

Navy Yard Hous. Dev. Fund Co., Inc. v Wynn

2025 NY Slip Op 30510(U)

February 11, 2025

Civil Court of the City of New York, Kings County

Docket Number: L&T Index No. 321003/23

Judge: David A. Harris

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This opinion is uncorrected and not selected for official publication.

**CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: PART C**

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**NAVY YARD HOUSING DEVELOPMENT
FUND CO., INC.,**

**L&T Index No. 321003/23
Mot. Seq. No. 1**

Petitioner-Landlord,

-against-

ANDREW WYNN,

Respondent-tenant,

JOHN DOE, JANE DOE,

Respondents-Undertenants
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DECISION AND ORDER

HONORABLE DAVID A. HARRIS, J.H.C.:

Recitation, as required by CPLR 2219(a), of the papers considered in the review of respondent’s motion for summary judgment, listed by NYSCEF Doc. Nos.: 11, 12, 13, 14, 15, 16, 119, 21, 22, 23

After the expiration of a thirty-day notice dated March 28, 2023 (NYSCEF Doc. No.

1)(Rent Demand), petitioner commenced this summary proceeding against Andrew Wynn (Wynn), John Doe and Jane Doe, seeking outstanding rent for Apartment 2E (Apartment) in the building located at 45 North Elliott Place, in Brooklyn (Building). The Petition (NYSCEF Doc. No. 1) alleges that the monthly rent is \$756.72, and seeks a balance of \$648.40 for January 2023, and \$756.72 per month for February 2023 through June 2023. The Rent Demand asserts a balance of \$76.85 for October 2023, \$771.65 for November 2023, \$772.65 for December 2023 and \$756.72 per month for January 2023 to March 2023. The Rent Demand and petition both assert, in identical language that “the tenant is the recipient of a Disability Rent Increase Exemption (DRIE) through the City of New York; monthly DRIE credits have [sic]”. The sentence fragment ends exactly as set forth above.

Wynn, at the time self-represented, interposed an answer (NYSCEF Doc. No. 4), subsequently retained counsel (NYSCEF Doc. No. 7) and interposed an amended answer (NYSCEF Doc. No. 6). As its first affirmative defense, the answer alleges insufficiency of the rent demand, noting the existence of a Disability Rent Increase Exemption (DRIE) and asserting that rent for the Apartment has been frozen at \$576.25. The defense asserts that the petition improperly demands rent in excess of that amount.

The second affirmative defense alleges an identical defect in the petition, and the third affirmative defense, also stated as a counterclaim, alleges breach of the warranty of habitability. Respondent also asserts counterclaims for an order to correct, for harassment and for attorney's fees.

Respondent now moves for summary judgment, alleging the petition is defective due to the same flaw that respondent asserts exists in the Rent Demand. Petitioner opposes the motion.

Summary judgment is a drastic remedy, one to be granted only when there is no doubt that no triable issue of material fact exists (*Rotuba Extruders v Ceppos*, 46 NY2d 223 [1978]). The granting of summary judgment is the procedural equivalent of a trial (*Falk v Goodman*, 7 NY2d 87 [1959]), and the proponent of summary judgment is required to make a prima facie showing of entitlement to judgment as a matter of law (*Winegrad v. New York Univ. Med. Center*, 64 NY2d 851 [1985]). If the movant succeeds in doing so, the party opposing the motion must demonstrate, through the presentation of evidence in admissible form, the existence of a factual issue requiring trial, (*Zuckerman v City of New York*, 49 NY2d 557, 560 [1980]).

Here, respondent produces DRIE approval letters for 12-month periods commencing on July 1, 2015 and ending on June 30, 2024. Each letter notes that Wynn's share of the rent at \$576.24. Several the letters misstate the total monthly rent as set forth in petitioner's ledger (NYSCEF Doc. No. 16), while all unequivocally state that respondent's share, characterized in letters issued in and after June 2018 as "frozen rent" of \$576.25.

Petitioner opines that respondent's subsidy must have been suspended, and that when active, rent was not frozen at the level asserted by respondent, basing that assertion on what it received as a credit (NYSCEF Doc. No. 19). No documentary evidence supports petitioner's assertions.

In reply, respondent asserts that petitioner cannot seek from respondent rent in excess of the level at which rent has been frozen. In essence, respondent asserts that if the subsidy paid an insufficient amount, the burden of any deficiency is not respondent's. Respondent also asserts that Tax Abatement Credit (TAC) reports were, earlier in the litigation, provided to petitioner, and attaches them (NYSCEF Doc. No. 23). The reports are enlightening, and to the court reveal the underlying issue.

Each individual report shows both a "Total TAC amount" and a "Total Amount Transferred." In each year, they are markedly different sums. In the report for July 1, 2019 to June 30, 2020, the total TAC amount was \$1692.72, and the total amount transferred was \$168.84. The report shows a TAC balance of \$1528.88. From July 1 2020 to June 31, 2021, the total TAC amount is \$1864.80, the total transferred is \$172.08 and the remaining balance is \$1692.72. From July 1 2021, to June 30, 2022, the TAC total was \$1864.90, the amount transferred was \$175.56 and the remaining balance was \$1864.80. From July 1, 2022 to June 30, 2023, the total TAC amount was 2219.52, the amount transferred was \$179.16 and the balance was \$2040.36. From July 1, 2023, to June 30, 2024, the total TAC credit given was \$2219.52, and the amount transferred was \$125.52, leaving a balance of \$2219.52.

The TAC credit in each year is divided into two parts, one significantly larger than the other. Petitioner's ledger (NYSCEF Doc. No. 16) shows a significant drop in the DRIE credit from June 2021 to July 2021; the credit in June was \$155.40 and in July \$14.63. The TAC report shows the total transferred to be 175.56, which exactly corresponds to 12 months of \$14.63, which is the smaller portion of the TAC credit for that time period. It appears that there has been only partial transfer of the tax credits available. The issue then, is partial transfer of the TAC, rather than any deficiency in payment by

respondent. Petitioner's ledger demonstrates monthly payments corresponding to every month included in the provided ledger.

When, as here, there is a DRIE, and the petitioner is not receiving the full benefit of the awarded tax credit, its remedy is not to seek the difference from the respondent, but to pursue its claims against the entity awarding the tax credit. The Appellate Term has held that "[a] proper rent demand is a statutory prerequisite for a nonpayment proceeding [and] must set forth the approximate good faith amount of rent owed (*125 Court Street, LLC v Sher*, 98 Misc 3d 150[A], 2018 NY Slip Op 50092[U] [App Term 2d, 11th & 13th Jud Dists] [citations and internal quotation marks omitted]). Here, despite respondent's frozen rent, the Rent Demand asserts months of rent significantly in excess of Wynn's frozen rent. The petition for every month it asserts there is rent due, seeks a balance significantly in excess of Wynn's frozen rent. Because the rent has been frozen, and both the Rent Demand and the petition seek rent hundreds of dollars per month above the frozen rent, the rent demand cannot be construed as setting forth a good faith approximation of the sums due. As a matter of law, petitioner is not entitled to demand the sums sought, The rent demand does not set forth a good faith approximation of the sum owed. As such, it is an insufficient notice and cannot properly service as a predicate for this proceeding; it is irremediably flawed. Respondent's motion, therefore, is granted and the proceeding is dismissed.

This is the decision and order of the court.

Dated: Brooklyn, New York
February 11, 2025



HON. DAVID A. HARRIS, J.H.C.

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