

**117-119 W. 15th St. LLC v Mayes**

2022 NY Slip Op 34459(U)

August 2, 2022

Civil Court of the City of New York, Queens County

Docket Number: Index No. 302033/21

Judge: Maria Ressos

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This opinion is uncorrected and not selected for official publication.

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

-----X Index No.:302033/21

117-119 WEST 15<sup>TH</sup> STREET LLC,

Motion Cal. # \_\_\_\_ Motion Seq. #001

Petitioner/Landlord,

**DECISION/ORDER**

-against-

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

JAMES MAYES-TENANT,  
BETTIE MAYES-TENANT  
SHANNON MAYES-OCCUPANT  
JAYME MAYES-OCCUPANT  
JOSEPH ROBERSTONS-OCCUPANT  
YNUS ROBEERTSON-OCCUPANT  
MARIE MAYES-OCCUPANT  
"J. DOE"-OCCUPANT(S)

| <b>Papers</b>                                 | <b>Numbered</b>   |
|---|-------------------|
| Notice of Motion & Affidavit & Exhibits ..... | NYSCEF Doc # 9-17 |
| Opposition & Affirm & Exhibits.....           | NYSCEF Doc. # 18  |
| Reply & Exhibit.....                          | NYSCEF Doc. # 21  |

Respondent

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HON. MARIA RESSOS, J.H.C.

Respondents move herein for an Order: 1) Dismissing the petition pursuant to CPLR§ 3211 (a) (7), RSC 2524.2 (a) and (b) and RSC§ 2524.3 as the termination notice was vitiated by Petitioner’s acceptance of rent after the date when the lease was purportedly terminated, and the proceeding was commenced; 2) Dismissing the petition pursuant to CPLR §3211(a)(7), RSC §2524.2(a)and (b) and RSC§ 2524.3 as the notice to cure and the predicate notice is fatally defective, having failed to state the facts establishing the grounds for eviction; 3) Dismissing the petition pursuant to CPLR §3211(a)(8) as the petitioner failed to properly serve the notice of petition and petition pursuant to RPAPL §735 and this Court lacks jurisdiction over the respondents.; (4) In the alternative, if the respondents’ motion is denied, granting Respondents leave, pursuant to CPLR§ 404(a) to submit an answer and; 5) granting such other and further relief as this Court deems just and proper.

Petitioner in opposition argues that the motion should be denied as the respondents have failed to meet their burden for dismissal pursuant to CPLR§ 3211. Petitioner additionally argues that they did not accept rent after the notice of termination expired and therefore did not vitiate the termination notice. Furthermore, service of process was effectuated in accordance with RPAPL§ 735 and there is no basis for a traverse hearing. Petitioner additionally argues that it has adequately stated a cause of action for illegal sublet as well as numerous other causes of action and the notice to terminate is specific enough to allow the respondents to frame a defense. Petitioner additionally argues that Respondents should not be granted leave to amend their answer because the proposed amendments lack merit and allowing Respondents to amend their answer at this time would be prejudicial to Petitioner.

Petitioner commenced this holdover proceeding to recover possession of the rent stabilized apartment occupied by Respondents on the basis that Respondents illegally sublet the apartment pursuant to RSC§ 2524.3(a) and RSC §2525.6, failure to provide access pursuant to RSC§ 2524.3 (e) and disruptive and antisocial behavior pursuant to RSC§ 2524.3 (a)(b) and (d).

Petitioner served the notice of petition and petition upon all the respondents by substituted service on Jane Doe on June 8,2021 and then a mailing that same day and filing the affidavit of service in court on June 11, 2021. Respondent, Bettie Mayes, filed a Covid-19 Hardship Declaration on June 21, 2021. The case was first on the court calendar in the HMP part on July 7,2021 and it was adjourned to August 3,2021 in Part D. The attorney for Respondents Bettie Mayes, Shannon Mayes, and James Mayes (hereinafter "Respondents") filed a notice of appearance on August 2, and 19, 2021. The instant motion was filed on August 19, 2021. The case and the motion were then adjourned several times over the next year. Respondents filed on answer on April 19, 2022. This court heard arguments on the motion on July 14,2022 and reserved decision.

Prior to terminating the tenancy, Petitioner served a 10 Day Notice to Cure on Respondents. Petitioner alleged that Respondents had sublet the premises to Joseph Robertson, Yunus Robertson, Marie Mayes and "J. Doe". Petitioner also alleged that there were ten people occupying the premises causing it to be overcrowded. Petitioner additionally alleged that from early 2019 to the present, Respondents had refused to grant Petitioner access to the premises to access a leak from the premises into the apartment below. Petitioner alleged that Respondents and their family members and occupants of the apartment had threatened building employees including the superintendent, property manager and independent plumber. Petitioner alleged that Respondents refused access on January 22, 2019, April 22,2019 and November 12,2020 among other dates (which were not listed). Petitioner additionally alleged that Respondents and/or occupants of the apartment engaged in "anti-social, disruptive, destructive, dangerous and/or illegal behavior in the building. This conduct included threatening building employees and an independent plumber, creating excessive noise at all hours of the night, excessive pedestrian traffic in and out of the apartment, guests and visitors of respondents' have been observed loitering in the hallways and stairwells of the building all hours of the day and night. Petitioner further alleged that occupants, guests, or visitors of the apartment have been observed leaving dirt, debris, and garbage in the common areas of the building and that there have been on-going complaints that Respondents' family members have caused disruption in the building.

