

Riverside Dr. 635 Realty LLC v Campbell
2026 NY Slip Op 31470(U)
April 13, 2026
Civil Court of the City of New York, New York County
Docket Number: Index No. LT 311475-23
Judge: Tashanna B. Golden
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART H
-----X
RIVERSIDE DRIVE 635 REALTY LLC,

Petitioner

Index No. LT # 311475-23

CHRISHON CAMPBELL; GARRETT MODESTE,
Respondents

DECISION/ORDER

-----X

Motion Seq. # 3

Present: Hon. Tashanna B. Golden:

Recitation, as required by CPLR 2219(a), of the papers considered in review of Respondent’s motion for summary judgment:

Papers:

Numbers

Respondent’s Motion, and Affirmations in Support.....NYSCEF # 41-43
Court File.....*Passim*

Upon the foregoing cited papers, the Decision and Order on these motions are as follows:

Petitioner filed this instant Nonpayment proceeding on or about June 8, 2023, seeking a final judgment of possession of the premises located at 635 Riverside Drive, Apt. 10A, New York, NY 10031 (the “subject premises”) from Respondent. Petitioner predicated its Nonpayment proceeding upon the alleged service of a rent demand. In August 2023, Petitioner sought a warrant requisition for Respondent’s failure to file an Answer. The warrant requisition was granted and a judgment of possession was granted in October 2023. Respondent filed an Order to Show Cause to vacate the default. On January 19, 2024, the order to show cause was granted by two-attorney stipulation. Respondent filed a motion for discovery, and it was granted on consent via two-attorney stipulation in October 2024. The matter was adjourned numerous times. On December

17, 2025, Respondent filed the within motion seeking to dismiss the proceeding. Petitioner did not file opposition.

Respondent seeks to dismiss the proceeding pursuant to CPLR § 3211(a)(7) for the Petitioner's failure to provide proof that there was a rental agreement in effect at the commencement of the case. It is well-established that "when a party moves to dismiss a complaint pursuant to CPLR § 3211 (a)(7), the standard is whether the pleading states a cause of action, not whether the proponent of the pleading has a cause of action. In considering such a motion, the court must accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory." *Sokol v Leader*, 74 AD3d 1180, 1181 (App Term 2d Dept. 2010) (citations omitted); *see Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]). Further, in evaluating the facial sufficiency of a predicate notice in a holdover proceeding, "the appropriate test is one of reasonableness in view of the attendant circumstances." *Hughes v Lemox Hill Hosp.*, 226 AD2d 4 (App Term 1st Dept 1996). But "[w]hen evidentiary material is considered, the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one, and, unless it has been shown that a material fact as claimed by the pleader to be one is not a fact at all and unless it can be said that no significant dispute exists regarding it, again dismissal should not eventuate," (*id.* at 275).


A landlord may commence a nonpayment proceeding under RPAPL § 711(2) where a "tenant has defaulted on payment of rent, pursuant to the agreement under which the premises are held." Here, Petitioner commenced a nonpayment proceeding, alleging that the Respondent had a "WRITTEN rental agreement" to pay \$3,400.00 per month and that the subject premises is subject

to the Rent Stabilization Law.¹ Respondent argues that there is no written rental agreement which was in effect at the time that the proceeding was commenced.² The parties conducted discovery, and the Petitioner did not provide a written lease agreement in effect in June 2023. The only lease which both parties uploaded is one from May 1, 2021, through April 30, 2022.³ A nonpayment proceeding requires an agreement between the parties to pay rent which is either express or implied. *See 6 W 20th St Tenants Corp v Dezertov*, 75 Misc 3d 135(A) (App Term 1st Dept 2022). In *Alice Formey Irrevocable Trust v Edwin*, 86 Misc 3d 136(A) (App Term 2d Dept 2025), the Appellate Term distinguished that a rental agreement can be either oral or in writing but is required to be in writing in a Rent-Stabilized apartment as stated in *Fairfield Beach 9th, LLC v Shepard-Neely*, 74 Misc 3d 14 (App Term 2d Dept 2021).

As Petitioner has pled that the subject premises is subject to the Rent Stabilization Law and has failed to produce a written rental agreement between it and the Respondent, Petitioner may not maintain this nonpayment proceeding. As such, the Respondents' motion to dismiss is granted and the matter is DISMISSED.

The foregoing is the Decision/Order of this court.

Dated: April 13, 2026
Brooklyn, New York



So Ordered
Hon. Tashanna B. Golden
Judge, Housing Court

Hon. Tashanna B. Golden
Judge, Housing Court

¹ See NYSCEF Doc # 1

² See NYSCEF Docs # 41-43

³ See NYSCEF Docs # 20 & 27 The Court notes that the lease is not a rent stabilized lease.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED		<input type="checkbox"/>	NON-FINAL DISPOSITION			
MOTION SEQ. #:		GRANTED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
		JUDGMENT	<input type="checkbox"/>	SPS	<input type="checkbox"/>	DECISION RESERVED	<input type="checkbox"/>	SUBMITTED
CHECK IF APPROPRIATE:		WITHDRAWN			<input type="checkbox"/>	DEFAULT	<input type="checkbox"/>	STAY CASE
		ADJOURNED: ALL PURPOSES			<input type="checkbox"/>	ADJOURNED: SUBMISSION	<input type="checkbox"/>	ADJOURNED: TRIAL
		ADJOURNED: HEARING			<input type="checkbox"/>	ADJOURNED: INQUEST	<input type="checkbox"/>	
		TRANSFER/REASSIGN			<input type="checkbox"/>	GAL APPOINTMENT	<input type="checkbox"/>	
NOTES	Case Dismissed.							