

**Garrison, LLC v Jimenez**

2025 NY Slip Op 31414(U)

April 11, 2025

Civil Court of the City of New York, Bronx County

Docket Number: LT-329311-23/BX

Judge: Krzysztof Lach

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

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GARRISON, LLC

LT-329311-23/BX

Petitioner-Landlord

**DECISION/ORDER**

-against-

REYNALDA JIMENEZ

Respondent-Tenant

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

<b>PAPERS</b>	<b>NUMBERED</b>
Respondent's Notice of Motion (Sequence #1); Affirmation; Affidavit; Exhibits; & Memorandum of Law	1 (NYSCEF Doc. #'s 11 - 22)
Affirmation in Opposition	2 (NYSCEF Docs. # 25)
Respondent's Memorandum in Reply & Exhibit	3 (NYSCEF Doc. #'s 26 - 27)

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

Garrison ("Petitioner") commenced the within nonpayment proceeding seeking a monetary and possessory judgment for the premises located 1008 Garrison Avenue, Apartment 3-B, Bronx, New York ("the subject premises") against Reynalda Jimenez ("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 there is no valid certificate of occupancy; on the ground that the rent demand is defective and upon the ground that Petitioner failed to maintain an accurate multiple dwelling registration with HPD. 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*

At the outset, it should be noted that Respondent voluntarily concedes (in reply papers) that Petitioner produced an HPD Initial Inspection Card ("I-Card"). Therefore, based on this evidence, Respondent withdrew that branch of her motion which sought dismissal of the proceeding on the ground that there was no certificate of occupancy for the subject premises. Respondent still proceeds on that branch of her motion which seeks dismissal on the ground of a defective demand for rent.

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]).

In the matter at bar, Petitioner's rent demand states the following:

PLEASE TAKE NOTICE that you are hereby required by your tenancy to pay GARRISON, LLC landlord of the above described premises, the sum of \$4,064.54 for rent of the premises.

MAY	23	\$765.84
APR	23	\$765.84
MAR	23	\$540.84
FEB	23	\$540.84
JAN	23	\$540.84
DEC	22	\$315.84
NOV	22	\$594.50

You are required to pay within fourteen days from the day of service of this notice. If you fail to pay, the landlord will commence summary proceedings against you to recover possession of the premises.

In reviewing the moving papers and pleadings, the parties acknowledge that the subject premises is governed by the Rent Stabilization Code. The Court further notes that the Petitioner failed to submit an annual rent registration with the Office of Rent Administration (ORA) for the subject premises from 2021 through and

including 2023. At the time that this proceeding was commenced, Petitioner was not yet required to file its registration for 2024. Based on the records from the Division of Housing and Community Renewal (DHCR), the last registered rent for the subject premises was in 2019 when the Petitioner registered a monthly rent of \$952.38.

Rent Stabilization Code § 2528.4<sup>1</sup> and Rent Stabilization Law § 26-517(e)<sup>2</sup> penalize a landlord who fails to timely comply with the annual registration requirements. Landlords are barred from collecting any rent in excess of the legal regulated rent in effect on the date of the last preceding registration statement. Once the landlord fulfills its obligation to file the registration statement, the penalty of the past remains, and the landlord can only begin to collect the lawful rental amount from that day forward (see *17 E. 101st St. Assoc. v Huguenin*, 161 Misc 2d 815 [Civ Ct, New York County 1994, Braun, J.]; see also *Verveniotis v Cacioppo*, 164 Misc 2d 334, 338 [App Term, 2d Dept 1995]; *Matter of Cardona v New York State Div. of Hous. & Community Renewal*, 214 AD2d 393, 394 [1st Dept 1995]; *101 West 70th Street Assoc v Desoiza*, NYLJ, Dec. 24, 1998, at 30, col 2 (App Term, 1st Dept)).

At first blush, it would appear that Petitioner seeks a monthly rental amount in its rent demand that is less than the last rent registered with DHCR. This, however, is deceiving. Petitioner's own rent ledger reveals that Petitioner was at all relevant times charging Respondent a monthly rent of \$990.84 in contravention of the statutory regulations and subtracting certain payments received during the time in question to arrive at the monthly sums in the demand. Since Petitioner sought rent it was barred from collecting, this alone would be sufficient for the Court to rule that Petitioner's demand for rent was made in the absence of good faith and was rendered defective (*Passarelli Family Partnership, L.P. v Davis*, 32 Misc.3d 1226 [A]

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<sup>1</sup> Rent Stabilization Code § 2528.4 states in part that upon "failure to properly and timely comply, on or after the base date, with the rent registration requirements of [the Rent Stabilization Code] shall, until such time as such registration is completed, bar the owner from applying for or collecting any rent in excess of: the base date rent, plus any lawful adjustments allowable prior to failure to register... The late filing of a registration shall result in the elimination, prospectively, of such penalty... provided that the increases in the legal regulated rent were lawful except for the failure to file a timely registration, an owner, upon service and filing of a late registration shall not be found to have collected a rent in excess of the legal regulated rent at any time prior to the filing of the late registration."

<sup>2</sup> Similarly, Rent Stabilization Law § 26-517(e) provides that "[t]he failure to file a proper and timely initial or annual rent registration statement shall, until such time as such registration is filed, bar an owner from applying for or collecting any rent in excess of the legal regulated rent in effect on the date of the last preceding registration statement or if no such statements have been filed, the legal regulated rent in effect on the date of the housing accommodation became subject to the registration requirements of this section. The filing of a late registration shall result in the prospective elimination of such sanctions and provided that the increases in the rent were lawful except for the failure to file a timely registration, the owner, upon the service and filing of a late registration shall not be found to have collected an overcharge at any time prior to the filing of the late registration, shall not be found to have collected any overcharge at any time prior to the filing of the late registration."

[Civ Ct, Richmond County, Mundy, J]; see also *Bldg Management Co., Inc. v Benmen*, 36 Misc 3d 1225 [A] [Civ Ct, New York County 2012, Kraus, J] [The purpose of a rent demand in the context of a summary nonpayment proceeding is to afford a tenant an opportunity to avoid litigation by paying the amount due].

There, however, were additional errors contained in the demand. Petitioner failed to properly reflect the terms of a stipulation of settlement under L&T Index Number 310769/21 which not only discontinued that matter but left Respondent with a credit of \$626.34 through September 2022. This credit together with additional payments made during the months in question created a wide disparity between the sums that were owed by the Respondent and the sums sought by Petitioner in the demand.

These discrepancies, as noted above, rendered the rent demand defective as it was not a good faith approximation of the sums due. 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

  
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HON. KRZYSZTOF LACH  
Judge, Housing Court