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2023-08-08

### 507 West 179 Realty LLC v. Santos

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NYSCEF DOC. NO. 21  
Civil Court of the City of New York  
County of New York  
Part: Part H, Room: 830  
Date: January 5, 2023

RECEIVED NYSCEF: 08/10/2023  
Index #: LT-313285-22/NY  
Motion Seq #: 1

**Decision/Order**

507 West 179 Realty LLC  
Petitioner(s)  
-against-  
Emerenciano Santos; Geovan Santos; "Jane" "Doe"  
Respondent(s)

Present: Tracy Ferdinand  
Judge

Recitation, as required by CPLR 2219(A), of the papers considered in the review of this Motion for:  
**Leave to serve and file an amended answer and to dismiss**

PAPERS	NUMBERED
Notice of Motion and Affidavits Annexed	_____ 1 _____
Order to Show Cause and Affidavits Annexed	_____
Answering Affidavits	_____ 2 _____
Replying Affidavits	_____ 3 _____
Exhibits	_____
Stipulations	_____

Upon the foregoing cited papers, the Decision/Order in this Motion is as follows:

Respondent’s motion for leave to serve and file an amended answer is granted as unopposed.

Respondent also moves to dismiss the proceeding on the grounds that the rent demand is defective and may not serve as a proper predicate to this summary non-payment proceeding.

The 14-day Notice seeks rent for December 2021 in the amount of \$879.16 and January 2022 through June 2022 at a monthly rate of \$949.40 per month. Respondent argues that the monthly rent for January and February 2022 was \$926.24 not \$949.40 as demanded. Respondent also states that he was approved for ERAP funds at a monthly rate of \$926.24 in or about August 27, 2021, and petitioner is therefore precluded from seeking rent in excess of the \$926.24 per month for the 12 months following the receipt of the first ERAP payment. (L. 2021, c. 56, part BB, subpart A, §9(2)(d)(iii)). This would include all the months demanded in the notice at the higher rent of \$949.40.

Petitioner concedes that it mistakenly demanded rent for January and February 2022 in the amount of \$949.40 based upon a signed renewal that had not yet gone into effect. The rent in effect for those months was actually \$926.24 Petitioner does not address the ERAP argument at all and characterizes the errors as a deminimus miscalculations.


A proper rent demand must satisfy the statutory requirements of RPAPL §711(2) and provide a tenant notice “of the particular periods for which rent and other charges were due and the approximate good faith amount claimed for each such period...” *Almark Holdings Co., LLC v. Pizza147 NY LLC*, 2022 N.Y. Misc. LEXIS 7646 [App. Term 1<sup>st</sup> Dept. 2022].

The errors in the notice go beyond miscalculations. Petitioner does not dispute that the rent sought in the demand was improper both based upon the acceptance of ERAP funds and the error regarding the effective date of the lease renewal. Given the cumulative errors, the mistakes beyond mere miscalculations and the demand cannot be said to be a good-faith reasonable approximation of the rent owed.

A predicate notice is incapable of amendment and an improper demand may serve as a basis for dismissal. (*Chinatown Apts., Inc. v Chu Cho Lam*, 51 NY2d 786 [1980]).

Accordingly, respondent’s motion is granted and the proceeding is dismissed without prejudice.

This constitutes the Decision/Order of this Court.  
Date: 8/8/2023

  
\_\_\_\_\_  
Judge, Civil/Housing Court