

**1064 Cauldwell LLC v Montero**

2025 NY Slip Op 34091(U)

September 23, 2025

Civil Court of the City of New York, Bronx County

Docket Number: Index No. L&T 323785/24

Judge: Kisha L. Miller

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This opinion is uncorrected and not selected for official publication.

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

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1064 CAULDWELL LLC,  
Petitioner,

Index No. L&T 323785/24

-against-

DECISION/ORDER

ANGELA RAMIREZ MONTERO,  
JOHN DOE, JANE DOE,  
Respondents.

Motion seq. no. 1, 2

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HON. KISHA L. MILLER:

Edelman Schwartz, PLLC, for Petitioner.  
Mobilization For Justice, Inc., for Respondent.

Recitation, as required by C.P.L.R. § 2219(a), of the papers considered in review of the motion to dismiss; cross-motion to amend.

<b>Papers</b>	<b>Numbered</b>
Notice of Motion, Cross-Motion and Affidavits Annexed.....	NYSCEF Doc. Nos. 6, 7, 10-13
Answering Affidavits Annexed.....	NYSCEF Doc. Nos. 14, 15

In this nonpayment summary eviction proceeding, Respondent filed a motion to dismiss pursuant to CPLR §3211(a)(7) on the basis that 1) the petition fails to comply with the Williams Consent Decree; 2) the petition fails to plead and register the premises as a multiple dwelling; and 3) the rent demand is defective in that it fails to credit earmarked payments. Respondent also requests, as alternate relief, an order granting leave to interpose an amended answer. Petitioner opposes dismissal, and cross-moves to amend the petition to include the multiple dwelling registration and the certification in compliance with the Williams Consent Decree.<sup>1</sup>

Upon reviewing the papers submitted, Respondent demonstrated that the rent demand is defective.

Discussion

When a party moves for dismissal pursuant to CPLR §3211(a)(7), the question is whether a cognizable cause of action is manifested, presuming the complaint's factual allegations to be true, and according the pleading the benefit of every possible favorable inference (see *Reeves v*

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<sup>1</sup> The arguments contained in the affirmation submitted by Petitioner’s counsel in opposition to Respondent’s motion to dismiss will be considered since it specifically cites to CPLR §2106, which is sufficient for this court.

*Associated Newspapers, Ltd*, 232 AD3d 10 [1st Dept 2024] citing *Doe v. Bloomberg, L.P.*, 36 NY3d [2021]; *Polonetsky v. Better Homes Depot, Inc.*, 97 NY2d [2001]; *Leon v Martinez*, 84 NY2d 83 [1984]).

A rent demand is a condition precedent to a nonpayment proceeding and an element of a landlord's prima facie case (RPAPL §711[2]; *Pantigo Professional Center, LLC v Stankevich*, 60 Misc 3d 133[A], 2018 NY Slip Op 51039[U] [App Term, 2d Dept, 9th & 10th Jud Dists 2018] citing *Community Hous. Innovations, Inc v Franklin*, 14 Misc 3d 131[A], 2007 NY Slip Op 50050[U] [App Term, 2d Dept, 9th & 10th Jud Dists 2007]). It must, at a minimum, "clearly inform the tenant of the particular period for which a rent payment is allegedly in default and of the approximate good faith sum of rent assertedly due for each such period" (*542 Holding Corp v Prince Fashions, Inc.*, 46 AD3d 309 [1st Dept 2007] citing *Schwartz v Weiss-Newell*, 87 Misc 2d 558 [Civ Ct, NY County 1976]). Where a predicate notice is a required condition precedent, it must meet the applicable standards of sufficiency; if not, the proceeding must be dismissed for failure to state a cause of action (*Riverbay Corporation v Guerrant*, 74 Misc 3d 1219[A], 2022 NY Slip Op 50182[U] [Civ Ct, Bronx County 2022]).

Petitioner's rent demand seeks \$7861.43, representing rent owed in December 2023 at \$691.82 and from January 2024 through June 2024 at \$1193.94 per month. Respondent argues that from January 2024 through May 2024, the New York City Human Resources Administration ("HRA") sent semi-monthly earmarked payments of \$141.50 that were received and credited to Respondent's account but not reflected in the rent demand. In support of her argument that the rent demand does not contain an approximate good faith sum of the rent owed, Respondent provided two documents: a housing court report issued by HRA and Petitioner's rent ledger.

Both documents indicate the amounts contained in the rent demand are incorrect.

