

Postgraduate Ctr. for Mental Health v Celia
2016 NY Slip Op 30798(U)
May 3, 2016
Civil Court of the City of New York, New York County
Docket Number: L&T 78089/2015
Judge: Sabrina B. Kraus
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART D

POSTGRADUATE CENTER FOR
MENTAL HEALTH,

Petitioner-Landlord

HON. SABRINA B. KRAUS

-against-

DECISION & ORDER
Index No.: L&T 78089/2015

NICHOLAS CELIA
126 LASALLE STREET, Apt. 1B
NEW YORK, NEW YORK 10027

Respondent-Tenant

“JOHN DOE” AND “JANE DOE”

Respondents -Undertenants
_____X

BACKGROUND

This summary holdover proceeding was commenced by **POSTGRADUATE CENTER FOR MENTAL HEALTH** (Petitioner) against **NICHOLAS CELIA** (Respondents), the tenant of record of 126 LaSalle Street, Apt. 1B, New York, New York 10027 (Subject Premises), based on the allegation that Respondent has created a nuisance by his behavior and in violation of his obligations under the parties’ lease agreement.

PROCEDURAL HISTORY

Petitioner issued a notice of termination dated July 23, 2015 terminating Respondent’s

tenancy based on specific allegations of conduct that are asserted to have occurred from May 2014 forward. The alleged conduct includes leaving food unattended on a burning stove, verbal abuse of Petitioner's employees and staff, threats by Respondent, and other such conduct.

The petition is dated September 22, 2015, and the proceeding was initially returnable October 13, 2015. On the initial return date, Petitioner moved for the appointment of a *guardian ad litem* (GAL) for Respondent. The motion was granted by the court (Black,J) on October 27, 2015, and on October 28, 2015 Nancy Sparrow was appointed as GAL for Respondent.

Counsel for Respondent filed a notice of appearance on December 8, 2015, and on March 21, 2016 moved for an order dismissing the proceeding, or alternatively seeking leave to file an answer. On May 3, 2016, all the papers were submitted and the court reserved decision.

DISCUSSION

Respondent's motion to dismiss based on the allegation that Petitioner lacks standing to maintain this proceeding pursuant to RPAPL § 721 is denied. RPAPL § 721(1) provides that a summary proceeding may be maintained by the landlord or lessor. It is undisputed that there is a landlord tenant relationship between the parties. A copy of the lease between the parties is annexed to Petitioner's opposition papers. As such Petitioner, as lessor, has standing to maintain this proceeding.

Respondent also seeks dismissal based on the allegation that the petition fails to correctly and sufficiently plead the regulatory status of the Subject Premises. Paragraph 9 of the petition asserts that the Subject Premises are exempt from regulation based on substantial rehabilitation after 1974, and that Respondent is the recipient of a Section 8 subsidy administered by HPD. Paragraph 10 further asserts service of a copy of the predicate notice on HPD.

Respondent asserts that the petition should be dismissed because it does not provide information about two regulatory agreements applicable to the Subject Premises. The two applicable agreements are between Petitioner and HPD and Petitioner and HUD. Respondent argues that said failure violates RPAPL § 741 and renders the predicate notice defective. Respondent's motion to dismiss on this basis is denied. The notice is sufficiently detailed to alert Respondent as to the nature of the claim and to permit Respondent to assert defenses. The notice is therefore reasonable under the circumstances, and the alleged omission has caused Respondent no prejudice and does not require dismissal of the proceeding.

In evaluating the facial sufficiency of a predicate notice in a summary eviction proceeding, "the appropriate test is one of reasonableness in view of the attendant circumstances" (*Hughes v. Lenox Hill Hospital*, 226 A.D.2d 4, 18, 651 N.Y.S.2d 418, lv. dismissed 90 N.Y.2d 829, 660 N.Y.S.2d 552, 683 N.E.2d 17), and only in circumstances where such a notice contains substantial and prejudicial misstatements will it be subject to "strict construction as a matter of equity" (id., at 18, 651 N.Y.S.2d 418, citing *MSG Pomp Corp. v. Doe*, 185 A.D.2d 798, 586 N.Y.S.2d 965 [landlord's misrepresentation of ownership and rent-regulated status of apartment]). Measured against the test of reasonableness, the notice used here was facially sufficient, as it fairly stated the nature of the landlord's claim and the facts necessary to establish the existence of grounds for eviction.

(*190 Riverside Drive LLC v Nosei* 185 Misc2d 696, 697, AT 1st Dept., 2000).

Based on the foregoing, Respondent's motion to dismiss pursuant to RPAPL §741 is denied.

Finally, Respondent moves to dismiss the petition based on the allegation that the predicate notice failed to comply with HUD Handbook Provisions in violation of RPAPL §713. RPAPL §713 provides that a summary proceeding may be predicated on a ten day notice to quit in the instances enumerated therein, and applies to cases where there is no landlord tenant

relationship. It has no bearing on the issues in this proceeding. Respondent's motion to dismiss pursuant to RPAPL §713 is therefore denied.

Respondent moves for leave to file an amended pleading, based on the presumption that a general denial has been deemed interposed on behalf of Respondent. Leave to amend pleadings is to be freely granted, however, the first and second proposed defenses have already been ruled upon herein, lack merit and may not be interposed. The proposed pleading is otherwise permitted and shall be deemed served and filed. While the parties addressed the merits raised in the third defense in their motion papers, the court's denial of the motion is based on the fact that the notice of motion is predicated on RPAPL§ 713, which as noted is not applicable herein. However, the proposed defense when read broadly and ignoring the reference to RPAPL §713, may potentially assert a defense to Petitioner's claim and should be preserved for trial.

The proceeding is restored to the calendar for trial on May 24, 2016 at 9:30 am.
This constitutes the decision and order of the court.

Dated: New York, New York
May 3, 2016

Sabrina B. Kraus, JHC

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