

Clinton Arms Assoc. v Gonzalez

2025 NY Slip Op 33861(U)

October 2, 2025

Civil Court of the City of New York, Bronx County

Docket Number: Index No. L&T 325234-23/BX

Judge: Amira Hassan

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 F

Clinton Arms Associates	Petitioner-Landlord,
-against-	
Francisca E. Gonzalez, Gelde R. Fernandez	Respondent-Tenant.
Address: 2160-2166 Clinton Avenue, Apt. 3-D Bronx, NY 10457	

L&T Index Number: 325234-23/BX
 Motion Sequence: 03

DECISION/ORDER

Recitation, as required by CPLR 2219(a), of the papers considered in the review of motion (Seq. 03):

<i>Papers</i>	<i>Numbered</i>	<i>NYSCEF Doc. No.</i>
Notice of Motion (Seq. 03)	1	36
Affirmation(s) in Support, Memorandum of Law	2, 3, 4	37 to 39
<i>Exhibit(s) in Support</i>		40 to 43
Affirmation(s) in Opposition	5, 6	44, 45
<i>Exhibit(s) in Opposition</i>		46 to 52
Affirmation in Reply	7	53
<i>Exhibits in Reply</i>		54, 55
<i>NYSCEF Court File</i>		1 to 55

Upon the foregoing cited papers, the Decision/Order on Respondents' motion is as follows:

Clinton Arms Associates ("Petitioner") commenced this nonpayment summary proceeding by Notice of Petition and Petition dated June 5, 2023, alleging that Francisca E. Gonzalez and Gelde R. Fernandez ("Respondents") defaulted on their promise to pay \$2,004.00 in rent each month, pursuant to a written rental agreement. Respondents were allegedly served with a rent demand, incorporated in the Petition by reference, which asked that the sum of \$23,215.00 representing rent due and owing from May 1, 2022, through April 1, 2023, be paid, or that Respondents deliver possession of the apartment.

Petitioner now seeks a monetary and possessory judgment for the subject premises, which is contained in a multifamily housing project that receives assistance from the Department of Housing and Urban Development ("HUD") under the Section 8 Project-Based Assistance New Construction Program (24 CFR Part 880) pursuant to the National Housing Act and the U.S. Housing Act of 1937, located at 2160-2166 Clinton Avenue, Apt. 3-D, Bronx, New York 10457 ("Subject Premises").

This case appeared in the intake part in October 2023 then was assigned to resolution Part F in December 2023. Bronx Legal Services filed a notice of appearance on behalf of Francisca Gonzalez ("Respondent") on October 23, 2023. See, NYSCEF Doc. No. 9. The case endured several adjournments and motion practice. Respondents first sought leave to interpose an amended answer which was granted by the Hon. Miriam Breier by Decision/Order dated September 20, 2024. See, NYSCEF Doc. No. 18. On May 23, 2025, a second motion was filed by Respondent for discovery and was later settled by two-attorney stipulation dated April 11, 2025. In settlement the parties agreed that Respondent and her attorney may review and make copies of Respondent's HUD tenant file upon execution of the HUD release form. See, NYSCEF Doc. No. 35. The matter was adjourned for all purposes to June 12, 2025.

The current and third motion was filed on May 23, 2025, seeking a further amendment of the answer and summary judgment on Respondent's first and third affirmative defenses. The motion was briefed by the parties

over the course of few months and was last returnable September 25, 2025. The Court heard argument and reserved its decision that day.

The proposed amended answer seeks to add improper termination of subsidy assistance as a first affirmative defense, missing mandatory Violence Against Women Act Riders (“VAWA”) as a second affirmative defense, missing notice of Respondent’s right to informal meeting in rent demand as per HUD Handbook rules as a third affirmative defense, and miscalculated rent as a fourth affirmative defense. See, NYSCEF Doc. No. 40. Respondent argues she should be permitted to once again amend her answer because it will not prejudice Petitioner, and the new defenses were founded upon review of Respondent’s HUD tenant file. Petitioner’s arguments in opposition to amending the answer are unavailing. Petitioner avers Respondent failed to explain the extended delay in moving to amend, however, Respondent clearly stated the defenses were only recently fully discovered. It is well settled law that leave to amend a pleading shall be freely given absent surprise or prejudice to the opposing side, as such, the Court grants the portion of the motion seeking amendment of the answer. *Four Thirty Realty LLC v. Kamal*, 83 Misc.3d 138(A) (Appellate Term, 1st Dep’t 2024). Here, Petitioner failed to articulate surprise or prejudice. The proposed amended answer is deemed served and filed *nunc pro tunc* as such.