Petitioner also served a 10 Day Notice to Terminate the tenancy dated March 11, 2021. The 10 Day Notice to Terminate mirrored the allegations in the notice to cure and additionally stated: "You and your family members continue to cause a nuisance in the building after the Notice to Cure expired. As of March 10,2021, you and or the occupants of your apartment continue to loiter in the building and cause excessive noise all hours of the night." Ten- day notice to terminate ¶F, NYSCEF Doc. #14.

While Respondents' motion raises several grounds for dismissal, the sufficiency of the predicate notices is dispositive, therefore this Court will limit its discussion to the predicate notices.

A landlord is required to serve a ten-day notice to cure prior to the commencement of a holdover proceeding based upon a violation of the lease in a rent regulated tenancy. 9 NYCRR §2524.3 (a). The notice to cure must be specific and must advise that the tenant has a specific time period to cure the alleged breach. The notice to cure must be sufficiently specific to apprise the tenant of the condition that the landlord alleges is a default in the tenant's obligations. *Cosmopolitan Broadcasting Corp., v. Miranda*, 143 Misc. 2d 1, (N.Y. City Civ. Ct. 1989) ; *309 East 60<sup>th</sup> St. LLC v. Attallah*, 6/24/2009 N.Y.L.J. 27, col.3 (Civ. Ct. N.Y. Co.)

Additionally, the notice to cure must clearly advise the tenant of what they need to do to cure the breach. Any subsequent termination notice based upon failure to cure must allege specific facts upon which the conclusion that the tenant failed to cure the breach was based. See, e.g. *76 West 86<sup>th</sup> Street Corp. v. Junas*, 55 Misc. 596 (N.Y. City Civ. Ct. 2017). The notice of termination itself must set forth sufficient facts to establish grounds for the landlord to recover possession. It must set forth the "who, what, when and where" of the grounds for eviction. *510 East 5<sup>th</sup> St. Assocs. v. Gatchell*, 22, col. 2. 9/20/89 N.Y.L.J. (Civ. Ct. N.Y. Co.)

A predicate notice served pursuant to the Rent Stabilization Code must state the facts necessary to establish the ground for eviction. The facts must be plead with sufficient specificity and a notice containing allegations that are broad and unparticularized may be found too conclusory to satisfy the level of specificity required by RSC§ 2524.2(b) and to enable the tenant to prepare a defense. There is no bright-line rule to determine whether a notice is sufficiently detailed. The "test for determining the sufficiency of a termination notice is whether it is reasonable...in view of the attendant circumstances." *Brooklyn Home for Aged People Housing Development Fund Co. v. Selby*, 32 Misc. 3d. 130(A) (App. Term 2011).

In this case the notice to cure alleges that the tenants "refused to provide your landlord access to the premises from at least the early 2019 to the present." Notice to Cure ¶ A & B. The notice fails to state what specific dates that the landlord tried to gain access, but the tenants refused and how they attempted to gain access. Petitioner additionally alleged that an occupant in Respondents' apartment "did threaten to shoot the plumber who attempted to gain access to the apartment." However, Petitioner failed to advise the respondents of the date this allegedly occurred. The notice to cure further alleges, "you and the occupants in your apartment have caused excessive noise at all hours of the day and night. There has been loud yelling, banging, pounding and excessive music at all hours of the day and night both in the apartment and the common areas of the building caused by the occupant in your apartment." Notice to Cure ¶ C Sec. 2. There are no dates listed when these incidents occurred. The notice continues to list other violations such as loitering in the hallways and stairwells of the buildings, complaints about disruptive behavior from other tenants. However, only one date January 6,2020 is

identified. These allegations without more, are insufficient to apprise Respondents of Petitioner’s claim and allow them to prepare a defense.



Similarly, the notice of termination is insufficient because it does not allege facts to support the claim that respondents failed to comply with the notice to cure. The termination notice incorporated by reference the allegations contained in the notice to cure and simply alleges , “You and your family members continue to cause a nuisance in the building after the Notice to Cure expired. As of March 10,2021 you and/or the occupants of your apartment continue to loiter in the building and cause excessive noise at al hours of the night.” ¶ f 10 Day Notice to Terminate. (NYSCEF Doc. # ). The notice of termination in this case “fails to state with specificity and particularity facts that constitute the misconduct or breach that occurred subsequent to the notice to cure.” *Hew-Burg Realty v. Mocerino*, 163 Misc.2d 639, 641 (Civ. Ct. , Kings Co. 1994). Defects in the notice of termination cannot be cured by amendment. *Chinatown Apartments, Inc. v. Chu Cho Lam*, 51 N.Y. 2d 786 (1980). As a summary proceeding cannot proceed with a defective predicate notice, Respondents’ motion for summary judgment dismissing the proceeding must be granted.

Accordingly, the branch of the motion which seeks summary judgment dismissing the proceeding is granted. This proceeding is dismissed without prejudice. The branch of the motion seeking leave to amend the answer is denied as moot.

Respondent shall serve a copy of this order with notice of entry upon Petitioner within ten (10) days.

This constitutes the decision and order of the Court.

Dated: August 2, 2022  
Queens, NY

  
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Hon. Maria Ressos, J.H.C.  


Petitioner’s Attorney  
Tamra Pelleman, Esq.  
Gutman, Mintz, Baker & Sonnenfeldt, LLP  
813 Jericho Turnpike,  
New Hyde Park, NY 11040

Respondents Attorney  
Christopher Lee, Esq.  
Communities Resist  
434 South 5<sup>th</sup> Street  
Brooklyn, New York 11211  
clee@communitiesresist.org