

Fordham Law School

FLASH: The Fordham Law Archive of Scholarship and History

[All Decisions](#)

[Housing Court Decisions Project](#)

2023-09-18

BELEN v. DOMINGUEZ

Follow this and additional works at: https://ir.lawnet.fordham.edu/housing_court_all

Recommended Citation

"BELEN v. DOMINGUEZ" (2023). *All Decisions*. 1282.
https://ir.lawnet.fordham.edu/housing_court_all/1282

This Housing Court Decision is brought to you for free and open access by the Housing Court Decisions Project at FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in All Decisions by an authorized administrator of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

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

-----X
ARIEL E. BELEN, AS RECEIVER,

Index No. L&T-335494-22/BX

Petitioner-Landlord,

DECISION/ORDER

-against-

Motion Seq. No. 1

LIVHIERKYZZ DOMINGUEZ,

Respondent-Tenant.
-----X

Present: Hon. Rina Gurung
Judge, Housing Court

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

Papers	Numbered
Respondent’s Notice of Motion, Affirmation, and Exhibits.....	<u>7</u>
Petitioner’s Affirmation and Affidavit in Opposition, and Exhibits.....	<u>10-19</u>
Respondent’s Affirmation in Reply	<u>20</u>
Court File.....	<u>passim</u>

Upon the foregoing cited papers, the Decision and Order on this motion is as follows:

This is respondent Livihierkyzz Dominguez’ (“respondent”) motion to dismiss pursuant to CPLR §3211(a)(7) and RPAPL §§741(4) and 711(2) on the grounds that the rent demand is defective because it does not state a good faith approximation of the amount owed. In the alternative, respondent also moves to file an amended answer and seeks the proposed amended answer annexed with this motion deemed as filed. Respondent’s branch of the motion seeking dismissal of the petition is granted and the branch of the motion seeking to file an amended answer is denied as moot for the reasons stated *infra*.

Petitioner commenced this nonpayment of rent proceeding on November 15, 2022, predicated upon a rent demand dated September 30, 2022. The rent demand sought a total of \$887.98 in rent arrears from June 2021 to September 2022. Particularly, within the rent demand petitioner sought \$17.98 for June 2021, and \$58.00 per month from July 2021 to September 2022. On December 19, 2022, respondent

then *pro se* interposed an answer. Thereafter, respondent retained counsel, and then filed this instant motion.

It is undisputed that respondent is a beneficiary of a tenant-based section 8 voucher administered by the New York City Housing Authority (“NYCHA”). Respondent argues that petitioner did not fulfill the requirements of RPAPL §741 because petitioner failed to serve the requisite predicate rent demand pursuant to RPAPL §711(2). Respondent avers that the proceeding must be dismissed because the rent demand sought a monthly rent portion of \$58.00 from July 2022 to September 2022, despite respondent’s portion of the rent for the period being \$0.00 per month. In support of her argument, respondent annexed with her reply, a copy of an annual recertification notice¹ from NYCHA Leased Housing Department dated June 24, 2022. This notice states, effective July 1, 2022, the contract rent for the premises is \$1,534.79, NYCHA’s portion is \$1,534.79 and respondent’s portion is \$0.00. Respondent also annexed a copy of the annual recertification notice² by NYCHA Leased Housing Department dated December 24, 2022. It also states, effective December 1, 2022, the contract rent for the premises is \$1,534.79, NYCHA’s portion is \$1,534.79 and respondent’s portion is \$0.00. The fact that respondent’s rent share was \$0.00 is also corroborated by petitioner’s own rent ledger³ annexed with its opposition. Petitioner’s rent ledger reflects respondent’s rent is fully covered by section 8 every month from July 2022. Nevertheless, petitioner argues that the rent demand is sufficient because it itemizes the amount of rent due from June 2021 to September 2022 and same is a good faith approximation of the sums due.

