

MCK Hoffman Realty LLC v Gracia

2023 NY Slip Op 34111(U)

August 10, 2023

Civil Court of the City of New York, Bronx County

Docket Number: Index No. 302766/2023

Judge: Shorab Ibrahim

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This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX: HOUSING PART J

-----X
MCK HOFFMAN REALTY LLC,

Petitioner,

-against-

DAISY GRACIA A/K/A DAISY GARCIA
& JOHN DOE & JANE DOE

Respondents.
-----X

Index No. 302766/2023

DECISION/ORDER
Motion Seq. 1

Hon. Shorab Ibrahim

Recitation, as required by C.P.L.R. § 2219(a), of the papers considered in review of this motion.

Papers Numbered

Notice of Motion—NYSCEF Doc. 8; Affirmation in Support—NYSCEF Doc. 9; Affidavit in Support—NYSCEF Doc. 10; Memorandum of Law in Support—NYSCEF Doc. 11; Supporting Exhibits—NYSCEF Docs. 12-15; Affirmation in Opposition—NYSCEF Doc. 16; Reply Affirmation—NYSCEF Doc. 18; Reply Exhibits—NYSCEF Doc. 19.

After oral argument on July 25, 2023, and upon the foregoing cited papers, the decision and order on this motion is as follows:

DISCUSSION

Respondent moves to dismiss under CPLR 3211 arguing that the notice to terminate is fatally defective.

The standard for evaluating the sufficiency of predicate notices in holdover proceedings (here the notices allege nuisance behavior in violation of the Rent Stabilization Code and the parties' lease) is "one of reasonableness in view of the attendant circumstances." (*Oxford Towers, Co. LLC v Leites*, 41 AD3d 144 [1st Dept. 2007]). Under this "reasonableness" standard, it is not always required that a termination notice include new allegations of acts occurring post cure period. (*see Riverbay Corp. v Frere*, 79 Misc. 3d 1218(A), 4 [Civ Ct, Bronx County 2023] citing *Schwesinger v Perlis*, 75 Misc. 3d 135(A) [App Term, 1st Dept. 2022]).

However, there are other axiomatic rules governing predicate notices. One is that "[f]acts in the predicate notices must also be pleaded with sufficient specificity." (*London Terrace Gardens, L.P. v Heller*, 40 Misc. 3d 135(A), 2 [App Term, 1st Dept. 2009]). "Sufficient

specificity” is required “so as to inform the tenant of the factual and legal claims that must be met, thus enabling the tenant to interpose any available defense.” (*McGoldrick v DeCruz*, 195 Misc. 2d 414, 415-416 [App Term, 1st Dept. 2013]; *Rascoff/Zsyblat Org., Inc. v Directors Guild of Am., Inc.*, 297 AD2d 241, 242 [1st Dept 2002]).

Here the notice to cure alleges, in relevant part, excessive noise and foot traffic at the respondent’s unit and that candles are being burned in a dangerous manner. This notice alleges these are daily occurrences but also lists six (6) specific dates (although no times). The notice to cure expired on December 5, 2022. On December 8, 2022, petitioner issued a termination notice which tracks the allegations in the notice to cure, but adds, “the aforesaid conditions continue to exist to date.” Putting aside the lack of clarity in the term “conditions” when referring to affirmative acts, the termination notice fails to meet the above-described reasonableness standard.

Just two full days after the notice to cure expired, petitioner alleges no cure. Petitioner must have sufficient information gathered in this 2-to-3-day window to make that statement. (*see 291 Lenox Realty Co v Babel*, 19 Misc. 3d 1145(A) [Civ Ct, Kings County 2008] (notice not including dates and times when such information is readily available is defective)). The failure to include any of that information in the termination notice is fatal as it is impossible for respondent to formulate a defense (i.e. respond to unstated facts).¹ It should have been easy enough for petitioner to include specific facts in the termination notice, since the notice to cure previously alleged the acts were happening daily. The court has considered the balance of petitioner’s opposition and finds petitioner’s arguments to be without merit as applied to the facts of this case. Furthermore, just about every case petitioner cites to involves vastly different facts and are readily distinguished (as respondent does in her reply).

Consequently, the motion is granted. Judgment shall enter in respondent’s favor dismissing the petition.

¹ Not that it might rescue a deficient notice, but the court notes that petitioner never offered an affidavit detailing the respondent’s alleged failure to cure between December 6 and 8.

This constitutes the decision and order of the court. It will be posted on NYSCEF.

Dated: August 10, 2023
Bronx, New York

SO ORDERED,

/S/

HON. SHORAB IBRAHIM
Judge, Housing Part

To: Todd Rothenberg
By: Boris Lepikh, Esq.
Attorneys for Petitioner
&
Mobilization for Justice, Inc.
By: Willa Elizabeth Denning Collins, Esq.
Attorneys for Respondent