Papers</b>	<b>Numbered</b>
Notice of Motion (Motion #1 on N.Y.S.C.E.F.).....	<u>1</u>
Affirmation in Opposition to Motion (Entries 14-17 on N.Y.S.C.E.F.).....	<u>2</u>
Affirmation in Reply in Support of Motion (Entries 18 on N.Y.S.C.E.F.).....	<u>3</u>

Petitioner commenced this holdover proceeding seeking possession of 489 East 183rd St., Apt. 1E, Bronx, N.Y. 10458 (the “subject premises”) from Respondents on the ground that Respondents are residing at the subject premises on a month-to-month basis. Petitioner served a 30-day Notice of Termination, dated July 11, 2022, which states that Petitioner will commence a summary holdover proceeding in the event Respondents do not vacate by August 31, 2022. The Notice of Petition and Petition were filed on N.Y.S.C.E.F. on October 19, 2022. Respondent Jose Rivera (“Respondent”) obtained the Legal Aid Society as counsel on November 9, 2022.

Respondent moves to dismiss this proceeding pursuant to C.P.L.R. § 3211(a)(8) on the ground that this court lacks jurisdiction due to Petitioner’s noncompliance with R.P.A.P.L. § 735(2)(a). Respondent points to the fact that Petitioner filed the affidavit of service for the Notice of Petition and Petition with the court on November 1, 2022, five days after effecting service by personal delivery on October 27, 2022. See N.Y.S.C.E.F. Document #7.

Petitioner opposes the motion. Petitioner argues that the late filing should be excused because service was effected personally and not by substituted or conspicuous service. Petitioner also cites to Second Department cases to support its argument that Respondent has not been prejudiced due to the late filing.

The court finds that Petitioner's filing of the affidavit of service for the Notice of Petition and Petition with the court violates R.P.A.P.L. § 735(2)(a). R.P.A.P.L. § 735(2)(a) provides that the service of Notice of Petition and Petition "shall" be filed with the court within three days of effecting personal delivery. See R.P.A.P.L. § 735(2)(a). Here, Petitioner's failure to timely file the proof of service clearly violates this provision of the law.

Petitioner's argument that Respondent has not demonstrated any prejudice due to its failure to timely file the affidavit of service for the Notice of Petition and Petition is without merit. Petitioner's noncompliance with the filing requirements of the R.P.A.P.L. subjects this proceeding to a dismissal. See Riverside Syndicate, Inc. v. Saltzman, 49 A.D.3d 402 (1st Dep't 2008). See also 125 East 50th Street, Co., Lessee, L.L.C. v. Credo International Inc., 75 Misc. 3d 134(A) (App. Term, 1st Dep't 2022). Petitioner's failure to strictly comply with statutory requirements deprives this court of jurisdiction. See Berkeley Assoc. Co. v. Di Nolfi, 122 A.D.2d 703 (1st Dep't 1986), lv. denied 69 N.Y.2d 804 (1987); see also M.S.G. Pomp Corp. v. Doe, 185 A.D.2d 798 (1st Dep't 1992). Dismissal of this proceeding is still warranted even if Respondent does not demonstrate any prejudice due to Petitioner's failure to comply with the filing requirements. See Bronx 2120 Crotona Avenue L.P. v. Gonzalez, 75 Misc. 3d 753 (Civ. Ct., Bronx Co. 2022). Hence, this proceeding shall be dismissed accordingly.

Furthermore, even though Respondent was personally served it still does not excuse Petitioner from complying with the requirement of filing the proof of service with the court within three days of completing personal delivery pursuant to R.P.A.P.L. § 735(2)(a). The three-day filing rule also applies to scenarios where a litigant is served personally, besides the other two methods of service. See Matticore Holdings, L.L.C. v. Hawkins, 76 Misc. 3d 511 (Civ. Ct., Bronx Co. 2022). Here, Petitioner has clearly failed to comply with the statutory requirement.

Based upon the foregoing, Respondent's motion to dismiss is granted due to Petitioner's failure to comply with R.P.A.P.L. § 735(2)(a). The proceeding is hereby dismissed without prejudice.

The foregoing constitutes the decision and order of the court.

Dated: April 10, 2023  
Bronx, N.Y.



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Omer Shahid, J.H.C.