Respondent also argues that the rent demand is defective because it seeks rent for the months respondent already paid. In support of her argument, respondent annexed four Western Union Money Orders (“MO”) receipts⁴ for \$106.00 each, totaling \$424.00. The receipt of the MO state (i)

¹ See NYSCEF Document No. 20, Exhibit A, Page 10

² See NYSCEF Document No 6, Exhibit C, Page 24

³ See NYSCEF Document No 18, Exhibit H, Page 2 to 4

⁴ See *Id.*, page 23

#19271410879 was issued on July 31, 2021, and same contains a handwritten note “August 2021”; (ii) #19271410880 was issued on July 31, 2021, and same contains a handwritten note “September 2021”; (iii) #19305387099 was issued on September 28, 2021, and same contains a handwritten note “October 2021”; and (iv) #19305387098 was issued on September 28, 2021, and same contains a handwritten note “November 2021”. Respondent states petitioner’s rent demand sought \$58 each for the months August to November 2021 even though she paid rent for these months. Respondent further supports her argument by annexing petitioner’s rent ledger which also reflect these payments were in fact credited to respondent’s account. Petitioner argues that MO receipts are not proof of payment for earmarked months stated in the receipts. These receipts are not negotiated copy of the money orders which would be necessary to establish earmarking for the specific months. Nevertheless, petitioner does not have an adequate response as to the reason the rent demand still sought rent for the months respondent already claim to have paid and credit already applied to the rent ledger.

The sum demanded in the predicate notice needs to be, at the very least, a good faith approximation of the rent that a tenant would have to pay to prevent litigation (see 542 Holding Corp. v. Prince Fashions, Inc., 46 A.D.3d 309, 848 N.Y.S.2d 37, 2007 NY Slip Op 9869 [App. Div. 1st Dept. 2007]). A predicate rent demand does not seek a good faith approximation when it sought..., payment of a month’s rent that the tenant already paid, and payment of a month’s rent that the landlord double billed (see Rochdale Vil., Inc. v. Goode, 16 Misc. 3d 49, 842 N.Y.S.2d 142, 2007 NY Slip Op 27249 [App. Term 2nd Dept. 2007]). Here, petitioner in its rent demand sought \$58 per month from July to September 2022, when respondent’s share was \$0.00 per month. Petitioner also sought \$58 per month from August to November 2021 in the rent demand when respondent made four \$106.00 payments totaling \$424.00 during these months. This court finds that the rent demand is inconsistent with the true amount due from respondent for several months the rent demand sought. As such, petitioner fails to provide a good faith approximation of the rent owed when the rent demand was made.

CPLR §3211(a)(7) states, “a party may move for judgment dismissing one or more causes of action asserted against him on the ground that the pleading fails to state a cause of action”. On a motion to dismiss for a failure to state a cause of action, the court must deem the allegations of the petition as true and construe them in Petitioner’s favor, affording Petitioner the benefit of “every reasonable inference,” (see Cortlandt St. Recovery Corp. v. Bonderman, 31 N.Y.3d 30, 96 N.E.3d 191, 73 N.Y.S.3d 95, 2018 NY Slip Op 01149 [2018]), and determine whether the facts as alleged fit any cognizable legal theory (see Children’s Magical Garden, Inc. v. Norfolk St. Dev., LLC, 164 A.D.3d 73, 82 N.Y.S.3d 354, 2018 NY Slip Op 05223 [App. Div. 1st Dept. 2018]). Pleadings in summary proceedings are to be accorded the same liberal construction as papers in civil litigation generally, so that cases may be disposed of on the merits (see 501 Seventh Ave. Assocs., LLC v. 501 Seventh Ave. Bake Corp., 7 Misc. 3d 137(A), 801 N.Y.S.2d 233, 2005 NY Slip Op 50799(U), [App. Term 1st Dept. 2005], leave to appeal denied, 2005 N.Y. App. Div. LEXIS 10762 [App. Div. 1st Dept. 2005]). If within the four corners of a pleading there are discernible factual allegations which taken together manifest any cause of action cognizable at law, a motion for dismissal will fail (see 511 W. 232nd Owners Corp. v. Jennifer Realty Co., 98 N.Y.2d 144, 746 N.Y.S.2d 131, 773 N.E.2d 496 [2002]). Here, petitioner fails to state a cause of action as the court finds that the rent demand is defective. This proceeding is therefore dismissed as a predicate notice cannot be amended (see Chinatown Apartments Inc. v. Chu Cho Lam, 51 N.Y.2d 786, 412 N.E.2d 1312, 433 N.Y.S.2d 86 [1980]).

For the foregoing reasons, respondent’s branch of the motion seeking dismissal of the petition is granted and the branch of the motion seeking to file an amended answer is denied as moot.

SO ORDERED, this nonpayment proceeding is DISMISSED.

The foregoing constitutes the Decision and Order of this court.

Dated: September 18, 2023
Bronx, New York



Hon. Rina Gurung, J.H.C.