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Ada Buffa Realty LLC v. Gharbi

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

ADA BUFFA REALTY LLC
Petitioner-Landlord

L&T Index # 301649/23

-against-

ABDEL KADIR GHARBI
40-38 77th Street, Apartment 1F
Astoria, New York 11106
Respondent-Tenant

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.

Papers	Numbered
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 holdover proceeding to recover possession of apartment 1F located at 35-17 29th Street, Astoria. Prior to commencement petitioner served a Ten Days Notice of Termination. Respondent moves to dismiss the proceeding for failure to state a cause of action. In the alternative respondent seeks time file an answer.

Discussion

Respondent argues that the proceeding should be dismissed because the notice of termination failed to allege the grounds upon which the proceeding was commenced and failed to allege nuisance. Petitioner counters that the case is properly brought under RSC § 2524.3(b) because respondent is substantially interfering with the owner and other occupants' comfort or safety.

In considering a motion to dismiss for failure to state a cause of action, the sole criterion is whether, from the complaint's four corners, factual allegations are discerned which, taken together, manifest any cause of action cognizable at law. *Guggenheimer v. Ginzburg*, 43 NY2d 269 [Ct App 1977]. The court must afford the pleading a liberal construction and accept all fact as alleged as true. *Leon v. Martinez*, 84 NY2d 83 Ct App 1994]. The motion will only be granted if the facts alleged do not fit within any cognizable legal theory. *Leon v. Martinez, supra*.

RSC § 2524.2(b) provides that every notice to a rent stabilized tenant requiring that he or she vacate or surrender possession "state the ground under section 2524.3 or 2524.4 of this Part, upon which the owner relies for removal or eviction of the tenant, the facts necessary to establish the existence of such ground, and the date when the tenant is required to surrender possession." Notices that contain board, conclusory or unparticularized allegations do not satisfy these criteria as they do not allow a tenant to prepare a defense. *Berkeley Assoc. Co. v. Camlakides*, 173 Ad2d 193 [1st Dept 199]. A proper notice therefore "must be clear, unambiguous and unequivocal in order to serve as the catalyst which terminates a leasehold." *Ellivkroy Realty Corp. v. HPD 86 Sponsor Corp.*, 162 AD2d 238 [1st Dept 1990].

The Ten Days Notice of Termination here states in pertinent part:

PLEASE TAKE FURTHER NOTICE that termination is also based upon Section 2524.3(b) of the Rent Stabilization Code in that you are committing a nuisance by willfully failin [*sp*] to properly prepare your apartment for Bedbug Extermination and failing to provide effective access for eradication of bedbugs within your apartment.

The notice goes on to allege that, after an October 21, 2022 inspection, respondent was given instructions on how to prepare his apartment for bedbug treatment. However, on November 1, 2022, the apartment was not prepared for treatment as the mattress was not placed in a special bed bug covering, respondent's clothes were not cleaned and placed in bags, the closet was not cleared out and the furniture was not moved to the center of the room. The petitioner gave respondent a second bedbug preparation sheet and on November 25, 2022, sent him a follow-up reminder but the apartment still was not properly prepared when the exterminator came on November 30, 2022. The notice further states that respondent cancelled the last access date and has not responded to petitioner's attempts to set new dates.

Respondent argues that the case should have been brought pursuant to RSC § 2524.3(e) which pertains to unreasonably refusing access for repairs. While the notice does allege that respondent failed to provide petitioner with access after November 30, 2022, it also alleges that respondent is committing a nuisance by failing to properly prepare his apartment for extermination.

Petitioner argues that this claim sets forth a cause of action under RSC § 2524.3(b). The Court finds this argument unpersuasive.

It is well settled that “[n]uisance imports a continuous invasion of rights ... a pattern of continuity or recurrence of objectionable conduct”. *Domen Holding Co. v. Aranovich*, 1 NY3d 117 [Ct App 2003]. Therefore, a proper termination notice must allege behavior which “interferes with a person’s interest in the use and enjoyment of land” including “the pleasure and comfort derived from the occupancy of land and the freedom from annoyance”. *Domen Holding Co. v. Aranovich, supra*. To determine whether a behavior is so egregious as to rise to the level of nuisance, the court must weigh both the quantitative and qualitative aspect of the specific set of facts in evaluating where the high threshold of proof required for eviction based on nuisance has been met. *160 W. 118th St. Corp. v. Gray*, 7 Misc3d 1016(A) [Civ Ct NY 2004]. A notice which fails to detail how the complained of behavior affects the other building residents cannot serve as a proper predicate under RSC § 2524.2(b). *Sumet Assoc. I LP v. Irizarry*, 103 AD3d 653 [2nd Dept 2015] [petition properly dismissed where landlord failed to demonstrate that vandalizing walls in common area threatened the health and safety of the other residents]; *Roxborough Apts. Corp. v. Kalish*, 22 Misc3d 130(A) [App Term 1st Dept 2009][“In the absence of any claim or showing that tenant’s alleged refusal to allow the landlord access to the subject apartment to remedy the lead paint condition therein in any way affected other building residents, landlord failed to state an actionable claim for nuisance”].

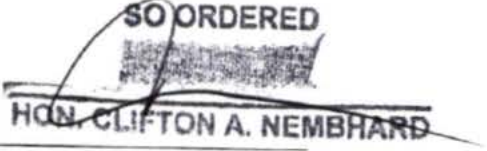
The termination notice here alleges that petitioner is committing a nuisance by willfully failing to properly prepare his apartment for bedbug extermination. While the notice provides dates when these failures allegedly occurred, it does not allege facts showing that the building’s other occupants were negatively impacted. In fact, the only mention of the other residents is that a bedbug was found in one apartment on respondent’s floor and that the landlord has attempted to contact the tenants whose apartments are in close proximity to respondent to determine if they have a bedbug infestation. These allegations, even when taken in the light most favorable to petitioner do not satisfy the specificity requirements of RSC § 2524.2(b).

Conclusion

Based on the foregoing, the motion is granted, and the case dismissed.

This constitutes the decision and order of the Court.

Date: October 17, 2024
Queens, New York

SO ORDERED

HON. CLIFTON A. NEMBARD
Hon. Clifton A. Nembhard, JHC