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Meisels Family, Inc v. Crittleton

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[*1]

Meisels Family, Inc v Crittleton
2023 NY Slip Op 50436(U)
Decided on April 14, 2023
Civil Court Of The City Of New York, Kings County
Golden, J.
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
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Decided on April 14, 2023

Civil Court of the City of New York, Kings County

The Meisels Family, Inc, Petitioner-Landlord,

against

**Rickey Crittleton, Loretta Grant "John Doe" and
"Jane Doe", Respondent-Tenant(s).**

Index No. LT-318974-22

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Tashanna B. Golden, J.

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

Respondent's Motion to Amend and Dismiss:

Papers Numbers

Respondent's Motion, Affirmation in Support, and Exhibits 9-19

Petitioner's Affirmation in Opposition and Exhibits 23-26

Respondent's Reply 27

Court File Passim

Petitioner filed this instant nonpayment proceeding on or about August 17, 2022, seeking final judgment "for the rent demanded therein" as well as possession of the premises located at 564 Liberty Avenue. Apt 2R, Brooklyn, New York 11207, from respondents-tenants, Rickey Crittleton Loretta Grant, John Doe and Jane Doe. Petitioner predicated its nonpayment proceeding upon service of a 5-day default notice, and a 14-Day Rent demand. On or about September 8, 2022, Respondent Loretta Grant filed a pro-se answer and checked the Paragraphs that states: "The Petitioner never asked me or properly asked me for the rent, orally or in writing before starting this case"; "There are or were conditions in the apartment and/or the building/house which the Petitioner did not repair and/or services which the Petitioner did not provide"; and "General Denial". On October 13, 2022 Brooklyn Legal Services Corp. A, by Kristie Ortiz-Lam put in a Notice of Appearance on behalf of Respondent Loretta Grant. On November 7, 2022 Respondent, by Counsel, filed the instant motion pursuant to CPLR § 3025(b) seeking to amend the pro se answer; and seeking to dismiss the underlying nonpayment petition. Petitioner, by counsel, filed opposition on February 6, 2023. Respondent filed a reply on February 14, 2023.

Leave to Amend:

Respondent seeks leave to amend the answer to include the following defenses and affirmative defenses: 1) defective rent demand; 2) defective petition; 3) failure to register with HPD; and 4) failure to obtain a certificate of occupancy.^{[\[FN1\]](#)} A motion to amend a pleading should be freely given absent a showing of prejudice or surprise to the opposing party. *Zader v. Oakdale Islander Ltd Partnership*, 211 AD2d 712 (App. Div. 2d Dept 1995). This rule is equally applicable to amendments of answers to interpose defenses. *Smith v. Maya*, No. 98-770-KC, 1999 WL 1037917, at *2 (2d Dep't Jul 23, 1999). Petitioner opposes the motion to amend, not based on prejudice or surprise, but instead, based on the argument that 1) the proposed amendments lack merit, and 2) that Respondent's failure to file an affidavit of merit with the motion and to attach a verification to the proposed answer prohibits the Court from granting Respondent's motion.

Respondent's pro se answer states the following: "The Petitioner never asked me or properly asked me for the rent, orally or in writing before starting this case"; "There are or were conditions in the apartment and/or the building/house which the Petitioner did not repair and/or services which the Petitioner did not provide"; and "General Denial". [\[FN2\]](#) Respondent's proposed amended answer asserts "Failure to State Facts upon which Special Proceeding is Based (Defective Rent Demand)"; "Failure to State Facts upon Which Special Proceedings is Based (Defective Petition)"; "Failure to State a Claim upon Which Relief May be Granted (HPD Registration)"; and "Failure to Obtain Certificate of Occupancy". [\[FN3\]](#) Arguably, the first two proposed defenses were asserted in the pro se answer, with the proposed Amended Answer expanding and clarifying the claimed defenses. Therefore, there is no argument of surprise with respect to them. The third and fourth defenses cannot reasonably be inferred from the pro se answer. Typically, the purpose of an Amended answer is to include claims and defenses that a pro se litigant failed to assert. However, the Petitioner argues that the "new" defenses are [\[*2\]](#) without merit and therefore should not be permitted under CPLR 3025. In considering the merits of an amended pleading, the court need only determine whether the proposed amendment is palpably insufficient to state a cause of action or defense, or is patently devoid of merit. *See Katz v. Kastlepoint Insurance, Co.* 121 AD3d 948 (Supreme Court App. Div. 2d Dept, 2014). Respondent's assertion that failure to register the subject premises with HPD and to obtain a proper certificate of occupancy as a defense in a non-payment action certainly may be meritorious, and therefore, amendment is permissible under the facts as set forth.

