

**Allaico v Rodriguez**

2024 NY Slip Op 34651(U)

December 20, 2024

Civil Court of the City of New York, Queens County

Docket Number: Index No. L&T 307905/24

Judge: Logan J. Schiff

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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

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LUIS ALLAICO

Index No. L&T 307905/24

Petitioner,

-against-

**DECISION/ORDER**

ISRAEL RODRIGUEZ, et al.

Respondents.

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Present: Hon. Logan J. Schiff  
Judge, Housing Court

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of Respondent’s motion to dismiss (mot. seq. 1): NYSCEF 7-21.

The branch of Respondent’s motion to dismiss for failure to timely serve a 30-day termination notice pursuant to RPL 232-a based on Respondent’s contention that such notice should have afforded Respondent until the last day of his monthly term is denied. While prior to enactment of the Housing Stability and Tenant Protection Act of 2019 (HSTPA), a line of cases held that an RPL 232-a notice must end on the last day of a tenant’s monthly term (*see, e.g. Avalonbay Communities, Inc. v. Betts*, 791 NYS2d 867 [App Term, 2d Dept, 9th & 10th Jud Dists 2004]), these holdings are based on a prior iteration of RPL 232-a (and RPL 232-b outside of New York City), which provided that a landlord must serve a 30-day termination notice requiring vacatur “on the day on which [the tenant’s] term expires...” This language was removed from the statute following the enactment of the HSTPA, which amended RPL 232-a, and now only requires that the notice comply with the newly enacted RPL 226-c. That section sets the notice period requirements for nonrenewal of tenancies based on the number of years of occupancy and requires a 30-day termination notice for a tenant that has occupied an apartment for less than one

year on a month-to-month basis, without reference to a coinciding end of “term” date. As the Appellate Term has noted in connection with another provision of the HSTPA: “The Legislature, by enacting an amendment of a statute changing the language thereof, is deemed to have intended a material change in the law.” (*200 Claremont Ave. Hous. Dev. Fund Corp. v Estate of Lewis*, 83 Misc. 3d 9 [App Term, 1st Dept], citing McKinney's Cons Laws of NY, Book 1, Statutes § 193 [a]). To the extent such an interpretation is inconsistent with the spirit of the amendment to RPL 232-a and the HSTPA more broadly in expanding protections to tenants in eviction proceedings, the court is constrained to follow the plain language of the statute (*see, e.g., Kalikow Family Partnership, L.P. v Doe*, 72 Misc. 3d 1172 [Civ Ct, Queens Co 2021]).

The branch of Respondent’s motion seeking dismissal based on a misdescription of the premises in the Petition for failure to state the room that Respondent resides in is denied without prejudice to the defense at trial. “Where evidentiary material is submitted and considered on a motion to dismiss a complaint pursuant to CPLR 3211(a)(7), and the motion is not converted into one for summary judgment, the question becomes whether the plaintiff has a cause of action, not whether the plaintiff has stated one, and unless it has been shown that a material fact as claimed by the plaintiff to be one is not a fact at all and unless it can be said that no significant dispute exists regarding it, dismissal should not eventuate” (*Gordon v Vladislav Tsirkin CPA & Co. LLC*, 229 AD3d 450 [2d Dept 2024] [internal citation omitted]). Here, Respondent’s submissions, particularly when considering Petitioner’s opposition affidavit alleging that Respondent is a mere roommate in shared possession with Petitioner rather than a single room occupancy tenant, do not conclusively establish that Petitioner misdescribed the premises, nor can the court conclude at this stage if any such theoretical defect is non-amendable at or prior to trial (*see Najjar v. Cooper*, 35 Misc 3d 129[A] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2012]); *cf. US Airways, Inc. v*

*Everything Yogurt Brands, Inc.* 18 Misc.3d 136[A] [App Term, 2d Dept, 2d & 11th Jud Dists 2008]).

The branch of Respondent's motion seeking to interpose an answer is granted. Respondent is directed to file an answer on or before January 24, 2025, or he will be afforded a general denial.

This matter is adjourned to January 31, 2025, at 930am for settlement or release to the trial part.

This constitutes the decision and order of the court.

Dated: December 20, 2024  
Queens, New York



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HON. LOGAN J. SCHIFF, J.H.C.