

666 Seneca Ave., LLC v Rascica
2026 NY Slip Op 32069(U)
June 5, 2026
Civil Court of the City of New York, Queens County
Docket Number: LT-318637-25/QU
Judge: Rina Gurung
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS: HOUSING PART D

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666 SENECA AVENUE, LLC,

Index No. LT-318637-25/QU

Petitioner,

DECISION/ORDER

-against-

Mot. Seq. Nos. 1 and 2

NICOLA RASCICA, JOHN DOE, and JANE DOE,

Respondents.

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Present: Hon. Rina Gurung
Judge, Housing Court

Recitation, as required by CPLR §2219(a), of the papers considered in the review of this motion:

Papers	Numbers¹
Respondent's Motion and Supporting Papers	<u>8-12</u>
Petitioner's Cross Motion, Opposition, and Supporting Papers	<u>13-16</u>
Court File.....	<u>Passim</u>

Upon the foregoing cited papers, the Decision and Order on this motion is as follows:

Petitioner 666 Seneca Avenue LLC ("Petitioner") commenced this summary licensee holdover eviction proceeding under RPAPL § 713(7) on December 5, 2025, alleging that Respondent Nicola Rascica ("Respondent") entered into possession of the subject premises as a licensee. Respondent now files this pre-joinder motion (Mot. Seq. No. 1) to dismiss under "CPLR § 3211(a)(2)," on grounds that Petitioner failed to comply with 22 NYCRR § 208.42(b), by using an edited version of the mandatory notice of petition form promulgated by the former Chief Administrative Judge of the Courts pursuant to Administrative Order No. 163, dated August 7, 2019 ("AO/163/19"). *See* NYSCEF Doc. No. 8 at 1. Petitioner opposes on grounds that any

¹ NYSCEF Document Number.

deviations between the mandatory notice of petition form and its Notice of Petition do not deprive the Court of subject matter jurisdiction, that any deviations are “*de minimis* at best and not a basis for dismissal[.]” and that no prejudice was alleged. *See* NYSCEF Doc. No. 13 at 1-4. Additionally, Petitioner files a cross motion (Mot. Seq. No. 2) for amendment of its Notice of Petition “pursuant to CPLR § 3025 & CPLR § 2001[.]” NYSCEF Doc. No. 14. The Court grants Mot. Seq. No. 1 solely to the extent that this proceeding is dismissed without prejudice due to Petitioner’s material failure to comply with § 208.42(b) and AO/163/19 and denies the remaining branch of that motion seeking monetary compensation for which Respondent fails to provide any support. Mot. Seq. No. 2 is correspondingly denied as material deviations in substance and content cannot be corrected by amendment or disregarded.

22 NYCRR § 208.42(b) provides that “[t]he chief administrator of the courts shall promulgate, and post on the Unified Court System website, a form notice of petition *for mandatory use* in eviction proceedings involving residential property under article 7 of the Real Property Actions and Proceedings Law (other than in proceedings brought on the ground that the respondent has defaulted in the payment of rent).” (emphasis added). AO/163/19 provides that “[u]se of these forms *shall be optional up to and including September 30, 2019, and mandatory thereafter.*” (emphasis added).² Respondent catalogues the deviations between Petitioner’s Notice of Petition and the mandatory notice of petition form, noting that the Notice of Petition does not specify that it is a notice of *holdover* petition like the mandatory form, that the Notice of Petition states “your residence” instead of “your home[.]” that Petitioner omitted information pertaining to its right to seek interest for any awarded money judgment, and that the Notice of Petition omitted a paragraph

² NY City Civ Ct Act § 401(c) also provides in relevant part that “[n]otwithstanding the provisions of section 731 of the real property actions and proceedings law, regarding issuance by an attorney, the notice of petition in a summary proceeding to recover possession of real property shall be issued only by a judge or the clerk of the court.”

from the mandatory form which states: “***WARNING!*** If you don’t come to court at this date and time, a judgment may be entered against you. If that happens, the landlord will have the right to evict you. You have a right to postpone the case for 14 days, but you have to come to court to ask for that.” NYSCEF Doc. No. 9 at 6.

“In some instances, the failure to conform a notice of petition to a form made mandatory by statute or court rule may be treated as jurisdictional[.]” *Jones Living Tr. by Caine v Burnell*, 88 Misc 3d 129(A), 2026 NY Slip Op 50201(U) (App Term, 2d Dept, 2d, 11th, and 13th Jud Dists 2026). That is the case here. *Compare* NYSCEF Doc. No. 2, *with* NYSCEF Doc. No. 12 (including a copy of AO/163/19 as an exhibit). While not every deviation will suffice to warrant dismissal, the Notice of Petition here contains a glaring deviation from the mandatory notice of petition form in that it omits the paragraph containing the bolded and italicized “***WARNING!***” explaining the consequences of a default and the right to seek an initial adjournment. And despite Petitioner’s contentions otherwise, when considering whether such deviations in a notice of petition require dismissal, the inquiry is not solely tethered to an analysis of whether prejudice was actually suffered and instead hinges on the degree of the differences, and whether such differences prejudiced the respondents’ rights to the information contained in the mandatory notice of petition form. *Burnell*, 88 Misc 3d 129(A) at *2. Furthermore, even if demonstration of actual prejudice was a requirement for dismissal under these grounds, arguably, depriving a respondent of information they are entitled to – including about the consequences of missing an appearance and entitlement to an initial adjournment – is in of itself “prejudicial.”

The Notice of Petition in this proceeding failed to substantially comply with “the spirit and intent of the sample notice” and further contained differences of substance rather than form. *See id.* (quoting *Chalfonte Realty Corp v Streator, Inc*, 142 Misc 2d 501, 503 (Civ Ct, NY County

1989) (internal quotation marks omitted)). To the extent that Petitioner cross moves for leave to interpose an amended notice of petition, “[t]he defect in Petitioner’s notice of petition is not amendable since no action is commenced if the papers served are not in compliance with the statutory mandate as to substance and content.” *Chalfonte Realty Corp*, 142 Misc 2d at 504; *see also* CPLR 2001 (providing that a “court may permit a mistake, omission, defect or irregularity, including the failure to purchase or acquire an index number or other mistake in the filing process, to be corrected, upon such terms as may be just, or, *if a substantial right of a party is not prejudiced*, the mistake, omission, defect or irregularity shall be disregarded, provided that any applicable fees shall be paid.” (emphasis added)).

Therefore, Respondent’s Mot. Seq. No. 1 is granted to the extent that this proceeding is dismissed without prejudice, and Petitioner’s Mot. Seq. No. 2 denied.

The foregoing constitutes the Decision and Order of this court.

Dated: Queens, New York
June 5, 2026

So Ordered:



Hon. Rina Gurung
Judge, Housing Court

CHECK ONE:

MOTION SEQ. #: 1

CHECK IF APPROPRIATE:

NOTES

☐	CASE DISPOSED	☐	NON-FINAL DISPOSITION	☐	OTHER
☒	GRANTED	☐ DENIED	☐	☐	☐
☐	SETTLE ORDER	☐	☐	☐	☐
☐	INCLUDES TRANSFER/REASSIGN	☐	☐	☐	☐
NOTES					

☐	CASE DISPOSED	☐	NON-FINAL DISPOSITION	☐	OTHER
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