Petitioner further argues that Respondent's failure to file an affidavit of merit with the motion and to attach a verification to the proposed answer prohibits the Court from granting Respondent's motion. As stated *supra*, a motion to amend a pleading should be freely given absent a showing of prejudice. *Zader*. There is no requirement that such motion be accompanied by an affidavit of merit. The proposed amendments to the answer are based on documentary evidence, not on personal knowledge, making verification unnecessary. There is no requirement that an answer in a landlord/tenant dispute be verified. *See Robie-Harmon Properties, Inc. v. Seal Dynamics, Inc.* N.Y.L.J., 3/4/80, p.11, col. 5 (App. Term, 9th and 10th Jud. Dists.) ("Although section 741 of the RPAPL requires that a petition be verified, section 743 of the RPAPL not only does not require that an answer be verified, but gives the tenant an option of submitting an answer either orally or in writing ") As the Petitioner has failed to show that amending the Answer will result in prejudice or that the proposed amendment is devoid of merit, and the Court finds that neither an affidavit of merit or a verification is required for amendment, Respondent's motion to amend the answer is hereby granted.

Motion to Dismiss:

Respondent seeks to dismiss the Petition pursuant to CPLR §3211 (a) (1). [\[FN4\]](#) CPLR 3211 (a) (1) provides, "[a] party may move for judgment dismissing one or more causes of action asserted against him on the ground that [] a defense is founded upon documentary evidence " To determine whether relief may be granted, the Court must look at the notices in question.

A. Five Day Notice:

On or about July 6, 2022, Petitioner served Respondent with a five-day notice stating that "[the Respondent's] rental account is currently more than five days past due." and that "[the Respondent] currently owe[s] the sum of \$4,607.77 in unpaid rent through July 2022. ***SEE LEDGER ATTACHED*** Disregard all charges other than rent***" [\[FN5\]](#)

B. Fourteen Day Notice:

On or about July 6, 2022, Petitioner served Respondent with a fourteen-day notice stating that "[the Respondent] is required to pay to the undersigned THE MEISELS FAMILY INC, Landlord and Owner of the above described premises on or before the expiration of FOURTEEN (14) days from the service of this Notice upon you the sum of \$4,607.77 **in rent and additional rents** computed as follows: ***SEE LEDGER ATTACHED*** Disregard all charges other **[*3]**than rent** ." [\[FN6\]](#) (emphasis added)

C. Rent Ledger:

The five-day notice, the fourteen-day notice, and the Petition, all refer to the ledger. The ledger is an eight-page statement which begins in July 2017 and runs through July 2022. The statement purports to show the transactions for the tenancy in the instant action, and includes entries for monthly rent, payment, and fees. On the top right of the page it lists "Awesome Properties, PO Box 745 Harriman, NY 10926". Underneath that, there is a box that says "To: Ricky Crittleton, 564 Liberty Ave, #2-R, Brooklyn, NY 11207". On the top left, it says "Statement" in bold, and underneath that, lists the date as July 12, 2022. [\[FN7\]](#)

The ledger has four primary columns, "Date", "Transaction", "Amount", and "Balance". However, there are two additional categories in the top left of the chart, above the four primary columns. These are labeled "Amount Due" and "Amount Enc." At the bottom of the

chart on pages 1-8 the following categories and amounts are listed: "Current" 0.00; "1-30 Days Past Due" 547.06 ; "31-60 Days Past Due" 485.13; "61-90 Days Past Due" 534.12; "Over 90 Days Past Due" 3,265.45; and "Amount Due" \$4,831.76. [\[FN8\]](#)

The "Amount Due" on Page 1 of the ledger is \$4,831.76. The first date on the ledger is July 31, 2017, with the Transaction listed as "balance forward Loreta Grant #2-R". There is no entry in the "amount" category. There is a "balance" of -251.26. [\[FN9\]](#) Finally, the ledger reflects charges and credits spanning eight pages and four years. Some of the credits are bounced check and other fees.

