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Beach Haven Apts Assoc LLC v. Kasitsyn

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Civil Court of the City of New York
County of Kings

Index # **LT-301341-22/KI**



Beach Haven Apts Assoc LLC

Petitioner(s)

Decision / Order

-against-

Tomi Kasitsyn; Lamia Yakubova

Respondent(s)

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

Papers	Numbered
Order to show Cause/ Notice of Motion and Affidavits /Affirmations annexed	NYSCEF 12-19
Answering Affidavits/ Affirmations	NYSCEF 22
Reply Affidavits/ Affirmations	NYSCEF 23
Memoranda of Law	_____
Other	_____

Upon the foregoing cited papers, this Decision/ Order grants the motion for the following reason(s):

Respondent Tomi Kasitsyn moves to dismiss this nonpayment proceeding pursuant to CPLR § 3211(a)(7) alleging that the petitioner served a defective rent demand. Respondents reside in the subject premises, the rent-stabilized apartment at 49 Nixon Court, Apt. 6E, Brooklyn, NY. They received funds from the COVID-19 Emergency Rental Assistance Program (“ERAP”) in September 2021, and petitioner’s rent ledger shows these funds were credited to respondent’s account that same month. On December 21, 2021, petitioner served a rent demand upon respondents claiming that respondent owed just under two months’ rent: \$1,260.02 in rent for November 2021 and \$1,334.74 in rent for December 2021. The ERAP checks issued on behalf of respondent, however, were earmarked as paying rent for the period between November 2020 to December 2021, which includes the two months claimed in the rent demand. Respondent argues that the rent demand is defective insofar as it demands rent that had already been paid with ERAP funds.

A rent demand must contain a good-faith approximation of how much the tenant owes and the period during which the arrears accrued. *EOM 106-15 217th Corp. v. Severine*, 62 Misc.3d 141(A) (AT 2d Dep't, 2d, 11th & 13th Jud. Dists. 2019). Earmarked checks must be applied to the rent for which they were earmarked. *Id.* This applies not only to checks earmarked by tenants, but to earmarked checks paid by the government on a tenant's behalf. *L&T E. 22 Realty. V. Earle*, 192 Misc.2d 75 (AT 2d Dept, 2d, 11th & 13th Jud. Dists. 2002). A rent demand that contains amounts that have already been paid is defective and petitioner cannot sustain its *prima facie* case. *21 Realty v. Caraballo*, 75 Misc.3d 1210[A] (Civ. Ct. Bronx County 2022) (citing RPAPL § 711(2); *Moniaci v Kelly*, 73 Misc 3d 127(A), (AT, 2d Dept, 2d, 9th & 10th Jud. Dists. 2021).) Here, the predicate notice demanded arrears that had already been satisfied by earmarked ERAP payments. The predicate notice is therefore defective, and the petition must be dismissed as petitioner cannot sustain its *prima facie* case.

Moreover, when a landlord accepts ERAP payments, such acceptance constitutes an agreement not to use the arrears covered by the payment as a basis for an eviction in a nonpayment proceeding. *Id.* Petitioner's rent demand contravenes this agreement and therefore the petition must be dismissed on this ground as well.

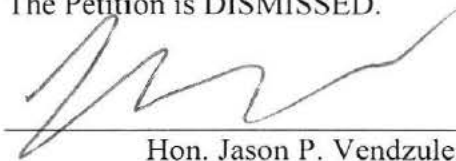
The court declines to reach other grounds for dismissal raised by respondent as they are moot.

ORDERED: Respondent's motion is GRANTED. The Petition is DISMISSED.

Date:

5/19/23

Brooklyn, NY



Hon. Jason P. Vendzules, J.H.C