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2023-11-14

### EIRINIKOSTAS LLC v. KIRKOS

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#### Recommended Citation

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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF QUEENS: HOUSING PART D

EIRINIKOSTAS LLC  
Petitioner-Landlord

L&T Index # 305280/22

-against-

EVAGGELOS KIRKOS  
XIOMARA SOLEDAD  
34-20 34<sup>th</sup> Street, Apt. 2, on the 1<sup>st</sup> Floor  
Astoria, New York 11106  
Respondents-Tenants

**DECISION/ORDER**

“JOHN DOE” and “JANE DOE”  
Respondents-Undertenants

Hon. Clifton A. Nembhard

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

<b>Papers</b>	<b>Numbered</b>
Notice of Motion and Affidavits Annexed .....	1
Order to Show Cause and Affidavits Annexed .....	
Answering Affidavits .....	2
Replying Affidavits .....	3
Exhibits .....	
Other .....	

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

*Background*

Petitioner commenced this nonpayment proceeding by notice of petition and petition. Prior to commencement petitioner served a rent demand dated March 16, 2022 seeking rent from November 2021 to March 2022 at \$1,416.52 a month. Respondent Evaggelos Kirkos moves to dismiss the proceeding on the grounds that the rent demand failed to credit earmarked rental payments and that it lists a higher monthly rent than was agreed upon by the partes. In the alternative, respondent seeks leave to interpose an answer.

### *Discussion*

Respondent first seeks dismissal arguing that, prior to commencement, petitioner accepted Emergency Rental Assistance Program ("ERAP") money which included earmarked payments for November 2021, December 2021, and January 2022. Petitioner in opposition argues that the notice is sufficient. Moreover, an alleged defective predicate notice does not divest the court of subject matter jurisdiction. The Court finds respondent's contention persuasive.

It is axiomatic that a proper rent demand is a condition precedent to maintain a nonpayment proceeding and is not subject to cure. RPAPL § 711(2); *Chinatown Apts. v. Chu Cho Lam*, 51 NY2d 786 [Ct App 1980]. The demand therefore must be reasonable in view of all the attendant circumstances. *Hughes v. Lenox Hill Hosp.*, 226 AD2d 4 [1<sup>st</sup> Dept 1996]. It must clearly inform the tenant of the particular periods for which rent is in default and the approximate good faith sum allegedly due for each period so that the tenant has an opportunity to make payment and avoid litigation.

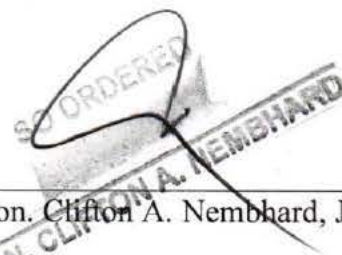
In support of the motion, respondent submits a letter from the Office of Temporary and Disability Assistance which shows that ERAP rent on respondent's behalf for the months of August 2020 through July 2021 and November 2021 through January 2022. The payments were made on February 16, 2022 and were earmarked. Therefore, they must be applied to the months intended. *Key Realty Co. v. Charles*, 1998NY Misc LEXIS 762 [App Term 2<sup>nd</sup> Dept]. Since the rent demand fails to reflect the payments for November 2021, December 2021, and January 2022, it is not a good faith estimate of the rent due and thus cannot serve as a proper predicate to the proceeding.

### *Conclusion*

Based on the foregoing, the motion is granted and the case dismissed. The Court need not reach the merits of respondent's remaining argument.

This constitutes the decision and order of the Court.

Date: November 14, 2023  
Queens, New York

  
Hon. Clifton A. Nembhard, JHC