

1714 Linden LLC v Ishak
2025 NY Slip Op 35536(U)
January 13, 2025
Civil Court of the City of New York, Queens County
Docket Number: Index No. LT-320273-23/QU
Judge: Logan J. Schiff
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS: HOUSING PART D

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1714 LINDEN LLC

Index No.LT-320273-23/QU

Petitioner-Landlord,

DECISION/ORDER

-against-

Motion Seq. No. 1

THORAIA ISHAK, ET AL.

Respondent(s)-Tenant(s).

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Present: Hon. Logan Schiff

Judge, Housing Court

Recitation, as required by CPLR §2219(a), of the papers considered in the review of Petitioner’s motion to award a final judgment of possession, and Respondent’s cross-motion to dismiss:

Papers	Numbered
Petitioner’s Motion, Affidavit, and Exhibits	<u>8-14</u>
Respondent’s Opposition and Cross Motion, Affidavit and Exhibits.....	<u>15-17</u>
Petitioner’s Reply and Exhibits	<u>19-20</u>
Respondent’s.....	<u>21</u>
Court File	<u>passim</u>

The Decision/Order on Petitioner’s Motion to Restore to Calendar, and Respondent’s Cross-Motion to Dismiss is as follows:

PROCEDURAL HISTORY

Petitioner 1714 Linden LLC (hereinafter Petitioner) commenced this proceeding on December 1, 2023, upon filing a nuisance and breach of lease holdover petition under Rent Stabilization Code (RSC) §§ 2524.3(a) and 2524.2(b), against 72-year-old Thoraia Ishak (hereinafter Respondent). Prior to commencement, Petitioner served a Notice to Cure on September 18, 2023, which stated that Respondent had until October 5, 2023, to cure conditions

in her apartment related to clutter or risk losing her 27-year tenancy in the rent stabilized unit. The notice stated that the apartment was observed to be “unkempt, filthy, [and] cluttered;” as having the presence of foul and noxious odors; and being a fire hazard due to the lack of ingress or egress, all interfering with the health, safety, comfort, use, and enjoyment of residents and building staff (NYSCEF 1 at 7). Petitioner subsequently served a 10-day notice of termination on October 17, 2023, which mimicked the Notice to Cure but added:

“By a notice to cure dated September 18, 2023, the landlord advised you of the above conduct and provided a good-faith opportunity to allow you to cure the violations on or before October 5, 2023. To date[, y]ou have failed to take action to remove the clutter, garbage, and refuse, or eliminate the noxious odors. To date, you have failed to engage in a deep[]cleaning of the apartment” (*id.* at 12).

Respondent procured counsel and, on June 6, 2024, the parties entered into a stipulation that marked the case off calendar. While the stipulation did not include language about the conditions or behaviors that would need to be met to demonstrate compliance, it provided for four access dates for inspection with one week’s notice plus an inspection for dismissal as required by the Department of Housing Preservation and Development. Under paragraph four, the proceeding could be restored to the calendar by petitioner’s motion, albeit without specifying what relief Petitioner could seek upon default. The stipulation further provided that, if Petitioner did not restore the case to the calendar by February 5, 2025, the case would be dismissed.

On September 16, 2024, Petitioner filed a motion to restore the case to the calendar for entry of a final judgment of possession in favor of Petitioner and for the warrant to issue forthwith. The attached affirmations allege that Respondent tampered with the plumbing to maintain a washing machine and bidet in her apartment, that Respondent’s tampering with the plumbing caused massive leaks affecting neighboring tenants, and that the bathroom was unkempt as a result. Petitioner argues that these alleged violations are examples of nuisance behavior that warrant

imposition of a judgment of possession in favor of Petitioner. Respondent disagrees, arguing that “Respondent is the sole, rent-stabilized tenant living in the building premises” and that restoring the matter on these allegations, which have no relationship to the underlying termination notice or stipulation of settlement, would allow Petitioner to “weaponize the law to profit from the eviction of a long-term, elderly[,] rent stabilized tenant” (NYSCEF 16 at 2-3). Respondent further cross-moved for a dismissal for failure to state a cause of action for (a) failing to include the lease provisions allegedly violated in the predicate notices and (b) for failing to state how Respondent could cure the alleged conduct and for failing to set forth any specific allegations relating to Respondent’s failure to cure after the expiration of the cure period. All papers were submitted by November 12, 2024, and the court reserved decision. The court now takes each of these motions in turn.