The HRA report indicates the agency issued 10 semi-monthly shelter payments toward Respondent's rent covering specific periods from January 2024 through May 2024 as follows: \$141.50 ("A" cycle: 1/2/2024 to 1/16/2024); \$141.50 ("B" cycle: 1/17/2024 to 2/1/2024); \$141.50 ("A" cycle: 2/2/2024 to 2/16/2024); \$141.50 ("B" cycle: 2/17/2024 to 3/1/2024); \$141.50 ("A" cycle: 3/2/2024 to 3/16/2024); \$141.50 ("B" cycle: 3/17/2024 to 4/1/2024); \$141.50 ("A" cycle: 4/2/2024 to 4/16/2024); \$141.50 ("B" cycle: 4/17/2024 to 5/1/2024); \$141.50 ("A" cycle: 5/2/2024 to 5/16/2024); and \$141.50 ("B" cycle: 5/17/2024 to 6/1/2024). These payments are earmarked, meaning they must be applied to the period specified (see *Greenbrier Gardens Apts. v Eustache*, 50 Misc 3d 142[A], 2016 NY Slip Op 50210[U] [App Term, 2d, 9th & 10th Jud Dists 2016]).

The HRA report indicates a status of “3” for each payment, meaning they were all cashed, and Petitioner’s rent ledger indicates the payments were cashed in accordance with the period specified. The rent demand provides credit for Respondent’s monthly section 8 payments but fails to credit the monthly payments of \$283 issued by HRA from January 2024 through May 2024.

Petitioner does not deny receiving semi-monthly payments from HRA from January 2024 through May 2024, nor does Petitioner deny the rent demand is inaccurate. Instead, Petitioner argues that Respondent provided no proof of payment in admissible form; that Respondent failed to authenticate the rent ledger or certify it as a business record; and that arrears are still owed by Respondent.

None of these arguments are persuasive.

Minor inaccuracies or “de minimus miscalculations” in amounts sought in rent demands may be disregarded (*Almark Holdings Co., LLC v Pizza147 NY LLC*, 77 Misc 3d 130[A], 2022 NY Slip Op 51224[U] [App Term, 1st Dept 2022]; *10 Midwood LLC v Hyacinth*, 2003 NY Slip Op 50789[U] [App Term, 2d Dept, 2d & 11th Jud Dists 2003]). Courts will review whether a rent demand contains an inaccurate amount due to an accounting error or an amount representing a minor percentage of the total amount sought (see *Ciampa US LLC v Satterfield*, 79 Misc 3d 1227[A], 2023 NY Slip Op 50734[U] [Civ Ct, Queens County 2023] [uncredited HRA payments represented 1.8% of amount sought in rent demand and 2.1% of amount sought in petition]; *Ash Ave LLC v Allison*, 2025 NY Slip Op 25059 [Civ Ct, Queens County 2025] [petition dismissed on other grounds, but inclusion of one month’s rent at a rate above the frozen rent did not render the rent demand defective]; *57 Elmhurst, LLC v Castillo*, 80 Misc 3d 1205[A], 2023 NY Slip Op 50920[U] [Civil Ct, Queens County 2023] [amount in dispute comprised less than 4% of the total amount sought but court found rent demand defective due to a “knowing violation” of a rent reduction order]; *EOM 106-15 217th Corp v Severine*, 62 Misc 3d 141[A], 2019 NY Slip Op 50068[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2019] [rent demand defective as petitioner failed to properly apply earmarked funds]).

Here, the error in the rent demand represents 17% of the total amount sought, constituting more than a minor inaccuracy. There is nothing to suggest the error was the result of an accounting mistake or a miscalculation. As per the rent ledger, HRA began issuing payments toward Respondent’s rent in August 2023, nearly a year *prior to* service of the rent demand in June 2024. Petitioner should have carefully reviewed its records and reflected the credits in the rent demand. By failing to do so, the rent demand does not provide an approximate good faith

sum of rent assertedly due for the particular period of January 2024 through May 2024 (*542 Holding Corp v Prince Fashions, Inc.*, supra); and thus, fails to adequately apprise Respondent of the amount sought to afford her an opportunity to formulate defenses and avoid litigation (*2229 Creston Partners LLC v Ramos*, 31 Misc 3d 1221[A], 2011 NY Slip Op 50791[U] [Civ Ct, Bronx County 2011]).

Respondent need not produce evidence in admissible form, as Petitioner argues. Petitioner incorrectly refers to the standard of proof required in a motion for summary judgment filed pursuant to CPLR §3212, which is not the basis of Respondent's motion (see *Zuckerman v City of New York*, 49 NY2d 557 [1980] [to obtain summary judgment, the movant must tender evidentiary proof in admissible form]). Moreover, while Petitioner argues Respondent failed to authenticate the rent ledger, Petitioner does not dispute the entries or question the accuracy of the information contained in its own rental record.

As a required condition precedent, a predicate notice is not amendable, and a nonpayment proceeding based on a defective rent demand must be dismissed for failure to state a cause of action (*Chinatown Apts. v Chu Cho Lam*, 51 NY2d 786 [1980]).

The court need not address the remaining arguments raised in Respondent's motion.

Accordingly, it is

ORDERED that Respondent's motion to dismiss the proceeding based upon a defective rent demand pursuant to CPLR §3211(a)(7) (seq. no 1) is granted. Petitioner's cross-motion to amend (seq. no. 2) is denied. The proceeding is hereby dismissed without prejudice.

This constitutes the decision of the court.

Dated: September 23, 2025



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KISHA L. MILLER, J.H.C.