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120 Beach 26th Street, LLC v. Butler

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS: HOUSING PART D

120 Beach 26th Street, LLC,

Petitioner,

L&T 67428/19

Decision and Order

-against-

Quasia Samuel and Jonathan Butler,

Respondents.

Recitation, as required by CPLR 2219(a)

Notice of Motion and Affidavits Annexed.....	1
Order to Show Cause and Affidavits Annexed.....	0
Answering Affidavits.....	2
Replying Affidavits.....	3
Exhibits.....	4
Stipulations.....	0
Other.....	0

Poley, J.

Respondent Quasia Samuel, by counsel, moves to dismiss this non-payment proceeding based on the allegation that the rent demand is defective as it is not precise and accurate as it seeks to recover rent arrears and additional fees. It is undisputed that the rent demand in this proceeding sought rent from Respondents in the amount of \$1,675.00 per month for the months of July 2019 and August 2019. In addition, the demand also seeks \$9.50 per month in Tenant Liability Insurance for the months of July 2019 and August 2019.

The crux of Respondent's argument is that the landlord is seeking fees that are not part of the possessory claim and that alone renders the rent demand defective as it does not apprise Respondent of the accurate amount owed. Respondent points to the newly amended RPAPL

§702 which states that “no fees, charges, or penalties” may be sought in a summary residential proceeding. In opposition, Petitioner argues that the rent demand is accurate, and that the inclusion of additional fees does not render the otherwise valid rent demand defective.

A rent demand is a condition precedent to commencement of a summary nonpayment proceeding, and as such, cannot be amended. (RPAPL §711(2) and §741(4); *see also*, *Chinatown Apts. v. Chu Cho Lam*, 51 N.Y.2d 786, 787 [1980]). The propriety of the rent demand is an element of landlord’s prima facie case. (*EOM 106-15 217th Corp. v. Severine*, 62 Misc.3d 141(A) [App Term, 2nd Dep’t, 11th & 13th Jud Dists 2019]; *see also*, *125 Court St., LLC v. Sher*, 58 Misc.3d 150(A) [App Term, 2nd Dep’t, 2d, 11th & 13th Jud Dists 2018]; *Rochdale Village, Inc. v. Goode*, 16 Misc.3d 49 [App Term, 2nd Dep’t, 2d & 11th Jud Dists 2007]). The predicate rent demand required by RPAPL§ 711(2) must clearly state the approximate good faith estimate of the sum allegedly due as well as the period for which the rent is demanded. (*Dendy v. McAlpine*, 27 Misc.3d 138(A) [App Term, 2nd Dep’t, 2d, 11th & 13th Jud Dists 2010]; *see also*, *EOM 106-15 217th Corp. v. Severine*, 62 Misc.3d 141(A) [App Term, 2nd Dep’t, 11th & 13th Jud Dists 2019]; *Pantigo Professional Ctr., LLC v. Stankevich*, 60 Misc.3d 133(A) [App Term, 2nd Dep’t 2018]).

It has long been the standard that inclusion of attorneys’ fees or late fees in a rent demand merely gives Respondent notice of Petitioner’s additional claim for contractual damages provided for in the parties’ lease and does not affect the validity of the rent demand. (*See, Brusco v. Miller*, 167 Misc.2d 54, 55 [App Term, 1st Dep’t 1995] (“The itemization of ancillary charges for attorney’s fees and late fees does not represent a demand for ‘illegal’ rent in excess of the stabilized maximum, but permissibly gives notice of landlords’ additional claim for contractual damages provided for in the parties’ lease.”); *see also*, *John Washington, Ltd. v. Gulbreath*, 171

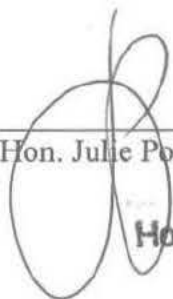
Misc. 2d 337 (App Term, 2nd Dep't 1997] (the inclusion of miscellaneous charges did not invalidate otherwise valid rent demand)). In evaluating the sufficiency of a predicate notice in a summary proceeding, "the appropriate test is one of reasonableness in view of the attendant circumstances." (*Oxford Towers Co. LLC v. Leites*, 41 AD3d 144, 144-145 [1st Dep't 2007] citing, *Hughes v. Lenox Hill Hosp.*, 22d, AD2d 4, 18 [1st Dep't 1996] , *lv denied* 90 NY2d 829 [1997]). Therefore, the inclusion of late fees or other fees in the rent demand does not in and of itself invalidate the demand, instead, the inclusion of such fees is a factor the Court considers when reviewing the reasonableness of the demand and determining whether the tenant may have been prejudiced in its ability to respond to the demand, formulate defenses, and avoid litigation or eviction.

When evaluating the reasonableness of a rent demand, Courts have considered the percentage of any discrepancy and Courts have compared fees and charges in relation to the amount of rent sought. (*See, 10 Midwood LLC v. Hyacinth*, 2003 NY Slip Op 50789(U) (App Term, 2nd Dep't, 11th & 13th Jud Dists 2003] (minor inaccuracies in the amounts sought should be disregarded); *see also, Wilsdorf v. Fairfield Northport Harbor, LLC*, 34 Misc.3d 146(A) [App Term, 2nd Dep't, 9th & 10th Jud Dists 2012] (holding "the provision in the lease charging plaintiff late fees of 10% of the monthly rent [is] unenforceable as a penalty, since it clearly disproportionate to any loss that defendant may incur"); *Diversified Equities, LLC v. Russell*, 50 Misc.3d 140(A) [App. Term, 2nd Dep't, 11th & 13th Jud Dists 2016] (holding that a "late monthly charge of 13% [is] excessive and grossly disproportionate to any damages that could be sustained as a result of tenant's failure to pay rent on time."); *see also, Park Haven, LLC v. Robinson*, 45 Misc.3d 129(A), 3 N.Y.S.3d 286 (App. Term 2d, 11th & 13th Jud. Dists. 2014); *Sandra's Jewel Box Inc. v. 401 Hotel, L.P.*, 273 A.D.2d 1 [1st Dep't 2000]).

In line with appellate authority, the Court finds that the amount sought in Petitioner's Rent Demand is an "approximate good faith estimate" of rent owed by Respondent. Respondent does not allege that they made payments which were not credited or misapplied or that the \$19.00 in additional fees are a gross and disproportionate penalty preventing Respondent from formulating a defense to the nonpayment of rental arrears. The \$19.00 in charges constitute less than 1% of the \$3,350.00 in rent sought in the demand.¹ That Petitioner is no longer permitted to collect the additional fees in the context of this summary proceeding does not in and of itself invalidate an otherwise valid rent demand. The standard of review for the predicate demand has not changed. It is still that of reasonableness in all attendant circumstances, and in the case at bar, the Court finds that the rent demand is reasonable and fairly apprises Respondent of the amount due. Accordingly, Respondent is to serve and file her Answer by January 15, 2020, and this proceeding will appear on Part D calendar on January 29, 2020 at 9:30 a.m. for all purposes.

This constitutes the Decision/Order of this Court.

Dated: December 24, 2019
Queens, New York



Hon. Julie Poley
Hon. Julie Poley

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¹ As a percentage of the \$3,350 in rent arrears, \$19.00 in charges constitutes a mere .0057% of the amount sought.