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1369 OCEAN LLC. v. CADORE

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

----- X
1369 OCEAN LLC.,

Petitioner,

Index No. L&T 302596/21

- against -

DECISION/ORDER

HADASSAHESTHER C. CADORE and
YVONNE C. CADORE

Respondents,

1362 Ocean Avenue
Apt. 1G,
Brooklyn, New York 11230

“Subject Premises”

----- X
Present: Hon. Kevin McClanahan
Judge, Housing Court

Recitation, as required by CPLR §2219(a), of the papers considered in the review of this motion:

Papers	Numbered
Respondent’s Notice of Motion and Motion, along with affirmation and exhibits	1, 2, 3, 4, 5
Petitioner’s Affirmation in Opposition	6
Respondent’s Memorandum of Law	7

Papers considered: (NYSCEF Doc Nos. 7 through 13)

Factual and Procedural History

This non-payment proceeding was commenced by Petitioner 1362 Ocean LLC on April 14, 2021, seeking \$14,175.00 in rental arrears and possession of the premises from Respondents Hadassahesther C. Cadore and Yvonne C. Cadore. Respondent Yvonne C. Cadore entered an in-person answer *pro se* on April 22, 2021, claiming improper service of the Notice and Petition; failure of Petitioner to effectuate written demand for rent prior to starting the case; failure to account for rent payment made to Petitioner; alleging that Petitioner did not make repairs or provide services to the apartment/building; and generally denying the allegations in the Petition.

Respondent Yvonne C. Cadore further alleged they were entitled to rent abatement and Covid-19 Hardship. On July 8, 2021, a Notice of Appearance was filed informing the court that Respondent Yvonne Cadore had retained the Legal Aid Society as counsel in this proceeding. On the same day, a Covid-19 Hardship Declaration was efiled on behalf of Respondent Hadassahester C. Cadore.

On January 3, 2022, Counsel for Respondent Yvonne Cadore filed a Notice of Motion, along with Affidavits and Exhibits in Support, seeking to amend the Answer filed by Respondent before Legal Aid was retained as counsel, pursuant to CPLR 3025(b). This proposed answer differed from the previously filed answer by detailing and substantiating the following affirmative defenses: (1) defective service; (2) habitability/abatement; and (3) safe harbor. The proposed amended answer also includes counterclaims for (1) repairs; (2) habitability/abatement; and (3) harassment. Respondent's proposed amended answer seeks the following relief: (1) dismissal of the petition; (2) an order directing Petitioner to correct conditions in the apartment; (3) damages on the second and third counterclaims; (4) a judgment ordering Petitioner to stop harassment of Respondent and placing a class C violation; and (5) any other relief the Court deems proper.

Petitioner submitted an Affirmation in Opposition dated February 7, 2022. Petitioner's Affirmation in Opposition requests that the Court deny Respondent's motion because the request is untimely and prejudicial to the Petitioner.

Discussion

The Court grants Respondent's motion seeking leave to amend answer:

The standard for allowing a party to amend pleadings is covered by CPLR 3025(b), which states "[a] party may amend his or her pleading or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or stipulation of all parties." Leave to amend a pleading should be freely granted absent prejudice or surprise and as long as the proposed amendment is not palpably insufficient or patently devoid of merit. Brummer v. Wey, 187 A.D.3d 566 (1st Dept. 2020), Greenberg v. Wiesel, 186 A.D.3d 1336 (2nd Dept. 2020). A party opposing leave to amend must overcome a heavy presumption of validity in favor of permitting amendment. McGhee v. Odell, 96 A.D.3d 449, 450 (1st Dept. 2012). Prejudice to warrant denial of leave to amend requires some indication that the opposing

parties have been hindered in the preparation of their case or have been prevented from taking some measure in support of their position. Id., Whalen v. Kawasaki Motors Corp., U.S.A., 92 N.Y.2d 288, 293 (1998).

Respondent Yvonne Cadore, not being an attorney and having not had a chance to retain counsel, timely filed an answer on April 22, 2021. Respondent Yvonne Cadore then retained counsel as of July 8, 2021, and then sought leave to amend pleadings on January 3, 2022. In Petitioner's Affirmation in Opposition, Petitioner suggests that the request to amend Respondent's answer is untimely because it arises six months after Respondent retained counsel. Petitioner also suggests that the delay in amending the answer has prejudiced the Petitioner.

The Court disagrees with Petitioner's contention that this six-month delay in seeking leave to amend was untimely, as the CPLR 3025(b) clearly states that amendment may be made *at any time*. There is no six-month time limit to amend an answer, except as it may cause surprise or prejudice to the Petitioner. Furthermore, the case was not trial-ready, nor had any discovery or substantial motion practice occurred. There were no imminent hearings scheduled when Respondent moved for leave to amend, and in fact the Covid Hardship Declaration filed by Legal Aid on behalf of Respondent Hadassahester Cadore on July 8, 2021, stayed the case. A Petitioner is not prejudiced simply by having to defend against counterclaims or affirmative defenses, when same are interposed early in the proceeding.

Based on the foregoing, the Court grants the motion, and the proposed amended answer is deemed served and filed. The proceeding is restored to the Part C calendar on October 23, 2023, Room 402 @ 11 AM.

Dated: Brooklyn, New York
October 6, 2023

KEVIN MCCLANAHAN, J.H.C.