

**Mendez v Hidalgo**

2023 NY Slip Op 34613(U)

March 8, 2023

Civil Court of the City of New York, New York County

Docket Number: Index No. LT-304924-22/NY

Judge: Tracy Ferdinand

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This opinion is uncorrected and not selected for official publication.

Civil Court of the City of New York  
County of New York  
Part: D, Room: 524  
Date: 3/8/2023

Index #: LT-304924-22/NY  
Motion Seq #: 1 & 2

**Decision/Order**

Laritza Mendez  
Petitioner(s)  
-against-  
Clara Hidalgo; "John" "Doe"; "Jane" "Doe"  
Respondent(s)

**Present:** TRACY FERDINAND  
Judge

Recitation, as required by CPLR 2219(A), of the papers considered in the review of this Motion for:  
**Dismiss**

PAPERS	NUMBERED
Notice of Motion and Affidavits & Exhibits Annexed	<u>1</u> [NYSCEF 10-14]
Order to Show Cause and Affidavits Annexed	_____
Notice of Cross Motion Affidavits and Answering Affidavits & Exhibits	<u>2</u> [NYSCEF 15]
Answering and Replying Affidavits & Exhibits Exhibits	<u>3</u> [NYSCEF 17-18]
Stipulations	_____
Other _____	_____

Upon the foregoing cited papers, the Decision/Order in this Motion is as follows:

RPAPL §741 requires the petition state the facts upon which the proceeding is based. The petition here states in pertinent part:

“5. The reasons for the commencement of the instant proceeding is set forth in the Notice of Termination annexed hereto and made part hereof...”

The Notice of Termination provides:

“PLEASE TAKE NOTICE, that the undersigned Shareholder and Proprietary Leaseholder has elected to and does hereby terminate, on March 31, 2022, your under-tenancy, and the under-tenancy of all those claiming under you, with respect to those cooperative premises situated at 664 West 161st Street, in the Borough of Manhattan, County, City and State of New York, more particularly described as the Apartment 1D in said premises. PLEASE TAKE FURTHER NOTICE, that you are required to remove from and surrender the demised premises, on or before March 31, 2022. Upon your failure to remove from the demised premises on or before March 31, 2022, the undersigned Shareholder and Proprietary Leaseholder will commence summary proceedings to evict you therefrom.”

Both the Notice of Termination and the Petition are devoid of any facts detailing the purported undertenancy or the basis for termination. Whether respondent held under a written lease or was by way of a month-to-month agreement; the length of the term, the duration of the tenancy and the reasons for the termination, even if just the expiration of the lease, are all necessary facts significant to the claims and defenses of both parties. Petitioner’s failure to include a sufficient statement of facts renders the Petition defective.

In light of the above, the Petition is dismissed without prejudice. The Court declines to reach the balance of respondent’s arguments and petitioner’s motion is denied in light of the dismissal.

Date: 3/8/2023

  
\_\_\_\_\_  
Judge, Civil/Housing Court