

**Groppa Props., Inc. v Tryon**

2023 NY Slip Op 31880(U)

June 6, 2023

City Court of Peekskill, Westchester County

Docket Number: Index No. LT 60-23

Judge: Reginald J. Johnson

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This opinion is uncorrected and not selected for official publication.

CITY COURT OF THE STATE OF NEW YORK  
CITY OF PEEKSKILL: WESTCHESTER COUNTY

-----X  
GROPPA PROPERTIES, INC.,  
793d Hardscrabble Road  
Chappaqua, NY 10514

Index # LT 60-23

-against-  
Petitioner-Landlord,

DECISION & ORDER

CHERYLYNNE TRYON  
360 Southard Avenue—Apt/Unit 1  
Peekskill, New York 10566

Respondent-Tenants

-----X  
Reginald J. Johnson, J.

Petitioner, by its attorney Glen P. Malia, Esq., commenced this holdover proceeding against the Respondent on the grounds that she failed to pay or paid late her share of the rent, that she permitted unapproved individuals to reside in her unit in violation of her Section 8 lease, that she harbored two potentially dangerous dogs without consent of landlord, that she created unsafe and unhealthy living conditions at the premises by allowing garbage to accumulate, that she permitted overcrowding in the unit, and that she maintained an unregistered and uninsured vehicle on the premises. Respondent, by Legal Services of the Hudson Valley [LSHV], by Anne E. Wagstaff, Esq., moved to dismiss the instant proceedings on the grounds that the Court lacks subject matter jurisdiction because the Petitioner failed to properly describe the premises in the petition as required by Real Property Actions and Proceedings Law [RPAPL] §741(3), that Petitioner failed to state a cause of action pursuant to Civil Practice Law and Rules [CPLR] §3211(a)(7), because the predicate notice upon which the proceeding is based is defective, that the Petitioner failed to serve the Public Housing Authority, CVR<sup>1</sup>, with the Notice of Petition and Petition in violation of 24 CFR §982.31(e)(2)(ii), that if the motion is denied Respondent requests permission to file an answer, and for such other and further relieve as the Court may deem just and

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<sup>1</sup> CVR New York administers the Section 8 Housing Choice Voucher Program, among other services, on behalf of Public Housing Authorities and other program participants.

proper. The Petitioner opposed the motion to dismiss and argued that there is an issue of fact as to the Respondent's correct unit number and therefore said issue is inappropriate for summary judgment, that the Notice of Termination and Fourteen (14) Day Rent Demand were clear and unequivocal and not defective, and that the notice of termination was properly served on CVR.

In deciding this motion, the Court considered the Notice of Motion to Dismiss and the Affirmation in Opposition.

### Procedural History

On November 16, 2022, the Petitioner served a Ninety (90) Day Notice of Termination on the Respondent seeking termination of the lease on the grounds of nonpayment and/or late payment of rent, permitting unapproved individuals to occupy the premises, harboring two (2) potentially dangerous dogs, creating an unsafe and unhealthy condition at the premises by accumulating garbage thereat, permitting overcrowding in the unit, and maintaining an unregistered and uninsured vehicle on the property. On November 16, 2022, the Petitioner simultaneously served a Fourteen (14) Day Rent Demand on Respondent. On February 22, 2023, the Petitioner commenced this holdover proceeding. The parties made their first appearance on March 7, 2023, which was adjourned to April 4, 2023, for Respondent to seek the assistance of LSHV. On April 4, 2023, the Respondent filed a motion to dismiss. The Court set the following motion schedule: opposition papers by April 26, 2023; reply papers, if any, by May 5, 2023; and a decision and appearance on June 6, 2023. Opposition papers were received on April 25, 2023. The Court marked the motion fully submitted on May 12, 2023.

