

Tesja Realty Corp. v Johnson

2025 NY Slip Op 31285(U)

April 11, 2025

Civil Court of the City of New York, Bronx County

Docket Number: LT-319109-23/BX

Judge: Krzysztof Lach

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

TESJA REALTY CORP.

LT-319109-23/BX

Petitioner-Landlord

DECISION/ORDER

-against-

TANYA JOHNSON

Respondent-Tenant

Recitation, as required by CPLR § 2219 (a), of the papers considered in the review of the Respondent's Motion.

PAPERS	NUMBERED
Respondent's Notice of Motion (Sequence #1); Affirmation; Affidavit; Exhibits; & Memorandum of Law	1 (NYSCEF Doc. #'s 9 - 16)
Affirmation in Opposition	2 (NYSCEF Docs. # 19)
Respondent's Affirmation in Reply; Exhibits & Memorandum of Law	3 (NYSCEF Doc. #'s 21 - 24)

Upon the foregoing cited papers, the Decision and Order is as follows:

TESJA Realty Corp ("Petitioner") commenced the within nonpayment proceeding seeking a monetary and possessory judgment for the premises located 619 Casanova Street, Apartment 1R, Bronx, New York ("the subject premises") against Tanya Johnson ("Respondent").

Respondent has submitted an omnibus motion which seeks dismissal of this proceeding on several grounds. Namely, Respondent seeks to dismiss this proceeding pursuant to CPLR § 3211(a)(7) on the ground that the Petitioner failed to serve a valid rent demand prior to commencing this proceeding; failed to provide Respondent with the 30-day notice required by Section 40424(c)(1) of the Cares Act; failed to allege that Respondent is a recipient of a Section 8 subsidy administered by NYCHA; and failed to comply with the Williams Consent Decree. In the alternative, Respondent seeks leave to amend her *pro se* answer. For the reasons cited below, the Court dismisses the Petition.

MERITS

Petitioner's Rent Demand is Defective Which Requires Dismissal of this Proceeding

It is a basic tenet of nonpayment proceedings that a proper rent demand is a statutory prerequisite (RPAPL § 711 [2]) and an element of a landlord's *prima facie* case (*EOM 106-15 217th Corp. v Severine*, 62 Misc 3d 141[A] (App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2019). A proper demand for rent must fairly afford the tenant actual notice of the alleged amount due and of the period for which such claim is made (*Schwartz v Weiss-Newell*, 87 Misc 2d 558 [Civ Ct, New York County 1976]). The sum demanded need not be precise but, at the very least, must contain a good faith approximation of the rent owed so as to allow the tenant an opportunity to avoid litigation (*FAV 45 LLC v McBain*, 42 Misc 3d 1231 [A] [Civ Ct, New York County 2014]; *545 W. Co. v Schachter*, 16 Misc 3d 431, 432 [Civ Ct, New York County 2007]). A demand for rent that simply provides a lump sum has been held to be defective (*St. James Court, L.L.C. v Booker*, 176 Misc.2d 693, 695 [Civ Ct, Kings County 1998]).

In the matter at hand, Respondent is a recipient of a Section 8 voucher from the New York City Housing Authority. As such, a portion of her rent is paid for and federally subsidized. A “[s]ection 8 tenant agrees in the Section 8 lease only to pay the tenant share of the rent. Absent a showing by [a] landlord of a new agreement...a Section 8 tenant does not become liable for the Section 8 share of the rent as rent even after termination of the subsidy.” (*Prospect Place HDFC v Gaildon*, 2005 N.Y. Slip Op 50232[U] [App Term 1st Dept] quoting *Rainbow Assocs. v Culkin*, 2003 N.Y. Slip Op 50771[U] [App Term 2d Dept]). Petitioner's rent demand sought \$17,926.72 in outstanding rent. Of this amount, \$12,636.72 was designated in a lump sum fashion as a “previous rent balance” without clarity as to the time frame that this sum had accrued. Given that this lump sum represented 75% of the rent sought in the demand, Respondent was precluded from remedying any default in payment and avoiding litigation because she could not properly ascertain whether these sums had been paid; whether they represented her portion of the rent (without inclusion of the Section 8 subsidy); nor could the Respondent properly determine whether any sums were stale and subject to laches.

Since a rent demand is not subject to cure, a defective rent demand is fatal to the proceeding upon which it relies and requires dismissal of the proceeding (*Chinatown Apartments, Inc., v Chu Cho Lam*, 51 NY2d 786 [1980]).

CONCLUSION

Accordingly, it is hereby:

ORDERED, that the prong of Respondent's motion (sequence #1) seeking dismissal of the instant nonpayment proceeding pursuant to CPLR § 3211 (a)(7) on the ground of a defective rent demand is GRANTED.

This constitutes the Decision/Order of this Court.

Dated: April 11, 2025
Bronx, New York



HON. KRZYSZTOF LACH
Judge, Housing Court