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Site 10 Community Alliance Associates LP v. Keats

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NEW YORK CITY CIVIL COURT
COUNTY OF NEW YORK: HOUSING PART C

-----X
SITE 10 COMMUNITY ALLIANCE ASSOCIATES, L.P.,

Petitioner - Landlord,

DECISION AND ORDER

v.

L&T 306988/21

██████████ KEATS,
Respondent – Tenant.

-----X
Present: HON. TRAVIS J. ARRINDELL
Judge, Housing Court

Recitation, as required by CPLR §2219(A), of the papers considered in the review of Respondents’ Motion to Dismiss and Petitioner’s opposition to said motion:

Papers

Respondent’s Motion (Numbered 11-16 on NYSCEF).....	<u>1</u>
Petitioner’s Opposition (Numbered 17-18 on NYSCEF).....	<u>2</u>
Respondent’s Reply (Numbered 19 on NYSCEF).....	<u>3</u>

Upon the foregoing cited papers, the decision/order on this motion is as follows:

Procedural History and Statement of Facts

On August 5, 2021, Petitioner served ██████████ Keats, John Doe, and Jane Doe (“Respondents”) located at ██████████ (“subject premises”), a Ten-day Notice of Termination. Petitioner, in their Notice of Termination, alleges that Respondents violated paragraph 13, 14, and 23 of the HUD lease agreement, and paragraph 2 of the House Rule. Petitioner alleges that on numerous occasions that Respondent engages in a “pattern of disruptive and disturbing behavior, including outbursts of yelling, screaming and verbally assaulting management and staff in the building and bombarding the landlord with baseless allegations of individuals breaking into her apartment for various reasons.”¹ As summarize in Petitioner’s opposition, Petitioner alleged the following specific incidences:

- 07/02/21 - at 10:30am – in lobby yelling about someone coming into the apartment while sleeping and pouring hot cream on her face

¹ Combined Ten (10) Day Notice to Tenant of Landlord’s Intention to Terminate Tenant’s Assistance Payment and Thirty (30) Day Notice of Termination with HUD Lease and Intention to Recover Possession, at pg. 3.

- 07/01/21 – 2 pm – claimed that people were turning on her air conditioner, wearing her clothes, using her razor to shave and putting oil on it after they finish.
- 07/01/21 – 4 pm – claimed someone else entered her apartment and cut her toenails and fingernails.
- 07/05/21 – 7:15 am – claimed someone unlocked her apartment door, took a shower and poured gasoline over her head.
- 07/11/21 – 6 pm – reported to management that someone poured chemical on her skin while she was in the shower and put her dirty clothes on the floor.
- 07/15/21 – 11:40 am – while Landlord was delivering fridge, she began screaming, NYPD mobile crisis and EMS came to scene. She ran off.
- 07/20/21 – claimed someone stole paper towels from her apartment. She refused to open door for NYPD.
- 06/17/21 – 11:45 am, yelled at site manager demanding locks be changed because people were taking showers in her apartment. Also accessed circuit breakers to turn off the electricity to her apartment.
- 06/14/21 – 10:15 am – reported people entered her apartment, showered, wore her clothes and turned on air conditioner.
- 06/07/21 – went to management claiming someone was playing with her clothes.
- 06/15/21 – 2:45 am – someone broke into [the apartment] and took her paper towels.
- 06/18/21 – 9:05 pm – claiming people were breaking into her apartment, using [the] coffee machine and putting oil in [the] tenant's drink dispenser.
- 04/21/21 and 04/30/21 – claimed people breaking into [the] apartment.
- 03/09/21 – claimed someone speaking to her through the vent, coming into her home, touching her while asleep and coloring her hair red.
- 03/18/21 – demanded Landlord remove stove [because] someone was entering [the apartment] and eating her food after she cooked it.
- 10/01/21 – came to management saying people are entering [the apartment] to use her stove and belongings [and] asked [the] Landlord to remove her stove.²

Legal Discussion

Pursuant to 24 CFR § 247.4 to terminate a Section 8 subsidized tenancy the landlord must provide predicate notice stating the specific facts which supports the basis of the pending

² Petitioner's Affirmation in Opposition, at ¶ 11.

holdover proceeding. Furthermore under 24 CFR § 880.607 an owner may terminate a tenant’s tenancy due to a “material non-compliance with the lease.” A material non-compliance with the lease includes:

- (A) one or more substantial violations of the lease; or
- (B) Repeated minor violations of the lease that disrupt the livability of the building; adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related facilities; interfere with the management of the building or have an adverse financial effect on the building.³

The relevant lease provision as cited by the Petitioner states: (1) Paragraph 13 – “The Tenant agrees not to: make or permit noises or acts that will disturb the rights or comfort of neighbors”⁴; and (2) House Rule No. 2 – “No tenant shall make or permit any disturbing noises in the building by himself ... that will interfere with the rights, comforts, or conveniences of other tenants...”⁵

