Hatfield v Campolito
2026 NY Slip Op 32090(U)
May 12, 2026
County Court, Tompkins County
Docket Number: Index No. 2025-0040
Judge: Maura Kennedy-Smith
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STATE OF NEW YORK COUNTY COURT
COUNTY OF TOMPKINS

ROGER HATFIELD,
Petitioner/Appellee,

vs.

CRYSTAL CAMPOLITO,
Respondent/Appellant.

DECISION AND ORDER

Index #: 2025-0040

ROGER HATFIELD,
Petitioner/Appellee,

vs.

TIMOTHY CAMPOLITO,
Respondent/Appellant.

Index #: 2025-0039

Crystal Campolito and Timothy Campolito ("Appellants"), by and through counsel, Legal Assistance of Western New York, Inc., Thomas Dolan, Jr., Esq., of counsel, appeal from two decisions of the Dryden Town Court (Ravo, J.) issued orally, on December 16, 2024, after a two-day bench trial which: (a) denied Appellants' motions to dismiss the eviction proceedings based upon improper rent demands and the landlord Roger Hatfield's ("Appellee") failure to comply with the notice requirements under RPAPL § 741(5); (b) awarded Appellants a full abatement of rent for the arrears sought in Appellee's summary nonpayment eviction proceedings; (c) awarded Appellant Crystal Campolito compensatory ($1,300.00) and punitive damages ($700.00) for Appellee's violation of the warranty of habitability for the premises she rented; (d) awarded Appellant Timothy Campolito compensatory ($700.00) and punitive damages ($700.00) for Appellee's violation of the warranty of habitability for the premises he rented, and (d) granted warrants of eviction in favor of Appellee for Appellants' non-payment of rent. Warrants of eviction and judgments in favor of the Appellants (in the sum of $2,000.00 for Crystal Campolito and the sum of $1,400.00 for Timothy Campolito) were issued on January 22, 2025.

Appellee, by and through Kirwan Law, Terry J. Kirwan, Jr., Esq., of counsel, filed briefs in opposition.

For the reasons set forth hereafter, the decisions of Dryden Town Court are reversed.

Procedural History

<u>Special Proceeding Against Crystal Campolito</u>

On August 7, 2024, Appellee served Crystal Campolito with a notice to pay rent or surrender possession ("14-Day Rent Demand"). The 14-Day Rent Demand served upon Crystal

Campolito claimed that she owed the sum of $13,200.00 in back-rent for the premises located at 183 North Street, Upstairs Apartment, Dryden, New York 13053 for the period of September 2023 to August 2024, in the amount of $1,100.00 per month, and demands payment within fourteen (14) days from the date of personal service of said notice, excluding the day of service.

On or about September 4, 2024, Appellee caused Crystal Campolito to be served with a notice of petition and verified petition to recover possession. Said petition alleges that Crystal Campolito is in possession of the premises, having entered into possession of the premises under a rental agreement between the parties in which Ms. Campolito agreed to pay $1,100 each month in advance on the first day of each month to Appellee as landlord. It also alleges, in relevant part:

> 5. That on the 1st day of August 2024, there became and still due and owing to said Petitioner under and by virtue of said agreement the sum of $13,200 for twelve (12) months' rent upon said premises, to wit: September 2023 ($1,100); October 2023 ($1,100); November 2023 ($1,100); December 2023 ($1,100); January 2024 ($1,100); February 2024 ($1,100); March 2024 ($1,100); April 2024 ($1,100); May 2024 ($1,100); June 2024 ($1,100); July 2024 ($1,100); and August 2024 ($1,100).
>
> 6. On August 7, 2024, there was duly served on behalf of the Petitioner, pursuant to § 711 of the Real Property Actions and Proceedings Law, a Notice to Pay Rent or Surrender Possession (see, copy of Notice, attached hereto, made a part hereof, and incorporated by reference as Exhibit "1"), requiring in the alternative, the payment of said rent or the possession of the said premises within fourteen (14) days from the date of service of said notice. More than fourteen (14) days have elapsed since the service of said notice and said tenants are in default of payment or delivery of possession, as required by said notice (see, copy of Affidavit of Service, attached hereto, made a part hereof, and incorporated by reference as Exhibit "2").
>
> 7. The Respondent has failed to pay the rent due and owing and continues to be in possession of said premises without the permission of the Petitioner after default in the payment of the rent and the demand therefore aforesaid.

Special Proceeding Against Timothy Campolito

On August 7, 2024, Appellee served Timothy Campolito with a 14-Day Rent Demand, which claimed that he owed the sum of $9,000.00 in back-rent for the premises located at 183 North Street, Ground Floor Apartment, Dryden, New York 13053 for the period of September 2023 to August 2024, in the amount of $750.00 per month, and demands payment within fourteen (14) days from the date of personal service of said notice, excluding the day of service.

