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Stewart v. Jordan

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Civil Court of the City of New York
County of Kings

Index # **LT-305061-23/KI**



Ella G. Stewart

Petitioner(s)

Decision / Order

-against-

Vanessa Jordan

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 13-15
Answering Affidavits/ Affirmations	NYSCEF 17-21
Reply Affidavits/ Affirmations	NYSCEF 22
Memoranda of Law	_____
Other	_____

Upon the foregoing cited papers, respondent’s CPLR §§ 3211(a)(1) and (7) motion is granted and the Petition is dismissed.

Petitioner Ella G. Stewart brings this holdover proceeding seeking to evict Vanessa Jordan, the rent-stabilized tenant of 195 East 40th Street, 3rd Floor, Brooklyn, New York. Ms. Stewart alleges that Ms. Jordan violated a substantial obligation of her tenancy by being chronically delinquent in the payment of her rent and that she terminated the tenancy via a ninety-day notice served on Ms. Jordan. Ms. Stewart further alleges that Ms. Jordan is holding over after the termination of her tenancy and that petitioner is therefore entitled to a judgment of possession.

Ms. Jordan, represented by counsel, moves the court to dismiss this proceeding pursuant to CPLR §§ 3211(a)(1) and (7), arguing that the termination notice served upon her is defective as a matter of law. Respondent’s argument is sound, and the proceeding must be dismissed.

Holdover proceedings brought to evict tenants from rent-stabilized apartments are governed by the Rent Stabilization Code (hereinafter “RSC”). Pursuant to RSC §2524.2(a), owners are required to provide written notice to a tenant before commencing holdover

proceedings. RSC §2524.2(b) mandates that those notices detail the ground upon which the owner is relying (pursuant to RSC §2524.3. or §2524.4) for the eviction and the facts necessary to establish the existence of such a ground. These requirements are not mere formalities. The Rent Stabilization Code requires termination notices to include the basis for the termination and facts supporting that basis so respondents may prepare a defense to the claims. *See, e.g., 55 Clinton St., LLC v. Schumacher*, 65 Misc.3d 128(A) (AT 1st Dep't 2019).

The termination notice served as a predicate to this proceeding is bereft of both the legal basis for the action or any facts supporting that basis. Instead, the Ninety Day Notice that presages these proceedings indicates only that (1) the premises is held by respondent under monthly hiring, (2) that the landlord will commence proceedings “under the Statute” without defining said statute, and (3) that petitioner is allowed to commence this proceeding merely because respondent is holding over and has lived in the apartment more than two years. (NYSCEF Doc. 8.) Indeed, the form termination notice that serves as a predicate for this chronic rent delinquency holdover appears to have been created to terminate a tenancy in an unregulated apartment where there is no lease in effect. This notice is devoid of any statutory authority for the termination of the tenancy and fails to list any of the prior nonpayment proceedings detailed in the petition. As such, the termination notice is insufficient as a matter of law pursuant to RSC §2524.2(b).

Petitioner in opposition argues that RSC §§2524.2(a) and (b) do not apply to this proceeding because the proceeding is grounded in the nonpayment of rent insofar as it is based on chronic rent delinquency. Aside from the fact that the termination notice herein would also be defective if considered as a predicate rent demand under RPAPL §711(2), petitioner’s argument is belied by her own argument that the proceeding was brought because respondent

allegedly violated a substantial obligation of her tenancy. (Petition (NYSCEF Doc. 1) at ¶20 (citing *Adam's Tower Ltd. Partnership v. Richter*, 186 Misc.2d 620, 6221-22 (AT 1st Dep't 2000); Affirmation in Opposition (NYSCEF Doc 17) at ¶23 (citing *Kalaja Rlty LLC v. Morel*, 56 Misc.3d 1210(A) (Civ. Ct., N.Y. County, 2017)). As such, in petitioner's own words, this proceeding was not commenced solely because of the nonpayment of rent, and RSC §§2524.2(a) and (b) therefore apply.

Petitioner commenced this proceeding by way of a defective predicate notice, insofar as it did not conform with the dictates of the Rent Stabilization Code. A valid predicate notice a condition precedent to a holdover proceeding and defects in a predicate notice are not amendable. *Jamison v. Jamison*, 55 Misc.3d 139[A] (AT 2nd Dept' 2017) (citing *Chinatown Apts., Inc. v. Lam*, 55 N.Y.2d 786, 412 N.E.2d 1312 (1980).) As such, this proceeding must be dismissed as it was predicated on a termination notice that fails to cite a cause of action. *Cruz v. Davis*, 20 Misc.3d 1135[A] (Civ. Ct., N.Y. County 2008) (Lebovitz, J.H.C.).

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

This is the Decision and Order of the Court, which will be delivered to the parties via NYSCEF.

Date: July 18, 2023

Civ-GP-85



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