The remainder of Respondent’s motion seeks dismissal on several of her affirmative defenses and based on Respondent’s attorney’s review of the HUD tenant file on April 15, 2025. Respondent’s chief argument is that Petitioner failed to comply with HUD’s recertification and termination requirements which would prohibit them from maintaining a nonpayment proceeding based on market rent. The HUD Handbook 4350.3 REV-1 Chapter 7-7(B) outlines three recertification notices owners send prior to the recertification anniversary date. Allegedly, in violation of the rules in the HUD Handbook, Respondent’s tenant file contained only two notices, both letter notices failed to include pertinent information such as location, days, and office hours that property staff will be available for recertification interviews. See, NYSCEF Doc. No. 42. The notices do not list what information Respondent should bring to the interview. The notices Respondent describes and attaches to their motion are dated March 16, 2020, and March 30, 2020. Neither of the notices were an “initial notice” concerning recertifications. Respondent argues these omissions placed Respondent in the perfect position to fail to recertify. Furthermore, Petitioner allegedly failed to comply with notice service requirements of mailing and an attempt at personal delivery as a notice is only deemed effective upon completion of both mailing and hand delivery. Respondent’s counsel affirms that the file is missing proof of mailing or personal delivery. Respondent denies getting either letter. Additional issues raised include lack of VAWA notice in any of the underlying pleadings or tenant file, lack of extenuating circumstances inquiry, and no signed lease for the market rent.

In opposition, Petitioner is steadfast that they complied with all HUD Handbook pre-termination notices and requirements allowing them to charge market rent in this nonpayment proceeding. Petitioner maintains their office mailed Respondent a “First Notice” dated December 1, 2020, and received no response. See, NYSCEF Doc. No. 46. On January 1, 2021, Petitioner mailed Respondent a “Second Notice.” See, NYSCEF Doc. No. 47. Respondent failed to respond to both the “First” and “Second” notices, which caused Petitioner to send out the requisite “Third Notice” on February 1, 2021, by mailing. See, NYSCEF Doc. No. 48. An additional letter dated March 31, 2021, was provided to Respondent regarding their failure to recertify their annual income. This letter of termination also included the VAWA notice. See, NYSCEF Doc. No. 49. Petitioner attaches corresponding purported proof of mailings. See, NYSCEF Doc. No. 50. The March 31, 2021, termination of assistance notice relied upon by Petitioner reads that due to Respondent’s failure to meet with management, she lost her subsidy, the new rent effective March 31, 2021 will be \$1,934.00, and that Respondent has 10 days to request an appeal of the termination.

In reply, Respondent proposes that even if the notices attached to Petitioner’s opposition are the true and accurate notices served by Petitioner as they allege, they are still insufficient in that they fail to comply with the HUD Handbook rules.

CPLR § 3212 (b) provides that a motion for summary judgment “shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter

of law in directing judgment in favor of any party.” The moving party has the initial burden of establishing a *prima facie* showing that it is entitled to summary judgment as a matter of law and that no material issues of triable fact exist. See *Friends of Animals, Inc. v Associated Fur Mfrs.*, 46 N.Y.2d 1065, 1067-68 (1979). “To obtain summary judgment it is necessary that the movant establish his cause of action or defense ‘sufficiently to warrant the court as a matter of law in directing judgment’ in his favor (CPLR 3212, subd. (b)), and he must do so by tender of evidentiary proof in admissible form.” *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]. The function of the summary judgment procedure is issue finding, not issue determination. See, *Sillman v Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395, 404 (1957).

Chapter 7 of the HUD Multifamily Occupancy Handbook instructs that an initial notice for upcoming recertification be provided at every initial lease signing and at every annual recertification thereafter and must include the tenant’s signature acknowledging receipt and must be kept in the tenant’s file. A first reminder notice is to be sent 120 days prior to the tenant’s recertification anniversary date, a second reminder notice is to be sent at least 90 days prior to the tenant’s recertification anniversary date, and a third reminder notice is to be sent at least 60 days prior to the tenant’s recertification anniversary date. The second and third are to be sent if the owner does not get a response to the first or second notices. The second and third notices are to include the same information as the first notice.

The first reminder notice must refer to the HUD model lease as to tenant’s obligation to recertify, state the name of the staff to contact about an interview, their contact information and how the contact should be made, give location, days, office hours that property staff is available for recertification interviews, list the information the tenant should bring to the interview, state cutoff date by which tenant must contact the owner and provide the information, state that if tenant fails to respond the tenant will lose the assistance and be responsible for paying market rent or may be evicted for noncompliance with lease requirements to recertify annually. See, Handbook 4350.3 Rev-1, ¶ 7-7[B][2][b][2]. A copy of all notices must be maintained in the tenant file documenting the date the notice was issued. The third reminder notice must also specify the amount of rent the tenant will be required to pay if the tenant fails to provide the required documents and state that this rent increase will be made without additional notice.

