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Four Thirty Realty LLC v. Kamal

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[*1]

Four Thirty Realty LLC v Kamal
2024 NY Slip Op 51301(U)
Decided on September 19, 2024
Appellate Term, First Department
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on September 19, 2024
SUPREME COURT, APPELLATE TERM, FIRST DEPARTMENT
PRESENT: Hagler, P.J., Brigantti, Tisch, JJ.
570120/24

Four Thirty Realty LLC, Petitioner-Landlord-Respondent,
against
Annette Kamal, Respondent-Tenant-Appellant.

Tenant, as limited by her brief, appeals from that portion of an order of the Civil Court of the City of New York, New York County (Tracy Ferdinand, J.), entered January 17, 2023, which denied her motion for leave to amend the answer to include a set off and counterclaim in a nonpayment summary proceeding.

Per Curiam.

Order (Tracy Ferdinand, J.), entered January 17, 2023, insofar as appealed from, reversed, with \$10 costs, motion granted and the proposed amended answer deemed served and filed.

Given landlord's failure to show surprise or prejudice, tenant's motion to amend her answer to assert that landlord is barred from collecting rent by Multiple Dwelling Law §§ 301 and 302 should have been granted (*see Chazon, LLC v Maugenest*, 19 NY3d 410 [2012]; [Matter of 49 Bleecker, Inc. v Gatien](#), 157 AD3d 619 [2018]). A proper showing of prejudice must be "traceable not simply to the new matter sought to be added, but also to the fact that it is only now being added. There must be some special right lost in the interim, some change

of position or some significant trouble or expense that could have been avoided had the original pleading contained what the amended one wants to add" (*A.J. Pegno Constr. Corp. v. City of New York*, 95 AD2d 655, 656 [1983] [internal quotation marks omitted]). Landlord made no such showing ([see *Tri-Tec Design, Inc. v Zatek Corp.*, 123 AD3d 420](#) [2014]). Nor was the proposed amendment, based upon two violations issued by the Department of Buildings in February 2022, palpably insufficient or patently devoid of merit ([see *Ferrer v Go NY Tours Inc.*, 221 AD3d 499](#), 500 [2023]).

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

I concur I concur I concur

Decision Date: September 19, 2024

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