ANALYSIS AND DECISION

A: Petitioner’s Motion to Restore

To the extent that the conduct alleged in Petitioner’s motion to restore, which is related to leaks caused by an unauthorized washing machine and bidet, has no relationship to the conduct alleged in Petitioner’s predicate notices and the parties’ stipulation of settlement, namely a lack of access and clutter posing a fire hazard and creating unpleasant smells, the court must deny Petitioner’s motion.

It is well settled that predicate notices cannot be amended (*Chinatown Apts. v Chu Cho Lam*, 51 NY2d 786 [1980]), and Petitioner is “bound by the notice served” and cannot substitute new violations as they see fit to continue the holdover case (*One E. 8th St. Corp. v Third Brevoort Corp.*, 38 AD2d 524 [1971]; *Rockville Ctr. Hous. Auth. v. Boggen*, 20 Misc. 3d 1126[A][Dist Ct.

Nassau Cty 2008]; *Singh v Ramirez*, 20 Misc. 3d 142[A][App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2021].

Petitioner's predicate notices in this matter only made Respondent aware of the need to cure the accumulation of clutter, foul and noxious odors, and the lack of ingress and egress rendering the apartment a fire hazard and subject to HPD violations, whereas Petitioner's motion papers describe plumbing fixture being tampered with and water leaks. Although the Petitioner may feel that the "tenants in the Subject Building do not deserve to have their apartments, and the Subject Building, become less fit to live as a result of Respondent's nuisance like [*sic*] behavior" (NYSCEF 10 at 3), Petitioner offers no factual allegations demonstrating a lack of access on the agreed upon dates in the stipulation, a failure to allow Petitioner to correct violations related to clutter, or any behavior that might be considered a continuation of the behavior in the underlying predicate notices by which Petitioner is bound. The attached pictures in support of the motion (NYSCEF 12) at most demonstrate the installation of an unpermitted washing machine and bidet, actions that have no relationship to the underlying petition.

Even assuming, arguendo, that the parties could chart their own course and expand the nature of the allegations at issue in this proceeding beyond that of the predicate notices and petition, the stipulation contains no such language, merely referencing mandatory inspections to confirm the conditions have abated. As none of the allegations in landlord's motion to restore sufficiently support landlord's claim of nuisance in the petition and predicate notices, the motion must be denied (*see Singh v Ramirez*, 20 Misc. 3d 142[A][App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2021]).¹

¹ Even Petitioner's motion was granted, the stipulation does not specify the relief to be sought upon restoration. At most, the relief would be a trial as there is a preference against forfeitures of rent-stabilized tenancies (*see Dubor Assoc. v Richburg*, 50 Misc 3d 13 [App Term, 2d Dept 2d, 11th, 13th Jud. Dists, 2015]; *Matter of Vega v Franco*, 277 AD2d 131, [2000]; *Tri Cruger Realty, LLC v Masterson*, 36 Misc 3d 145[A] [App Term, 1st Dept 2012]; *160 W.*

B: Respondent's Cross-motion to Dismiss

The court now turns to Respondent's cross-motion to dismiss. Respondent argues that Petitioner's claim of breach of lease agreement under RSC § 2524.3(a) cannot be sustained as there was no lease provision cited in the predicate notice. This court agrees. Petitioner's predicate notice states that "pursuant to Sections 2524.3(a) and 2524.2(b) of the Rest Stabilization Code...the undersigned Landlord, 1714 Linden LLC, intends to end the term of said Lease on the grounds that [respondent is] violating a substantial obligation of [her] tenancy..." Absent from this notice, is what paragraph or condition of the lease agreement Respondent violated, a fatal defect for matters predicated on terminating a tenancy for violations of lease agreements, which "must cite to the specific prohibition in the lease which was allegedly violated" (*Bray Realty, LLC v Pilaj*, 59 Misc.3d 130(A) [App Term, 2d, 11th & 13th Jud Dists, 2d Dept 2018]; *see also Fabria Houses Assoc. v Fontanetta*, 2015 NYLJ LEXIS 5906 [Civ Ct, NY County 2014]). As such, Respondent's Motion to Dismiss for failure to state a cause of action is granted as to the claim arising under RSC § 2524.3(a).

