

T.I. Props., LLC v Cumberbatch

2025 NY Slip Op 34202(U)

June 11, 2025

Civil Court of the City of New York, Kings County

Docket Number: Index No. 312286/24

Judge: Michael L. Weisberg

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

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T.I. PROPERTIES, LLC, Index No. 312286/24

Petitioner,

-against-

MARVELLE CUMBERBATCH, ET AL.,

Respondents.
-----X

DECISION/ORDER

Mot. seq. no. 1

WEISBERG, J.:

The following e-filed documents, listed by NYSCEF document number 8-20 (motion no. 21) were read on this pre-answer motion to dismiss.

The question before the court is whether the rule applied by the Court of Appeals in *ATM One, LLC v Landaverde* (2 NY3d 472 [2004]), which required an owner to add an extra five days to the prescribed period when serving a notice to cure an alleged lease violation in a rent-stabilized tenancy, should be extended to a 90-day notice terminating an unregulated tenancy.

The petition in this “no grounds” holdover summary eviction proceeding is predicated on the alleged service of a 90-day notice of termination expiring March 31, 2024. The affidavit of service of the notice of termination alleges that the notice was posted on Respondent’s apartment door on December 27, 2023 and mailed by regular and certified mail a day later, which is 94 days before March 31st. Respondent has moved to dismiss the petition, arguing that the legislative intent of RPAPL 226-c requires that the rule in *Landaverde* should be applied here.

In *Landaverde* the Court of Appeals interpreted an ambiguous administrative regulation concerning service of a notice to cure an alleged wrongful act by the tenant, holding that if a landlord chose to mail the notice, as permitted by the statute, it was required to five days to the prescribed ten-day period (*Landaverde*, 2 NY3d at 477-478). In doing so, the Court reasoned that this approach “best effectuates the regulatory purpose to afford tenants a 10-day cure period before they may be subject to lease termination for designated violations” (id. at 477).

The Appellate Division (First Department) considered the holding in *Landaverde* when analyzing service requirements of a 90-day notice of nonrenewal based on nonprimary residence

in rent-stabilized apartment in *12 West 58th Street Corp. v Foster* (44 AD3d 410 [1st Dept 2007]). Declining to extend the *Landaverde* rule concerning notices to cure to a notice of nonrenewal, the court reasoned that “the policy concerns giving rise to the solution fashioned by the *Landaverde* court are not implicated in a situation where a 90/150 day notice of nonrenewal is served by mail. A notice of nonrenewal calls upon the tenant to elect whether to contest the merits of a landlord’s possessory claim following a lease termination date set months in advance or to vacate the premises in the interim. Unlike a tenant who receives a notice to cure, who may be deprived of the full benefit of the mandated 10-day cure period by the mailing of a notice to cure, a tenant served by mail with a notice of nonrenewal within the 90/150 day period cannot be said to be ‘disadvantaged by an owners choice of a service method’” (*id.* at 411, citing *Landaverde*, 2 NY3d at 478).

The rationale in *Foster* is applicable here and binding on the court. Moreover, unlike the notice to cure in *Landaverde* and the notice of nonrenewal in *Foster*, which could be served by mail or personal delivery, the 90-day notice here had to be served in accordance with the requirements of RPAPL 735. That is, unless service was by personal delivery, the notice had to be served by conspicuous placement and by mail. So even if the notice that was mailed arrived less than 90 days from the date of expiration of the notice of termination, thereby depriving Respondent a full 90 days of notice by mail, the notice that was posted on Respondent’s door more than 90 days from the date of expiration did so provide that a full 90 days’ notice, eliminating the policy concerns implicated in *Landaverde*.

Finally, Respondent’s argument regarding legislative intent fails, premised as it is on the single statement of a single legislator during an omnibus hearing on various elements of the HSTPA. “The views of one legislator, however, are not necessarily revealing of the legislative intent” (*Knight-Ridder Broadcasting, Inc. v Greenberg*, 70 NY2d 151, 159 [1987]). Moreover, taken in context, the statement of Assemblyperson Cymbrowitz relied on by Respondent does not support their argument. Instead, it is more appropriately interpreted to merely explain how within the City of New York, the law was being changed to afford tenants not merely 30-days notice of termination, but depending on the length of their tenancy, 60-days or 90-days notice of termination, and that such change was not being made outside the City of New York.

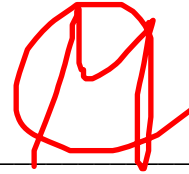
Accordingly, it is ORDERED that the motion is denied; and it is further

ORDERED that Respondent shall answer the petition by June 30, 2025 or their answer shall be deemed a “general denial;” and it is further

ORDERED that the parties shall appear in Part E/Room 504 on July 17, 2025 at 9:30 AM for the proceeding to be transferred to the trial expediter.

This is the court’s decision and order.

Dated: June 11, 2025

A handwritten signature in red ink, appearing to be 'M. Weisberg', is written above a horizontal line.

Michael L. Weisberg, JHC