Courts have determined that deficient recertification notices, such as those where the amount of rent the tenant will be required to pay is not provided, lead to improper termination and therefore bar the maintenance of a nonpayment proceeding. *Starrett City, Inc. v Brownlee*, 22 Misc.3d 38 (Appellate Term, 2nd & 11th Jud Dists 2008); see also, *SEBCO IV Assoc. LP v Colon*, 63 Misc.3d 1227(A) (Civ. Ct. Bronx Co. 2019). When an owner terminates assistance and the rent is increased to market or contract rent, the owner must provide proper notice to the tenant of the increase. Respondent erroneously recounts that personal delivery is required for each recertification notice, but this requirement pertains to notice of termination of the subsidy. A notice terminating the subsidy must be sent by first-class mail and an attempt at personal delivery on any adult at the unit must be attempted. If no adult answers, the person serving the notice may place it under or through the door or affix it to the door. Petitioner’s papers fail to address whether an attempt at personal service was made for the termination letter dated March 31, 2021 despite Respondent’s claims. Petitioner’s agent *only* affirms that all notices referenced were mailed to Respondent(s). See, NYSCEF Doc. No. 45, ¶ 7.

Although neither side states when Respondent(s)’ recertification anniversary date is, all the notices attached to Petitioner’s papers require Respondent to respond on or before April 1, 2021. The “Third Notice” dated February 1, 2021, was allegedly mailed on February 3, 2021, which provides 57 days’ notice instead of the required 60 days before the anniversary date. A second and third notice to recertify, sometimes referred to as “pre-termination notices”, are to be sent if the tenant does not comply with the initial notice to recertify. See, *Lexington Ct. LLC v Torres*, 85 Misc 3d 11 (Appellate Term, 1st Dep’t 2025) (where tenant’s rent increased because of recertification, and the first notice was sent late by the landlord, the tenant is not responsible for the retroactive increase of their share). Although the HUD Handbook does not say additional days be added for mailing, it is only logical that mailing be accounted for since Respondent’s failure to comply *within* the time frame has consequences as serious as losing her subsidy and in fact, here, after that “Third Notice” was mailed, Respondent’s

subsidy was terminated. See, *Good Neighbor Apt. Assoc. v Rosario*, NYLJ, July 9, 2008 (Civ Ct, New York Co.). Chapter 8, Termination, of the HUD Occupancy Handbook instructs owners that eviction “should be pursued only as a *last measure* for enforcing compliance [emphasis added].” Ensuring notices are sent in a timely fashion is line with that goal.

None of the notices contain a list of what required documents the tenant should bring to the recertification interview. Additionally, the “Third Notice” fails to state the amount of rent Respondent will be required to pay, instead it states that Respondent will be charged the “contract/market rent.” See, *Starrett City, Inc. v Brownlee*, 22 Misc.3d 38 (Appellate Term, 2nd & 11th Jud Dists 2008). Lastly, the termination notice dated March 31, 2021, incorrectly states that Respondent’s rent will increase effective March 31, 2021, whereas all other notices claim the rent would increase effective April 1, 2021.

Petitioner’s counsel consented to Respondent’s counsel accessing the contents of the HUD file. There is no explanation as to why the file only contained the two letters attached to Respondent’s motion regarding the 2021 recertification, yet Petitioner allegedly mailed four completely different letters submitted with their opposition papers. This is problematic as it places a veil of uncertainty over whether the owner is properly maintaining Respondent’s file as required by HUD. See *e.g. Good Neighbor Apt. Assoc. v Rosario*, NYLJ, July 9, 2008 (Civ Ct, New York Co.) (“the owner is required to keep the initial notice with original signatures, and copies of the first, second, and third reminder notices in the tenant’s file.”). Maintaining precise records is integral to an owner’s compliance with federal rules and regulations. Accepting the notices Petitioner attaches, by their own admission, as the pretermination notices relied upon, there is no question of fact that Petitioner did not properly follow the HUD regulations prior to terminating Respondent’s subsidy. As such, a nonpayment proceeding does not lie.

Accordingly, it is **SO ORDERED** that Respondent’s motion (Seq. 03) is granted to the extent that the matter is dismissed for all reasons stated herein. The Court need not reach the remaining arguments raised. Respondent is directed to serve a copy of this Decision/Order on Petitioner along with notice of entry within 3 days from court upload of this Decision/Order to NYSCEF.

This constitutes the Decision/Order of the court. A copy of same to be uploaded to NYSCEF.

Dated: October 2, 2025
Bronx, New York

AMIRA HASSAN, J.H.C.

Housing Court Judge