Respondent further argues that Petitioner's nuisance under RSC § 2524.2(b) claim must also be dismissed as the termination notice does not give enough detail as to conduct occurring after the cure period's expiration. This court disagrees. A termination notice is considered defective where it lacks any factual allegations that the course of conduct complained of continued beyond the cure period" (*Hew-Burg Realty v. Mocerino*, 163 Misc 2d 639, 641 [Civ Ct, Kings Co 1994]; *31-67 Astoria Corp. v Landaira*, 54 Misc 3d 131 [A] at *2 [App Term, 2d, 11th & 13th Jud Dists, 2d Dept 2017]). The motion's opposing party is given the benefit of every possible inference from

118th St. Corp. v Gary, 32 Misc 3d 1, 926 NYS2d 799 [App Term, 1st Dept 2011] and given that the court cannot read in additional terms to the agreement (*1029 Sixth, LLC v Riniv Corp.*, 9Ad3d 142,146 [1st Dept 2004] quoted in *Wallace Holdings, LLC v Brown*, 83 Misc 3d 1277[A], 2024 NY Slip Op 51114[U] [Civ Ct, Bronx County 2024]).

the facts alleged in the pleadings (*Archival, Inc. v 177 Realty Corp.*, 220 AD3d 909 [App. Div. 2d Dept 2023]). In evaluating the facial sufficiency of a predicate notice in a summary eviction proceeding, the appropriate test is one of reasonableness in view of the attendant circumstances (*see Hughes v Lenox Hill Hosp.*, 226 AD2d 4, 18, *lv denied* 90 NY2d 829, [1997]). When assessing the reasonableness of the notices, the court considers factors like constancy of condition, control of evidence, and timing of the notice (*Columbia Leasing L.P. v Williams*, 80 Misc 3d 884 [Civ Ct, Queens Co 2023]). Cases with longstanding, static conditions where evidence may be in the exclusive control of the respondent—such as clutter cases— can survive on a less detailed factual allegations than can those with intermittent conditions (*compare Riverbay Corp. v Frere*, 2023 NY Slip Op 50655[U] at *3 [Civ Ct, Bronx Co 2023], *with Jericho Project Lessee v Marten-Travera*, 67 Misc. 3d 1204[A] [Civ Ct, Bronx Co 2023]). Where notices are served one to two days after the expiration of the cure period and contain no specific allegation of post-cure period conduct, the notices are often treated as lacking good faith in ascertaining whether a cure actually took place and therefore as defective (*see 31-67 Astoria Corp. v Landaira*, 54 Misc. 3d 131(A), 52 N.Y.S.3d 248 [App Term, 2d, 11th & 13th Jud Dists, 2d Dept 2017]; *see also Sudimac v Beck*, 63 Misc. 3d 1208(A), 114 N.Y.S.3d 577 [Civ Ct, Queens Co 2019]).

Upon due deliberation, this court finds that the termination notice given in the instant case is reasonable under the attendant circumstances insofar as it alleges a range of conduct that taken together could constitute a nuisance, alleges the conduct remains ongoing following the end of the cure period, and the termination was served nearly two weeks after the cure period expired, indicating that the Petitioner did not treat this as a mere formality (*cf. Landaira* at *1; *Columbia Leasing L.P.* at 885). As such, the claim for nuisance survives the motion to dismiss.

CONCLUSION

Petitioner's motion to restore is denied and the proceeding will remain off calendar subject to the terms of the parties' agreement. Respondent's motion to dismiss is granted solely to the extent that the cause of action under RSC § 2524.3(a) is dismissed. The forgoing constitutes the DECISION AND ORDER of the court.

Dated: January 13, 2025
Queens, New York



HON. LOGAN J. SCHIFF