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180 Mgt. Corp. v. Salifu

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[*1]

180 Mgt. Corp. v Salifu
2023 NY Slip Op 50928(U)
Decided on August 10, 2023
Civil Court Of The City Of New York, Bronx County
Ibrahim, J.
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
As corrected in part through September 19, 2023; it will not be published in the printed Official Reports.

Decided on August 10, 2023

Civil Court of the City of New York, Bronx County

180 Management Corp., Petitioner,
against
Sulema Salifu & Tunisha Haamid Salifu, Respondents.

Index No. 336609/2022

For Petitioner: Paul Davis Esq.

5047 Broadway New York, New York 10034

For Respondent: The Bronx Defenders

By: Adam Markovics

360 East 161st Street

Bronx, New York 10451

Shorab Ibrahim, J.

Recitation, as required by C.P.L.R. § 2219(a), of the papers considered in review of this motion.

Papers Numbered

Notice of Motion—NYSCEF Doc. 10; Affirmation in Support—NYSCEF Doc. 11; Affidavit in Support—NYSCEF Doc. 12; Memorandum of Law in Support—NYSCEF Doc. 13; Supporting Exhibits A-G—NYSCEF Docs. 14-20; Affirmation in Opposition—NYSCEF Doc. 22; Petitioner's Exhibit 1—NYSCEF Doc. 23; Reply Memorandum of Law—NYSCEF Doc. 25

After oral argument on July 24, 2023, and upon the foregoing cited papers, the decision and order on this motion is as follows:

DISCUSSION

Facts

The parties generally *agree* on these pertinent facts: both named respondents were and are *tenants* pursuant to leases. However, Tunisha Haamid Salifu ("Tunisha" or "respondent"), the only appearing respondent, was *not* a party to a lease for the months of June and July 2022, a time period when she was removed from the then-effective lease [at her request], before she was added back onto the lease [also at her request]. (*see* Tunisha affidavit at NYSCEF Doc. 12). Sulema Salifu ("Sulema") has not appeared, but it appears they have been a party to leases throughout the tenancy. Tunisha is both a current leaseholder and occupant. She acknowledges she was an occupant in June and July 2022. (*see id.*).

The rent demand preceding this case seeks unpaid rent for June through October 2022.

[\[FN1\]](#)

The Parties' Arguments

Respondent now moves for dismissal. Central to respondent's argument is the fact that there is no lease in effect with Tunisha for two of the five months alleged owing in the demand. Tunisha does not otherwise dispute that rent was not paid [by whomever might be responsible] for the months noted in the rent demand.

Petitioner's opposition all but concedes Tunisha's factual assertions by confirming Tunisha was not a party to a lease in June and July 2022, (*see* NYSCEF Doc. 22, par. 7-8), and by not opposing Tunisha's affidavit. ([*see SportsChannel Associates v Sterling Mets, L.P.*, 25 AD3d 314](#), 315 [1st Dept. 2006] *quoting Kuehne & Nagel, Inc v Baiden*, 36 NY2d 539 [1975] ("Facts appearing in the movant's papers which the opposing party does not controvert, may be deemed to be admitted"))).

Petitioner argues, however, that the rent demand meets all legal requirements and that whether Tunisha owes rent for June and July 2022 is a triable issue.

The Law & Its Application

Respondent is correct, of course, that a rental agreement must be in effect for months sought in a summary proceeding. Otherwise, the word "rent" would be a misnomer. (see RPAPL 711(2) (only *rent* may be sought in summary proceeding); RPAPL 702(1) (defining "rent"); [*West 152nd Assoc., L.P. v Gassama*, 65 Misc 3d 155](#)[A], 2019 NY Slip Op 51926[U] [App Term, 1st Dept. 2019]; *Krantz & Phillips, LLP v. Sedaghati*, 2003 NY Slip Op. 50032[U] [App Term, 1st Dept. 2003]). If a rent demand seeks rent not due pursuant to a rental agreement, it is defective and such defect *may* require dismissal of a proceeding. (see [*Rochdale Village, Inc. v Chadwick*, 65 Misc 3d 1039](#), 1043 [Civ Ct, Queens County 2019]).

A *proper* rent demand, in turn, must be "a good faith approximation of the rent that a tenant would have to pay to prevent litigation." ([*2229 Creston Partners, LLC v Ramos*, 31 Misc 3d 1221](#)(A), 1 [Civ Ct, Bronx County 2011], *citing* [*542 Holding Corp. v Prince Fashions, Inc.*, 46 AD3d 309](#), 310 [1st Dept. 2007]). This concept—that a "primary" purpose of a rent demand must fairly tell the respondent what must be paid in order to avoid litigation—is now axiomatic. It is clearly stated in RPAPL 711(2), ("a written demand of the rent requiring, in the alternative, the payment of the rent, or the possession of the premises"), and is noted time and again in the case law. (see [*Bldg Management Co., Inc. v Benmen*, 36 Misc 3d 1225](#)(A), 1 [Civ Ct, New York County 2012] ("One of the primary purposes of the rent demand is to give the tenant a chance to pay what is due and avoid litigation."); [*Strong L.P. v. Dakar Rest., Inc.*, 28 Misc 3d 1213](#)(A), 2 [Civ Ct, Kings County 2010]; [*545 W. Co. v Schachter*, 16 Misc 3d 431](#), 432 [Civ Ct, New York County 2007]; *St. Romero HDfC v Mercado*, 51 Misc. 1209(A) [Civ Ct, New York County 2016]; [*FAV 45 LLC v McBain*, 42 Misc 3d 1231](#)(A), 4 [Civ Ct, New York County 2014]; *St. James Court, LLC v Booker*, 176 Misc 2d 693, 694-695 [Civ Ct, Kings County 1998] ("The purpose of the rent demand is not only to inform the tenant that in the absence of payment of the demanded amount or surrender of the premises, legal proceeding will be instituted, but also to allow the tenant to remedy any default in payment, thus avoiding litigation and possible eviction.")).