Defective Rent Demand:

RPAPL § 711 mandates that a written demand of the rent be made with at least fourteen days notice of the commencement of a proceeding. "A proper rent demand [] must fairly afford the tenant, at least, ***actual notice*** of the alleged amount due **and** of the period for which such claim is made. At a minimum, the landlord, or his agent should ***clearly inform*** the tenant of the ***particular*** period for which a rent payment is allegedly in default and of the approximate good faith sum of rent assuredly due ***for such period.***" *Loran LP v. Cruz*, 2020 NYLJ LEXIS 867 (Civ. Ct. Bx Co. 2020) (emphasis added).

Courts have found that where a rent demand includes additional charges outside of rent, the requirements of RPAPL 711 have not been met. In *Pantigo Professional Ctr., LLC*, the court held that a rent demand was defective and "not sufficiently specific" where it sought common charges as undefined utility charges in a commercial nonpayment proceeding. *Pantigo Professional Ctr., LLC*, 2018 NY Slip Op 51039(U). Similarly, in *56-11 94th St. Co. L.L.C.*, the court found that where a rent demand included excessive late fees, the "demand itself did not fairly apprise Respondent of the amounts actually due and prejudiced the Respondent's ability to respond to the demand, formulate defenses, and avoid litigation." *56-11 94th St. Co. L.L.C. v. [*4]Jara*, 2019 NY Slip Op 51121(U). (Internal citations omitted). See also *Highbridge Community HDFC v. Miverna Nunez*, LT-307767-20 (Civ. Bx. 2023) (granting Respondent's motion to dismiss where the rent demand referred to an attached rider and finding that the ledger failed to provide actual notice as required).

The purpose of the rent demand is to notify the tenant of what is owed and for what period. Therefore, rent demands need to be specific and clear. Just as an ordinary rent bill does not satisfy the requirements of RPAPL 711, [see *RCPI Landmark v. Chasm Lake Mgmt. Servs. LLC*, 32 Misc 3d 405](#) (Civ. NY 2011) (internal citations omitted), a rent demand that

merely cites to a rent ledger fails. The ledger, a document kept in the Petitioner's ordinary course of business, is designed, not for purposes of notifying the tenant of outstanding rent, but instead to keep a tally of ALL transactions on a tenant's account. This could include rent, air-conditioning fees, maintenance cost, parking, or a myriad of other items. These fees are appropriately logged on the ledger, but a tenant cannot be evicted for nonpayment of same under RPAPL 711. Thus, attaching a ledger, without any specificity in the rent demand can result in confusion and may not clearly inform the tenant of what is owed and for when. Here, the rent ledger in question has additional charges that are not rent, specifically bounced check fees and a "service" charge. Though the Petitioner caveats the notice by stating "Disregard all charges other than rent" it is not enough to bring the rent demand within the requirement of RPAPL 711. Since a defective rent demand cannot be amended Respondent's motion to dismiss is granted without prejudice. *See, e.g. Chinatown Apts v. Chu Cho Lam* 51 NY2d 786, 787, 412 NE2d 1312, 433 NYS2d 86 (1980),

The foregoing is the Decision/Order of this court.

SO ORDERED

Brooklyn, New York
April 14, 2023
HON. TASHANNA B. GOLDEN
JUDGE, HOUSING COURT

Footnotes

Footnote 1: See NYSCEF document 11 Proposed Amended Answer

Footnote 2: See NYSCEF document 6 Answer (Self Represented)

Footnote 3: See NYSCEF document 11 Proposed Amended Answer

Footnote 4: The court notes that Respondent's motion does not set forth the statute under which it seeks relief, but states it seeks an Order " (ii) dismissing the underlying nonpayment Petition with prejudice " Further, the Court notes that the motion to dismiss is properly before the court regardless of the outcome of the Motion to Amend the answer.

Footnote 5: See NYSCEF document 12, Exh B, Non Payment Petition at p11.

Footnote 6: See NYSCEF document 14, Exh D, 14 day rent demand

Footnote 7: See NYSCEF document 12, Exh B at 3-10 et al

Footnote 8: *Id.*

Footnote 9: *Id.*

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