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2023-09-28

### 2108 AMSTERDAM LLC v. RODRIGUEZ

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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK: HOUSING PART A

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2108 AMSTERDAM LLC

Index No.: 312997-22

PETITIONER/LANDLORD

DECISION/ ORDER

-against-

ANACELIS RODRIGUEZ,

RESPONDENT/TENANT

-----X

Hon. Alberto Gonzalez:

Respondent’s motion to dismiss is granted and the petition and proceeding are dismissed. Petitioner’s 14 Day Rent Demand alleges \$21,618.48 in outstanding rent. *NYSCEF #1*. The rent demand specifically alleges rent outstanding from September 2020 at \$435.15; October 2020 through June 2021, at a “Base Rent” of \$1,008.73; and a lump sum, from July 2021 through July 2022, of \$12,104.76. *Id.*

Respondent’s counsel argues, that Petitioner makes a demand for a “lump sum” from July 2021 through July 2022 in the sum of \$12,104.76, without detailing the months in question, and that Petitioner does not properly earmark the receipt of an ERAP payment (\$15,130.95), which Respondent’s counsel further asserts was earmarked for March 2020 through February 2021, July 2021, August 2021 and September 2021. *NYSCEF # 9 ¶ 55; NYSCEF # 22 ¶ 11.*

Petitioner’s opposition to the motion states, “[t]he Rent Demand details rents and arrears month-by-month, and clearly provides the total amount owed from September 2020 through July

2022 [and] any ERAP payment would only cover arrears for the COVID period which would have been prior to the commencement of this proceeding.” NYSCEF #17, ¶ 19-20.

A rent demand is a condition precedent to the initiation of a summary nonpayment proceeding and must be a “good faith approximation” of the sum owed. RPAPL 711; 2229 *Creston Partners LLC vs. Ramos*, 31 Misc.3d 1221(A), 930 N.Y.S.2d 177 (Civ. Ct. Bronx. Cty. 2011). A lump sum does not apprise a tenant of the correct amount due each month. *St. James Court LLC vs. Booker*, 176 Misc. 2d 693, 673 N.Y.S.2d 821 (Civ. Ct. Kings. Cty. 1998). Furthermore, when payments are earmarked for a certain period, such as ERAP payments, they must be credited to said months. *JSB Properties LLC vs. Yershov*, 77 Misc.3d 235, 177 N.Y.S.3d 417 (Civ. Ct. N.Y. Cty. 2022) (citing to *Neptune Development Corp v. Kalogiannis*, 63 Misc.3d 164(A), 116 N.Y.S.3d 474 (App. Term. 2nd Dep’t. 2019)).

Here Petitioner offers a lump sum for the period July 2021 through July 2022. It also does not deny receipt of the ERAP payments and does not earmark the payments in the rent demand. As such, the rent demand is defective, and the petition is dismissed.

CONCLUSION

For the reasons stated above, it is hereby ORDERED that Respondent’s motion is granted and the petition is dismissed



Hon. Alberto M. Gonzalez, HCJ

Dated: New York, New York  
September 28, 2023

**ALBERTO GONZALEZ  
JUDGE, HOUSING COURT**