

RP Wimbledon Owner, LLC v Chisholm

2025 NY Slip Op 32204(U)

May 24, 2025

Civil Court of the City of New York, New York County

Docket Number: Index No. LT-318196-24/NY

Judge: Adam R. Meyers

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This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK
NEW YORK COUNTY, HOUSING PART A

RP WIMBLEDON OWNER, LLC,

Petitioner(s),

-against-

THERESA CHISHOLM, "JOHN DOE" and "JANE
DOE",

Respondent(s).

Index No. LT-318196-24/NY

Motion Seq. 3

DECISION/ORDER

Present: Hon. Adam R. Meyers
Judge, Housing Court

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of the motion:

Papers	NYSCEF Doc. Nos.
Notice of Motion (Seq. 3) and supporting papers	26-27
Affirmation in Opposition and supporting papers	28
Affirmation in Reply and supporting papers	29-30

Upon the foregoing cited papers, the court’s decision and order is as follows:

Petitioner moves for leave to reargue the motions that resulted in the court’s March 24, 2025, Decision and Order, which granted Respondent’s motion to dismiss the proceeding and denied Petitioner’s motion for use and occupancy *pendente lite*. After oral argument on May 12, 2025, the court reserved decision. Upon further review of the moving papers, the motion for leave to reargue is denied.

Petitioner offers two primary arguments in support of its position that the court overlooked or misapprehended matters of fact or law in its disposition of the prior motions. First, Petitioner argues that the court misapprehended the provisions of RPL § 226-c and read into that statute requirements that are absent from the statutory text. Petitioner is, of course, correct in noting that a) the recent amendments to § 226-c were not yet effective at the time Petitioner served notice of nonrenewal upon Respondent, and b) even if the amendments were effective, they did not explicitly require that a § 226-c notice include an accounting of the rent allegedly owed by a tenant. But these points were not misapprehended by the court in arriving at its prior determination. A notice terminating a tenancy for some alleged cause must state the legal basis for the termination and the supporting facts to an extent “reasonable in view of all attendant circumstances” (*Hughes v Lenox Hill Hosp.*, 226 AD2d 4, 17 [1st Dept 1996]), *lv dismissed and*

denied, 90 NY2d 829 [1997]). This is not an explicit statutory requirement codified with respect to one sort of notice or another, but a general principle applicable to notices sent under a variety of statutory and contractual provisions. It reflects the commonsense idea that where notice must be given, its substance should be sufficient to facilitate appropriate action by the recipient, whether the cure of a breach, the exercise of an option, or the preparation of a legal defense. In the court’s view, this general rule applies to notices under RPL § 226-c alleging cause for nonrenewal under the Good Cause Eviction Law. And among the ‘attendant circumstances’ relevant to evaluating the reasonableness of a notice is the fact that eviction proceedings predicated upon nonpayment of rent under GCEL are expressly subject to cure. In this context, a reasonable notice must a) inform a tenant of the sum required to satisfy the alleged arrears and b) include additional information about calculation of that sum such that a respondent could at least begin to evaluate the merits of the landlord’s claim.

Next, Petitioner argues that the court misapprehended the applicable standard and failed to afford the petition a liberal construction and every possible inference under CPLR § 3211(a)(7) when reviewing its sufficiency (*see Sassi v Mobile Life Support Services, Inc.*, 37 NY3d 236 [2021]). Under this argument, the permissive standard of review applied to motions to dismiss should have precluded the court from finding the petition defective because of its failure to include underlying facts about the alleged arrears. But this standard of review does not supersede the fundamental requirement that a petition in an Article 7 summary proceeding “state the facts upon which the special proceeding is based” (RPAPL § 741 [4]). Often the facts underlying a summary proceeding—allegations regarding the period for which rent is owed, incidents giving rise to nuisance claims, etc.—are articulated in detail in the prerequisite notice and then incorporated by reference into the petition (*see TD Equities, Inc. v Cribbs*, 2025 NY Slip Op 50775 [U], *5 [Civ Ct, Qns Cnty 2025]). Here, though, where the prerequisite notice is also lacking in facts, it does not save the petition. The simple statement of a lump sum of arrears allegedly owed, without reference to the specific periods for which rent was not paid, does not satisfy the requirements of § 741(4) (*Goldman Bros. v Forester*, 62 Misc 2d 812, 814 [Civ Ct, NY Cnty 1970] [“An allegation that there was due the landlord ‘arrears of 827.02’ without alleging the underlying facts upon which this conclusion is based does not comply with the statutory requirement.”])).

Because the moving papers fail to identify any issue of fact or law overlooked or misapprehended by the court, Petitioner’s motion for leave to reargue is denied in all respects.

This constitutes the decision and order of the court.

Dated: New York, New York
May 24, 2025



Hon. Adam R. Meyers
Judge, Housing Court