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Flagg Court Realty Company, LLC. V. Bowes

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART H

-----X
Flagg Court Realty Company, LLC.

Petitioner

Index No. LT # 316164-22

- against -

DECISION/ORDER

Karen Bowes
191 73rd Street
Apt 251
Brooklyn, NY 11209

Respondent

“John Doe: & “Jane Doe”

Respondents (Possible Occupants)

-----X

HON. HANNAH COHEN:

Recitation, as required by CPLR 2219(a), of the papers considered in the review of respondent’s motion to amend the answer and upon amendment seeks summary judgment and dismissal and petitioner’s cross motion in opposition to dismissal and seeks dismissal of affirmative defenses and counterclaims and reply.

<u>Papers</u>	<u>Numbered</u>
Notice of Motion	1
Opposition	2
Reply	3

Upon the foregoing cited papers, the Decision and Order on this Motion is as follows:

Petitioner commenced this nonpayment proceeding after service of a 14 day rent demand in July 2022. Petitioner is the owners of shares of stock certificate in a cooperative and respondent is the under-tenant. Respondent appeared initially pro se and filed an answer. Respondent now with counsel seeks to amend the answer and upon amendment, seeks summary judgement based upon the defenses asserted.

Respondent seeks to amend the answer to assert the following points in law and affirmative defenses and counterclaims: (1) respondent is a non purchasing tenant per GBL section 352-eeee (“Martin Act”) and is subject to its protections and the fee penalty imposed by petitioner violates the Martin Act and the following affirmative defenses : (1) predicate rent demand is not a good faith approximate amount due, respondent’s rent is \$1545 per month, while the rent demand seeks \$3090 for January 2022; (2) stale rent and laches; (3) RPAPL 711(2) permits recovery of rent arrears and petitioner seeks penalty fee of \$3,090 for January 2022 which is impermissible; (3) respondent is protected from a possessory judgment based upon the Tenant Safe Harbor Act; (4) warranty of habitability and counter claims for (1)harassment; (2) petitioner’s practices violate GBL and is illegal and (3) attorney fees.

Respondent upon granting the submission of the above amended answer seeks summary judgment pursuant to CPLR 3212 on the following grounds: (1) rent demand fails to provide a good faith approximation of the rent due as the rent demand seeks stale rent for months that petitioner is barred from collecting; (2) laches in that petitioner seeks rent that is over 12 months old; (3) petitioner is precluded from seeks fees in summary proceedings and herein the petition violates RPAPL 711; and (4) the January 2022 \$3,090 charge is unconscionable and unenforceable.

Petitioner does not oppose amendment of an answer per se as case law and CPLR 3025(b) permits such amended but opposes dismissal and argues that the respondent’s affirmative defenses and first and second counterclaims lack any merit and should be stricken.

Petitioner argues that petitioner is the owner of stock certificate purchased in 1988. Respondent entered into a lease in February 2019 through January 31, 2020 at \$1,500 per month and again in February 2020 through January 31, 2021. When respondent failed to pay her rent, a letter was sent in December 2021 informing respondent that unless she paid arrears a new lease would not

be offered. Petitioner commenced a holdover proceeding under index 306135-21 and respondent filed a hardship declaration in July 2021 and an ERAP application in August 2021. In October 2021 petitioner received from ERAP \$40,170 and subsequently discontinued the holdover proceeding and offered respondent a new lease in December 2021 effective January 2022 at \$1,545 per month. Petitioner avers it received the signed lease from respondent in February 2022.

Respondent seeks summary judgement in that the rent demand does not accurately reflect a good faith basis of the amount due. Specifically respondent argues that respondent's January 2022 rent is not \$3,090 as alleged on the rent demand but \$1,545 per her signed lease. Petitioner admits that the January 2022 rent of \$3,090 was in error and the correct rent is \$1,545 but argues that as respondent returned the lease to petitioner in February 2022 petitioner's computer accidentally noted the penalty holdover rate of \$3,090 for January 2022. Petitioner also avers that any error is de minimis in light of the over \$23,000 in rent arrears owed by the respondent.

Courts have held that a proper rent demand is a statutory prerequisite to a nonpayment proceeding (RPAPL 711 [2]) and an element of a landlord's prima facie case (see *Community Hous. Innovations, Inc. v. Franklin*, 14 Misc 3d 131[A], 2007 NY Slip Op 50050[U] [App Term, 2d Dept, 9th & 10th Jud Dists 2007]). A rent notice must "set forth the approximate good faith amount of rent owed" (*Dendy v. McAlpine*, 27 Misc 3d 138[A], 2010 NY Slip Op 50890[U], *2 [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2010]; see *Holding Corp. v. Prince Fashions, Inc.*, 46 AD3d 309, 311 [2007]) and "fairly apprise the tenant of the periods for which rent is allegedly due and in what amounts" (*Pantigo Professional Ctr., LLC v. Stankevich*, 60 Misc 3d 133[A], 2018 NY Slip Op 51039[U] [App Term, 2d Dept, 9th & 10th Jud Dists 2018]; see *10 Midwood LLC v. Hyacinth*, 2003 NY Slip Op 50789[U], *1 [App Term, 2d Dept, 2d & 11th Jud Dists 2003]; *EOM 106-15 217th Corp. v. Severine*, 62 Misc. 3d 141(A), 112 N.Y.S.3d 861 (N.Y. App. Term. 2019).

Here, the predicate rent notice, which sought rent arrears for January 2022 at \$3,090 and not the correct amount per respondent's signed lease of \$1,545 did not meet this requirement. While petitioner may have received the signed lease late from respondent in February 2022, petitioner had several months before issuing the June 2022 rent demand to properly adjust respondent's rental amount. In light of the inaccuracy in the amount sought in the rent notice, respondent may have been prejudiced in her ability to respond to the demand, formulate defenses, and avoid litigation or eviction (see *Inland Diversified Real Estate Serv., LLC v. Keiko NY, Inc.*, 51 Misc 3d 139[A], 2016 NY Slip Op 50613[U] [App Term, 2d Dept, 9th & 10th Jud Dists 2016]; cf. *10 Midwood LLC v. Hyacinth*, 2003 NY Slip Op 50789[U]). Given that the rent notice was defective and that it cannot be amended (see *Chinatown Apts. v. Chu Cho Lam*, 51 NY2d 786, 787 [1980]; *125 Ct. St., LLC v. Sher*, 58 Misc 3d 150[A], 2018 NY Slip Op 50092[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2018]), the Court grants respondent's motion to amend the answer and upon such grants dismissal of the petition. In light of the above, the Court need not address the remainder of the motion.

The Court hereby dismisses the petition without prejudice to petitioner's right to commence a new proceeding.

This constitutes the decision and order of this Court.

Dated: December 14, 2022

Brooklyn, New York

Hannah Cohen, J.H.C.