

Fordham Law School

## FLASH: The Fordham Law Archive of Scholarship and History

---

[All Decisions](#)

[Housing Court Decisions Project](#)

---

2024-09-23

### CS Melrose Site D, LLC v. Rodriguez

Follow this and additional works at: [https://ir.lawnet.fordham.edu/housing\\_court\\_all](https://ir.lawnet.fordham.edu/housing_court_all)

---

#### Recommended Citation

"CS Melrose Site D, LLC v. Rodriguez" (2024). *All Decisions*. 1675.  
[https://ir.lawnet.fordham.edu/housing\\_court\\_all/1675](https://ir.lawnet.fordham.edu/housing_court_all/1675)

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](mailto:tmelnick@law.fordham.edu).

Civil Court of the City of New York

County of BRONX

Part 1-20

Index Number 305926-24 RECEIVED NYSCEF 10/29/2024

Motion Cal. # \_\_\_\_\_ Motion Seq. # 1

DECISION/ORDER

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>8, 9</u>
Order to Show Cause and Affidavits Annexed.....	<u>10-12</u>
Answering Affidavits.....	<u>14</u>
Replying Affidavits.....	<u>16</u>
Exhibits .....	_____
Other.....	_____

CS MELROSE  
SITED, LLC,

Claimant(s)/Plaintiff(s)/Petitioner(s)

against

MAYRA RODRIGUEZ,  
et al

Defendant(s)/Respondent(s)

Upon the foregoing cited papers, the Decision/Order on this Motion to \_\_\_\_\_

The gravamen of this 3011(a)(7) motion is that is as follows:  
 the predicate notices supporting this failure to provide access holdovers are impermissibly vague. The court agrees and the case is dismissed. The notice to cure (NTC) alleges a lease violation, but fails to cite to any lease whatsoever or even a lease clause. (see Chinatown Apts LLC v. Chu Cho Lam, 57 NY 2d 786 [1980], further while the NTC refers to prior written notices, it does not address what those notices actually stated - i.e. whether access dates were arranged or even offered. (see 1123 Realty LLC v. Treanor, 62 Misc 3d 326, 335 [Civ. Ct. 2018] (notice bereft of any dates & times when access allegedly sought... whether inspection appointment was agreed to... Thus, respondent is entirely unable to frame a defense); see also 291 Bronx Realty Co v. Babel, 19 Misc 3d 1145(A) [Civ. Ct. 2018] (notice deficient without dates & times where LL should know them)).

Date

Judge Civil Court

Civil Court of the City of New York

County of BRONX

Part I

Index Number 305926-24 RECEIVED NYSCEF: 10/29/2024

Motion Cal. # \_\_\_\_\_ Motion Seq. # 1

DECISION/ORDER

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	_____
Order to Show Cause and Affidavits Annexed . . .	_____
Answering Affidavits .....	_____
Replying Affidavits.....	_____
Exhibits .....	_____
Other.....	_____

CS MELROSE  
 SITE D, LL,  
 Claimant(s)/Plaintiff(s)/Petitioner(s),  
 against  
 MAYRA RODRIGUEZ  
 et al,  
 Defendant(s)/Respondent(s)

Upon the foregoing cited papers, the Decision/Order on this Motion to \_\_\_\_\_

The NTC further alleges that respondent has \_\_\_\_\_ is as follows:  
 "previously received several written notifications... regarding your obligation to provide access..." Nothing further is stated about those written notices - no dates, how they were delivered, if they included proposed access dates, etc.  
 The NTC also references "violations" [plural] issued by DHPD, but fails to state what those violations are. ~~The notice~~ The termination notice suffers from the same infirmities although it lists (2) dates the respondent allegedly failed to provide access. It is noted, however, that nowhere does petitioner allege that those dates were arranged or properly offered to the respondent. Petitioner's opposition attacks the motion on a technical ground - that it is supported with an attorney affirmation. This is not fatal (see generally Alvarez v. Prospect Hosp., 68 NY 2d 320, 325 [1986]).

\_\_\_\_\_ Date \_\_\_\_\_ Judge, Civil Court

\_\_\_\_\_ 2 of 3 \_\_\_\_\_

Civil Court of the City of New York

County of BRONX

Part I

Index Number 305926-24

Motion Cal. # \_\_\_\_\_ Motion Seq. # 1

DECISION/ORDER

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	_____
Order to Show Cause and Affidavits Annexed . . .	_____
Answering Affidavits .....	_____
Replying Affidavits.....	_____
Exhibits .....	_____
Other.....	_____

*\*The court notes that the only open violation that it does the petition is 1 (one) class A violation \**

CS MELROSE SITE  
D.U.U.

Claimant(s)/Plaintiff(s)/Petitioner(s)  
against

MAYRA RODRIGUEZ,  
et al.

Defendant(s)/Respondent(s)

Upon the foregoing cited papers, the Decision/Order on this Motion to \_\_\_\_\_

As to the merits of the motion, the predicate notices (separately and together) are not sufficient as they are not reasonable in view of all attendant circumstances. (see Oxford Towers Co, LU - Leiks, 41 AD3d 114 [1st Dept 2007]). By not including facts petitioner should be aware of (i.e. the leave permission, access dates arranged and denied, violation\*), petitioner places respondent in the position of not being able to frame a defense. (see McEldredge v. DeCruz, 195 Misc 2d 414, 415 [App Term, 1st Dept 2003]). Venush Theolog. Sem. of Am. v. Fiter, 255 AD 337, 338 [1st Dept 1999]. Consequently, the motion is granted and the case is dismissed. This order will be posted on NYSCEF.

9/23/2024  
Date

SO ORDERED

Hon. Judge of the Housing Court

3043