

**201 Linden Blvd Partners LLC v Keisha Samuel 1st
Succession**

2025 NY Slip Op 35263(U)

September 15, 2025

Civil Court of the City of New York, Kings County

Docket Number: Index No. L&T 308104/24

Judge: Javier E. Ortiz

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This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART A

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201 LINDEN BLVD PARTNERS LLC.,

Petitioner,

Index No. L&T 308104/24

- against -

DECISION/ORDER

KEISHA SAMUEL 1ST SUCCESSION,

Respondent,

201 Linden Blvd.
Apt. 20A,
Brooklyn, New York 11226

“Subject Premises”

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Present: Hon. Javier E. Ortiz
Judge, Housing Court

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

Papers	NYSCEF Numbered
Respondent’s Notice of Motion, along with supporting affirmation, client affirmation, memorandum of law and exhibits	11-22
Petitioner’s Affirmation in Opposition, along with client affirmation and exhibit	27-28
Respondent’s Reply Affirmation	30

Papers considered: (NYSCEF Doc Nos. 11 through 30)

Facts and Procedural History

This nonpayment proceeding was commenced on February 29, 2024, containing allegations that KEISHA SAMUEL 1ST SUCCESSION (hereinafter “Respondent”) owed \$32,361.17 as a rent due and owing through January 2024, at rates of: \$477.65 for June 2022; and \$1,678.08 for July 2022-January 2024 (NYSCEF Doc 1). Respondent filed a *pro se* answer asserting multiple defenses, including but not limited to a general denial; the warranty of habitability; harassment; and Petitioner seeks Section 8 portion of the rent. (NYSCEF Doc. 6).

The first appearance for the parties was on August 15, 2024, at which point Respondent was referred to legal counsel through the Court's intake process, which resulted with Brooklyn Legal Services filing a notice of appearance on November 20, 2024. (NYSCEF Doc. 7). Respondent's counsel subsequently filed a motion, pursuant to CPLR §3025(b) seeking leave to file an amended answer; and CPLR §3211(a)(7) and/or CPLR §3212 requesting that the Court dismiss this proceeding on the basis that the rent demand is defective.

The motion was fully briefed and submitted on August 13, 2025.

Discussion

Motion to Dismiss-Rent Demand

The gravamen of Respondent's argument is that the rent demand is defective as: 1) it fails to account for cashed HRA shelter payments; and 2) it seeks an amount in excess to the legal regulated rent of the subject premises. Petitioner concedes that although the demand fails to account for HRA payments from June 2022 through January 2024, tantamount to a 15% "disparity", it is still a good faith estimate. (NYSCEF Doc. 37, ¶ 18). The Court in short disagrees with Petitioner.

RPAPL §711(2) requires a landlord to demand payment of outstanding rent from a tenant as a condition to the commencement of a nonpayment proceeding. One purpose of the rent demand requirement is to afford a tenant an opportunity to avoid litigation by paying the amount due. (*Strong L.P. v Dakar Rest., Inc.*, 28 Misc.3d 1213(A) [Civ. Ct. Kings Co. 2010]; *545 W. Co. v. Schachter*, 16 Misc 3d 431, 432 [Civ. Ct. N.Y. Co. 2007]). 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. (*542 Holding Corp. v. Prince Fashions, Inc.*, 46 A.D.3d 309, 310 [1st Dept. 2007]). Failure to demand a good faith approximation in the predicate notice renders it defective, and as

rent demands cannot be amended, it further requires dismissal of the proceeding. (*Chinatown Apts. v. Chu Cho Lam*, 51 N.Y.2d 786 [1980]; *Dendy v McAlpine*, 27 Misc.3d 138[A] [App. Term 2d Dept. 2010]).

The Court finds that Petitioner's rent demand did not fairly apprise Respondent of the rent allegedly due, thus impeding on Respondent's ability to respond, formulate defenses, and avoid litigation. (*IO Midwood LLC v. Hyacinth*, 2003 NY Slip Op 50789[U] [App Term, 2d Dept, 2d & 11th Jud Dists. 2003]). Although a formidable attempt, Petitioner's demand sheds minimal color as to Respondent's alleged accruals making the predicate notice specious at best. Specifically, the Court cannot overlook Petitioner's lack of accounting for uncredited shelter payments for approximately a 3-year period. (NYSCEF Doc. 14, pg. 7). The Court instead find Respondent's argument compelling, stating that this case is similar to the facts in *Cypress Court Assocs. v. McLauren* in that the "rent demand fails to include any information from which it can be gleaned that petitioner gave credit for DSS payments and applied those payments to the months intended." (33 Misc. 3d 1203[A] [Civ. Ct. Kings Co. 2011]).

This, coupled with the notion that Petitioner provides no excuse for why the rent demand and the petition fail to account for the rent reduction order issued on May 10, 2023, freezing the rent to \$1,633.17, confirms the ambiguity Respondent avers; that this approximation fails to "clearly apprise Respondent of the amount of rent allegedly owed." (NYSCEF Doc. 30 ¶ 6).

While a substantive dispute over an amount of rent arrears and other charges actually owed does not implicate the legal sufficiency of the underlying rent demand, (*McDonnell v. Mitchell*, 59 Misc.3d 133[A][App. Term 2nd Dept.]; *H.S. Realty Assocs., Inc. v. Ilagan*, 46 Misc. 3d 150[A][App. Term 1st Dept. 2015]), case law has found a discrepancy between the actual amount owed and the amount demanded in the notice of more than \$1,000.00 renders the notice

defective. (*603-607 Realty Assocs. v. Etienne*, N.Y.L.J. Aug. 26, 2005 at 20:3 [Civ. Ct. Kings Co. 2005]). Here, the discrepancy amounts to allegedly more than \$5,000, which Petitioner during oral argument does not dispute. (NYSCEF Doc 30 ¶ 27). Given the discrepancy, Respondent has established that rent demand confused her or rendered her unable to figure out what to pay, as stated in her affirmation in support. (NYSCEF Doc. 13, ¶ 13; *1557 Realty Corp., LLC v. Reiff*, 21 Misc.3d 1141[A][Civ. Ct. N.Y. Co. 2008]). The Court finds that the discrepancy was not *de minimis* and a reasonable litigant would have trouble deciphering the amount needed in order to prevent litigation.

Accordingly, it its

ORDERED that Respondent's motion is granted to the extent that the proceeding is dismissed without prejudice; it is further,

ORDERED the portion of Respondent's motion to amend their answer is denied as moot.

This constitutes the decision and order of this Court.

Dated: Brooklyn, New York
September 15, 2025



HON. JAVIER E. ORTIZ
J.H.C.