Thus, to be effective, the rent demand "*must actually* demand payment of an amount that will prevent litigation, i.e., a reasonable approximation of the rent that is due." [emphasis added] (*FAV 45 LLC v McBain*, 42 Misc 3d 1231(A) at 4, *citing* *542 Holding Corp. v Prince*

Fashions, Inc., 46 AD3d at 310 [1st Dept. 2007] and [*Dendy v McAlpine*, 27 Misc 3d 138\(A\)](#), 2 [App Term, 2nd Dept. 2010]). Other courts have pointed out that demands must be made in "good faith." ([*see Ciampa US LLC v Satterfield*, 79 Misc 3d 1227\(A\)](#), 2 [Civ Ct, Queens County 2023] (demand "must set forth the approximate good faith amount of rent owed") [*citing EOM 106-15 217th Corp. v Severine*, 62 Misc 3d 141\[A\]](#) [App Term, 2nd Dept, 2nd, 11th & 13th Jud. Dists. 2019])).

Respondent's motion fails under this analysis.

The only payment that would have avoided the present litigation is the amount of rent petitioner actually demanded (5 months). Even if only three months were demanded from and paid by Tunisha [or Sulema], petitioner could properly commence this proceeding against both respondents for the remaining two months. After all, there is no dispute that Sulema owes, pursuant to a lease, all five months demanded.

For instance, if Tunisha (or Sulema) had paid three months (assuming the payments were ear-marked for August, September and October 2022), leaving just June and July 2022 due, the case would still continue against both respondents with Sulema owing two months (June and July) under a lease, and Tunisha, a required party-occupant, eligible for eviction. (*see* RPAPL 749(1); *see also* *170 W. 85th St. Tenants Assn. v Cruz*, 173 AD2d 338, 339 [1st Dept. 1991] ("for the warrant to be effective against an occupant, they must be made a party to the proceeding, either by naming them in and serving them with the petition and notice of petition or by joining him as a party during the pendency of the proceeding)). Under this analysis, Tunisha becomes subject to eviction as an occupant, and it is settled law that an occupant is not entitled to predicate notices. (*see id* at 339); [*1700 First Ave. LLC v Novak*, 46 Misc 3d 30](#), 31 [App Term, 1st Dept. 2014]; [*2626 Equities v Morillo*, 66 Misc 3d 1211\(A\)](#), 2 [Civ Ct, Bronx County 2020] (occupant not entitled to statutory rent demand)).

In other words, Tunisha's argument that she should have been served with a demand requesting just three months of rent is meritless under these unique circumstances, since payment of same would not have avoided litigation. Petitioner here has taken the most logical path while also complying with the spirit and requirements of rent demand generally.

To the extent that that a possessory money judgment is sought in this court for two months where Tunisha was not party to a lease, the court may, after trial, dismiss a portion of a claim that is not supported by the facts, rather than dismissing the entire case. ([*see East Harlem Pilot Block Bldg. IV HDFC v Diaz*, 46 Misc 3d 150\(A\)](#) [App Term, 1st Dept. 2015] (The motion court correctly dismissed *that branch* of the nonpayment petition seeking a

possessory judgment for rent arrears accruing prior to April 16, 2012, the date that tenant, as successor to her mother's Section 8 "project-based" tenancy, became a party to a lease agreement with landlord.) [emphasis added]).

This is especially true where the rent demand is made in good faith, as it was here. ([see McDonnell v Mitchell, 59 Misc 3d 133](#)(A), 1 [App Term, 2nd Dept. 2018]). In *McDonnell*, the landlord demanded full contract rent, including the Section 8 portion. The court denied dismissal finding no indication the demand was made in bad faith, "and a substantive dispute over the amount of arrears does not implicate the legal sufficiency of a rent demand. Under the circumstances, we see no basis to deny landlord a judgment for the tenant's share of the rent." (*id*); [Rippy v Kyer, 23 Misc 3d 130](#)(A) [App Term, 9th & 10th Jud. Dists. 2009]; *MPlaza, LP v [*2]Corto*, 35 Misc. ed 139(A) [App Term, 1st Dept. 2012] (dismissing only portion of petition seeking Section 8 portion of rent); [see also 402 Nostrand Ave. Corp. v Smith, 19 Misc 3d 44](#), 46 [App Term, 2nd Dept. 2008] (The rent demand and petition permissibly set forth landlord's good faith claim as to the rents due and the periods for which they were due. The fact that landlord did not entirely prevail on its claim does not provide a basis for invalidating the petition and rent demand and dismissing the proceeding) [internal citations omitted]). Here, the demand's good faith approximation is apparent as the months demanded are acknowledged owed by at least one tenant and at least three of five months are owed by both respondents.

Conclusion

Based on the foregoing, respondent's motion to dismiss the proceeding is denied in all respects. The parties shall appear in Part J, Room 490 on August 29, 2023, at 9:30 AM for a pre-trial conference, with client present.

This constitutes the decision of the court. It will be posted on NYSCEF.

Dated: August 10, 2023
Bronx, New York
SO ORDERED,
HON. SHORAB IBRAHIM

Footnotes

Footnote 1: The arrears for June 2022 are noted as \$1,384.89, while July through October 2022 are at \$1,432.01 per month. (*see* NYSCEF Doc. 1, p. 3).

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