### Factual History

On May 20, 2019, the parties executed a one-year residential lease agreement [the "lease"] for the premises located at 360 Southard Ave, Peekskill, New York 10566 [the "premises"]. The lease term commenced on June 1, 2019, and ended on June 1, 2020 [Aff. in Opp. Exh "B"]. The lease does not state an apartment or unit number, although the Respondent states that she has resided in unit 2 for almost four (4) years and that her unit has six (6) bedrooms, not three (3)

bedrooms like unit 1 [Id.; C. Tryon Affid. at ¶¶ 1 and 2;]. The unit is subject to Section 8 which is administered by CVR New York [C. Tryon Affid. at ¶4; Affirm. In Opp. Exh. “C”]. On or about November 16, 2022, the Petitioner simultaneously served a Fourteen (14) Day Rent Demand and a Ninety (90) Day Notice of Termination on the Respondent [C. Tryon Affid. at ¶ 5]. The Ninety (90) Day Notice of Termination purported to terminate the Respondent’s tenancy on January 31, 2023, or ninety days after the receipt of the notice on November 16, 2022, which would be February 14, 2023. However, the Fourteen (14) Day Rent Demand stated that the Respondent was required to pay \$3,092.00 on or before November 28, 2022, or 14 days after the receipt of the rent demand on November 16, 2022, which would be November 30, 2022 [Id. at ¶ 5]. The holdover petition filed on February 22, 2023, stated that the Respondent resided at “360 Southard Apt-Unit 1” Peekskill, New York. The parties dispute whether the Respondent resides in Unit 1 or Unit 2. Further, the Respondent alleges that Petitioner did not serve CVR with a notice of termination, but the Petitioner alleges that it did. There is no proof of service of the notice of termination upon CVR in the moving papers or in the Court’s file.

### Discussion

On a motion to dismiss the petition pursuant to CPLR §3211(a)(7), the Court must accept all the factual allegations in the petition as true and draw all inferences favorably to the petitioner (*Shui Kam Chan v. Louis*, 303 A.D.2d 151 [1<sup>st</sup> Dept 2003]; *Avgush v. Town of Yorktown*, 303 A.D.2d 340 [2d Dept 2003]; *Bernberg v. Health Mgmt. Sys.*, 303 A.D.2d 348 [2d Dept. 2003]).

RPAPL §741(3) requires that the petition in a summary proceeding “describe the premises from which removal is sought.” It has been held that where a landlord’s notice to cure, notice of petition, and petition in a summary proceeding failed to adequately describe the premises pursuant to RPAPL §741(3), the proceeding had to be dismissed (*Empire State Bldg. Co., LLC v. Progressive Catering Servs., Inc.*, 2 Misc.3d 545 [N.Y. Civ. Ct. 2003]) [discrepancy between description of premises in petition and lease, among other discrepancies, mandated dismissal]; 272 *Sherman, LLC v. Vasquez*, 4 Misc.3d 370 [N.Y. Civ. Ct. 2004] (where the description of the premises in the petition left the location of the premises uncertain, the petition failed to satisfy

RPAPL §741(3) requirement that the petition contain an accurate description of the premises, warranting dismissal). A misidentification of the subject premises deprives the Court of matter jurisdiction warranting a dismissal of the petition (*Clarke v Wallace Oil Co.*, 284 A.D.2d 492 [2d Dept 2001], because it “affects the very essence of the proceeding” (*Rasch, NY Landlord & Tenant—Summary Proceedings*, §1257, p. 64). Here, the Marshal would be unable to determine the proper premises against which to execute the warrant of eviction, because if the Respondent is correct, the Apt/Unit described in the petition, notice of termination, and rent demand describe the Apt/Unit of Respondent’s neighbor. It is a somewhat unusual concession by the Petitioner that there is an issue of fact as to which Apt/Unit the Respondent resides in, even though the Petitioner is the Respondent’s landlord (Affirm. In Opp. at ¶ 3). In a summary proceeding to dispossess a tenant, there can never be any doubt as to the accuracy of the description of “the premises from which removal is sought” (RPAPL §741[3]). Since the Petitioner concedes that there may be a misidentification of the subject premises in the petition, the petition fails to comply with the requirement of RPAPL §741[3] that the petition “describe the premises from which removal is sought” warranting dismissal of this proceeding on this ground.

