

**Chillo v Lopez**

2024 NY Slip Op 31870(U)

May 15, 2024

Civil Court of the City of New York, Kings County

Docket Number: Index No. LT-325774-23/KI

Judge: Shantonu J. Basu

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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF KINGS: HOUSING PART T

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TERESA CHILLO

Petitioner

Index No.: LT-325774-23/KI

-against-

DECISION/ORDER

NORMA LOPEZ and FAYCAL YAHIAOUI

Respondents

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Present:

Hon. Shantonu J. Basu  
Judge, Housing Court

As required by CPLR § 2219(a), the following is a recitation of the papers considered in the review of motion sequence 4 and motion sequence 5. For the reasons stated below motion sequence 4 is granted, and the proceeding is dismissed without prejudice. Motion sequence 5 is denied as moot.

**PAPERS**

**NUMBERED**

- Notice of Motion, Affirmation & Exhibits..... 1, NYSCEF # 35-46 (seq 4)
- Notice of Cross-Motion, Affirmation & Exhibits..... 2, NYSCEF # 50-53 (seq 5)
- Affirmation in Reply..... 3, NYSCEF # 54 (seq 4)

**PROCEDURAL AND FACTUAL BACKGROUND**

This is a nonpayment proceeding concerning an alleged rent-stabilized apartment. After Respondent-Lopez failed to answer, Petitioner obtained a default judgment and warrant.

Thereafter, Lopez moved by a *pro se* order to show cause to vacate her default (motion sequence 1).

On January 30, 2024, the return date of Lopez’s order to show cause, the parties entered into stipulation that kept the judgment and warrant in place but stayed execution of the warrant to March 15, 2024 for Respondent-Lopez to pay the arrears. Additionally, as a result of this stipulation, a new party, Respondent-Yahiaoui, was added to the proceeding.

On March 19, 2024, Respondent-Lopez retained counsel. Counsel for Lopez moved to vacate the January 30, 2024 *pro se* stipulation. On March 29, 2024, the court vacated the

*pro se* stipulation because Respondent unadvisedly waived a valuable defense since Petitioner had pleaded that the apartment was not a multiple dwelling when the apartment was a multiple dwelling. After vacating the default, the court adjourned the proceeding for all purposes.

Additionally the court indicated that it would entertain additional motions, either a motion to dismiss, or a motion to amend the petition, or any other appropriate motion.

Respondent-Lopez has now moved to dismiss the proceeding. In addition to arguing that that Petitioner misstated the multiple dwelling status, Respondent argues that the rent demand is defective.

Petitioner cross-moves to amend the petition to reflect compliance with the multiple dwelling registration requirement. Petitioner also argues that the rent demand is a good faith approximation of the rent due.

#### LEGAL ANALYSIS

While Petitioner has made a proper motion to amend the petition—and that motion would be normally granted—the larger issue is whether the rent demand is a good faith approximation of the rent owed.

A rent demand must afford the tenant “actual notice of the alleged amount due and of the period for which such claim is made. At a minimum, the landlord or his agent should clearly inform the tenant of the particular period for which a rent payment is allegedly in default and of the approximate good faith sum of rent assertedly due for each such period” (*Schwartz v Weiss-Newell*, 87 Misc 2d 558, 561 [Civ Ct, NY County 1976]).

In this case the facts are not in dispute.<sup>1</sup> A prior nonpayment case resulted in a so-ordered, two-attorney stipulation dated December 14, 2022. That stipulation stated that Respondent owed \$34,297.00 through November 30, 2022, and that Petitioner accepted \$36,988.00, yielding a credit of \$2691.00 towards future rent (LT-301113-21/KI, NYSCEF # 10).

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<sup>1</sup> In nearly all situations, a CPLR § 3212 summary judgment motion is preferable to a § 3211(a)(1) motion to dismiss. Moving for summary judgment eases the court’s burdens because it removes the issue of whether the evidence presented really is “documentary evidence.” In this context, “documentary evidence” refers only to undeniable documents that refute a petitioner’s factual allegations and establish a defense as a matter of law. *Xu v Van Zwienen*, 212 AD3d 872, 874 (2d Dept 2023). Respondent’s instant motion is one of the rare situations where a CPLR § 3211(a)(1) is proper since it relies upon a court-ordered stipulation and Petitioner’s own documents.

The court notes that the stipulation stated, partly in bold print, that Respondent had this credit and that “Petitioner [was to] to adjust [the] records accordingly.”

According to Petitioner’s ledger, Respondent’s rent for December 2022 and January 2023 was \$1186.00 per month (NYSCEF # 53).

Therefore, the credit was for slightly more than two-month’s rent. This means that Respondent’s rent was paid for December 2022 and January 2023 by the credit reflected in the December 14, 2022 stipulation. Petitioner’s predicate notice demanded payment for both of these months in full.

The court notes that Petitioner has all but admitted that the rent demand was inaccurate. Petitioner’s attorney’s affirmation in support of the cross-motion states that:

“The rent demand here sought rent at a rate of \$1186.00 per month which is the undisputed monthly rent. Respondent relies on the claim that Petitioner failed to include DSS credits in its calculation of arrears for the rent demand. While it may be true that the DSS payments were not credited in the rent demand, this still constitutes a *de minimis* error that does not warrant dismissal. The credit, which constitutes \$2691.00, are a little over 2 months out of the 8 months sued for. According to the ledger, Respondent has not paid the remaining 80% of rental arrears in nearly two (2) years.”

Petitioner’s contention that this error is *de minimis* is unsupported by case law.

Courts have overlooked small errors. For example in *Ciampa US LLC v Satterfield*, the court found that a 1.8% error was a minor inaccuracy that did not render the rent demand defective (*Ciampa US LLC v Satterfield*, 79 Misc 3d 1227[A], 2023 NY Slip Op 50734[U] [Civ Ct Bronx County 2023]; *see also 10 Midwood LLC v Hyacinth*, 2003 NY Slip Op 50789[U], \*1 [App Term, 2d Dept 2003] [allowing a 5% error]; *Moniaci v Kelly*, 73 Misc 3d 127[A], 2021 NY Slip Op 50884[U] [App Term, 2d Depts 2021] [allowing a 5% error]; *310 12th St. Assoc. LLC v Disla*, 78 Misc 3d 1211[A], 2023 NY Slip Op 50201[U] [Civ Ct, Kings County 2023] [allowing an error of \$40.00]).

However, these cases do not compare to the one at bar. A rent demand with an error of 5% or less, or an error of a few dollars, will still serve to give the tenant “actual notice of the alleged amount due and of the period for which such claim is made” (*Schwartz v. Weiss-Newell*, *supra*, 87 Misc 2d at 561).

A rent demand with a 20% error—which also demands over \$2500.00 for a two month period where no rent was owed—cannot serve this function.

For this reason, the court finds that the predicate notice is defective. Thus the proceeding is dismissed without prejudice, and Petitioner's motion is denied as moot.

### CONCLUSION

For the reasons stated above, Respondent-Lopez's motion (sequence 4) is granted, and the proceeding is dismissed without prejudice to each side's claims and defenses. Petitioner's cross-motion (sequence 5) is denied as moot.

Counsel for Respondent-Lopez to serve a notice of entry upon Respondent-Yahiaoui, who is unrepresented, by May 31, 2024 by regular mail and file proof of such service on NYSCEF by that date.

This constitutes the decision/order of this court.

Dated: May 15, 2024  
Brooklyn, NY



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Hon. Shantonu J. Basu  
Housing Court Judge