In evaluating the factual sufficiency of a predicate notice in a summary proceeding, “the appropriate test is one of reasonableness in view of the attendant circumstance.”⁶ The notice that forms the basis for a petition initiating a holdover proceeding must set forth sufficient facts to establish the grounds for the tenant's eviction.”⁷ The alleged defaults must be stated with particularity, so that the tenant may know what to defend against and how to impose valid legal defenses against the landlord’s claim.”⁸ Those facts must be case specific ... instead of generic or conclusory statements.⁹

Finally, when deciding a motion to dismiss pursuant to CPLR 3211 (a)(7) for failing to state a cause of action, the court must liberally construe the pleadings, accept all facts alleged in the pleading as true and determine only whether the facts fit within any cognizable legal theory.¹⁰ A motion to dismiss pursuant to CPLR 3211 (a)(7) must be denied if from the pleadings’ four corners “factual allegations are discerned which taken together manifest any cause of action cognizable at law.”¹¹ “Whether a plaintiff can ultimately establish its allegation is not part of the calculus in determining a motion to dismiss.”¹²

Here, Petitioner cites sixteen separate incidents of objectionable conduct. However, either considered independently or collectively, Petitioner fails to allege a material non-compliance with the lease as required by 24 CFR 880.607. To allege a claim under 24 CFR 880.607, Petitioner must allege facts that Respondent “disrupted the livability of the building; adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the

³ See 24 CFR 880.607.

⁴ See Notice of Termination, NYSCEF Doc # 14.

⁵ Id.

⁶ See Hughes v. Lenox Hill Hospital, 226 A.D.2d 4 [1st Dept. 1996].

⁷ See Westhampton Cabins & Cabanas Owners Corp. v. Westhampton Bath & Tennis Club Owners Corp., 62 A.D.3d 987, 988; See also RSL 2524.2(b); See also London Terrace Gardens, L.P. v Heller, 40 Misc. 3d 135(A).

⁸ See Carriage Court Inn, Inc. v. Rains, 138 Misc. 2d 444, 445.

⁹ See Second 82nd Corp v. Veiders, 34 Misc. 3d 130.

¹⁰ See Leon v. Martinez, 84 NY2d 83 [Ct App 1994].

¹¹ See 511 West 232nd Owners Corp v. Jennifer Realty Co, 98 NY2d 144, 152 (2002).

¹² See EBC I. Inc. v. Goldman Sachs & Co., 5 NY3d 11 (2005).

leased premises and related facilities; interfered with the management of the building or have an adverse financial effect on the building.”¹³ Petitioner provides specific facts regarding Respondent’s objectional conduct, but fails to provide any specific facts that demonstrates the impact of said conduct. Petitioner fails to allege any facts that Respondent’s conduct disrupted the livability of the building or that Respondent’s conduct interfered with any tenant’s right to quiet enjoyment. Furthermore, Petitioner failed to allege any facts that demonstrate Respondent’s conduct interfered with Petitioner’s management of the building or any fact that Respondent’s conduct had an adverse financial effect on the building. At most, Petitioner pleadings conclude from Respondent’s conduct that Respondent interfered with the quiet enjoyment of tenants or Petitioner’s management of the building without stating any specific facts in support. Petitioner fails to plead with specificity as required by 24 CFR § 247.4.

In response, Petitioner mistakenly argues that Respondent’s demand for specificity is a demand for evidentiary support. Petitioner argues that they are not required “to lay out all the evidentiary support of [their] case.”¹⁴ Petitioner, further cites 451 Marion LLC v Gonzalez, 44 Misc. 3d 1213(A), 1213A, holding

while a plaintiff may be required to supply evidentiary support for his claims in response to a motion for summary judgment under CPLR 3212, he is not obligated to do so in response to a pre-answer motion to dismiss under CPLR 3211. The criterion for decision on such a motion is whether the allegations of the complaint state a legally cognizable cause of action. The court’s role is simply to determine whether the **facts, as alleged, fit into any valid legal theory**. In deciding such a pre-answer motion, the court is not authorized to assess the relative merits of the complaint’s allegations against the defendant’s contrary assertions or to determine whether or not plaintiff has produced evidence to support his claims.¹⁵

Though Petitioner is correct that, they are not required to provide evidentiary support for their claims, they are required as held by 451 Marion LLC, 44 Misc. 3d 1213(A), to provide the facts which support a valid legal theory. As mentioned earlier Petitioner fails to provide any facts which supports that Respondent’s conduct has disrupted the livability of the building; the health and safety of any person; any tenant’s quiet enjoyment of the leased premises; interference with Petitioner’s management of the building; or any adverse financial effect on the building. A valid predicate notice is a condition precedent to a summary holdover proceeding and predicate notices are unamendable.¹⁶

¹³ See 24 CFR 880.607.

¹⁴ See Petitioner’s Affirmation in Opposition, at para graph 19

¹⁵ Emphasis Added.

¹⁶ See Chinatown Apts. v Chu Cho Lam, 51 NY2d 786, 788.

Conclusion

Respondents' motion to dismiss pursuant to CPLR 3211(a) (7) is granted. This constitutes the decision and order of the court.

Dated: October 3, 2023,
New York, NY

Travis J. Arrindell, JHC