Turning to the Respondent’s claim that the petition should be dismissed because the Petitioner did not serve CVR with a copy of the rent demand, notice of petition and petition [Wagstaff Affirm. at ¶¶ 30-34], it is well settled that the failure of the landlord/owner of a Section 8 tenant to serve the PHA with an owner eviction notice requires dismissal of the petition (*Lamlon Dev. Corp. v Owens*, 141 Misc.2d 287, 294 [Nassau Dist. Ct. 1988]); *Clive Walker v. Phillip Hester*, LT-209-17 (Peekskill City Court) [failure to serve tenant and Section 8 administrator simultaneously with copy of rent demand mandates dismissal of the proceedings]. Federal Regulation 24 CFR §982.310(e)(2)(ii) requires that the landlord/owner “must give the PHA a copy of any owner eviction notice to the tenant.” The Petitioner alleges that it gave the PHA/CVR a copy of the notice of petition and petition (Affirm in Opp. at Exh. “A”) and that the notice of termination was mailed to PHA/CVR (Id. at ¶ 2). A review of the Affirmation of Service, Exh. “A”, reveals that the notice of petition and petition were served upon the PHA/CVR, but no mention is made of the service of the notice of termination on PHA/CVR. The Court reviewed the petition and did not see an affirmation of service attached to it indicating proof of service of the notice of termination on PHA/CVR. An “owner eviction” notice encompasses “a complaint or

other initial pleading used under State or local law to commence an eviction action” [24 CFR §982.310(e)(2)(i)]. A notice of termination is an initial pleading or predicate notice under state law [*Oak Plaza LLC v. Oak St. Checking, Inc.*, 38 Misc.3d 1221[A] (Nassau County Dist. Ct. 2013); *Anderson A to Anderson G LLC v. Sanchez*, 68 Misc.3d 436 (Bronx County Civil Court 2020)]. Since there is no affirmation or affidavit of service indicating that the PHA/CVR was served with the notice of termination in this matter, the petition is dismissed on this ground (*Lamlon Dev. Corp. v Owens*, 141 Misc.2d at 294; *Homestead Equities v. Washington*, 176 Misc.2d 459 [Civ. Ct. Kings Co. 1998]; *Taylor v. Shelton*, 2017 NYLJ LEXIS 1023\* [Civ. Ct. Kings Co. 2017]).

The Respondent argues that the petition should be dismissed because the predicate notices were not clear and unambiguous, but confusing and conflicting [Wagstaff Affirm. at ¶¶ 21-29]. The Petitioner argues that the notice of termination and the rent demand were both clear and unequivocal, that “they are two (2) separate and distinct documents requiring different actions by the Respondent,” and the fact that the rent demand was signed after the notice of termination does not vitiate the notice of termination, because notice of termination is prospective, and the rent demand is for past due amounts of rent. Further, the Petitioner argues that since the rent demand and notice of termination were served at the same time, the rent demand did not render the notice of termination invalid (Affirm in Opp. at ¶ 5). It is well settled that “Termination notices’ must be clear, unambiguous and unequivocal in order to serve as the catalyst which terminates a leasehold” (*SAAB Enters v. Bell*, 198 A.D.2d 342, 343 [1993], quoting *Ellivkroy Realty Corp. v. HDP 86 Sponsor Corp.*, 162 A.D.2d 238, 238 [1990]; see *City of Buffalo Urban Renewal Agency v. Lane Bryant Queens*, 90 A.D.2d 976, 977 [1982]). Here, the notice of termination demanded that the Respondent vacate the premises on January 31, 2023, or 90 days after receipt of the notice of termination. However, the rent demand required that the Respondent pay rental arrears in the sum of \$3,092.00 on or before November 28, 2022, or 14 days after the receipt of the demand whichever date is later or surrender the premises. The predicate notices were unambiguous and conflicting since the Respondent could elect to pay the arrears and remain the unit, or even after Respondent paid the rent arrears, she would still be subject to eviction after the expiration of the 90-day notice of termination. As the termination notices were not sufficiently unambiguous as to the termination date, the notices were defective warranting dismissal of the petition on this ground [see *Bray Realty, LLC v. Pilaj*, 59 Misc.3d 130[A] (App Term, 2 Dept, 2d, 11<sup>th</sup> & 13<sup>th</sup> Jud Dists 2018); 290

*Riverside Company v Bottero*, 2003 NY Slip Op 51428[U] (Civ. Ct. New York County 2003) (a misstatement in a termination notice about the termination date will lead to dismissal if the error is materially misleading or if it is prejudicial).

Based upon the forgoing, it is

**Ordered**, that the Respondent's motion to dismiss the petition is granted.

The foregoing shall constitute the decision and order of this court.

Dated: June 6, 2023  
Peekskill, New York

E N T E R

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Hon. Reginald J. Johnson

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