On or about September 4, 2024, Appellee caused Timothy Campolito to be served with a notice of petition and verified petition to recover possession. Said petition alleges that Timothy Campolito is in possession of the premises, having entered into possession of the premises under a rental agreement between the parties in which Mr. Campolito agreed to pay $750.00 each month in advance on the first day of each month to Appellee as landlord. It also alleges, in relevant part:

> 5. That on the 1st day of August 2024, there became and still due and owing to said Petitioner under and by virtue of said agreement the sum of $9,000 for twelve (12) months' rent upon said premises, to wit: September 2023 ($750); October 2023 ($750); November 2023 ($750); December 2023 ($750); January 2024 ($750); February 2024 ($750); March 2024 ($750); April 2024 ($750); May 2024 ($750); June 2024 ($750); July 2024 ($750); and August 2024 ($750).
>
> 6. On August 7, 2024, there was duly served on behalf of the Petitioner, pursuant to § 711 of the Real Property Actions and Proceedings Law, a Notice to Pay Rent or Surrender Possession (see, copy of Notice, attached hereto, made a part hereof, and incorporated by reference as Exhibit "1"), requiring in the alternative, the payment of said rent or the possession of the said premises within fourteen (14) days from the date of service of said notice. More than fourteen (14) days have elapsed since the service of said notice and said tenants are in default of payment or delivery of possession, as required by said notice (see, copy of Affidavit of Service, attached hereto, made a part hereof, and incorporated by reference as Exhibit "2").
>
> 7. The Respondent has failed to pay the rent due and owing and continues to be in possession of said premises without the permission of the Petitioner after default in the payment of the rent and the demand therefore aforesaid.

Appearance on September 18, 2024

At the first appearance before the trial court on September 18, 2024, Appellants by and through counsel, filed affirmations in support of motions to dismiss seeking dismissal of the proceeding on the basis that Appellee's 14-Day Rent Demands and petitions fail to make an approximate good-faith sum of the rent Appellants allegedly owe and are therefore fatally defective. Appellants also filed motions to stay the proceedings seeking an order staying the proceedings due to code violations at the subject premises. The trial court held that a determination of whether the rent demand was improper was "a fact issue for the trier of fact" (September 18, 2024 Transcript, Page 11, line 13), and gave Appellee until October 9 to submit a response to said motions. The matters were adjourned for further proceedings on October 16, 2024.

Crystal Campolito's Motion to Dismiss and Motion to Stay Proceedings

With respect to Crystal Campolito's claim for improper rent demand in her motion to dismiss, Ms. Campolito plead that she currently resides at the subject premises pursuant to a Section 8 Housing Assistance Payments ("HAP") Contract whereby she is only obligated to pay Appellee a portion of the full market rent each month based on her income, and Ithaca Housing Authority ("IHA"), her Section 8 provider, is required to pay the remaining balance. Upon information and belief, Ms. Campolito claims that the full market rent for the premises is around $940.00 per month, not $1,100 as alleged in the 14-Day Rent Demand and petition, and her current rental portion is around $300.00 per month. As such, Appellee's 14-Day Rent Demand demands that Ms. Campolito pay the Appellee approximately $9,600.00 more than what Ms. Campolito was legally required to pay under her Section 8 HAP Contract. Therefore, Ms. Campolito argues that the predicate 14-Day Rent Demand does not bear a reasonable relationship to the amount of rent involved in this proceeding and, thus, does not constitute an "approximate good faith amount of rent" that can serve as a viable predicate for maintaining the instant summary non-payment proceeding. Consequently, Ms. Campolito asserts that trial court lacked jurisdiction to hear this case because defects in predicate notices are not subject to cure by amendment and require dismissal of the proceeding.

In the alternative, Ms. Campolito requested that the court stay the proceeding due to several code violations at the premises, which she claims have substantially interfered with her use and enjoyment of the premises over the past year, pursuant to Real Property Actions and Proceedings Law ("RPAPL") § 755(1)(a). Upon information and belief, Ms. Campolito claims that, on August 3, 2023, IHA sent the Appellee letters stating that several items in the premises failed a Housing Quality Standards (HQS) inspection and directed Appellee to make repairs within 30 days or else IHA would abate its rental payments. Thereafter, around September 2023, IHA sent the Appellee another letter stating that Appellee failed to make corrections to the subject premises, and, consequently, IHA would abate any further rent payments until the conditions were resolved. As of the date of filing, Ms. Campolito believed that Appellee still had not notified IHA of any corrections made to resolve the uninhabitable conditions in the premises, which resulted in the failed HQS inspection on August 3, 2023, IHA had not terminated Ms. Campolito's HAP Contract, and Ms. Campolito continues to reside at the subject premises pursuant to a Section 8 lease and is only obligated to pay the Appellee a portion of the full market rent. Even if some of the code violations had been resolved, in whole or in part, Ms. Campolito argues that Appellee bears the burden of proof for showing that the subject premises no longer violates any code provision or other local or state housing law, pursuant to RPAPL § 755(1)(a). Absent proof of such, she argued the trial court should find that such violations are dangerous to Ms. Campolito's life, health, and safety, and stay the instant proceeding pursuant to RPAPL § 755(1)(a) until the code violations are addressed in full.

Finally, Ms. Campolito requested that the proceedings be stayed pending the resolution of an action commenced in Tompkins County Supreme Court on or about December 23, 2023 by Ann Campolito, Crystal Campolito, and Timothy Campolito against Appellee and his business organization, The Roger W. Hatfield Trust, in which Appellants and Ann Campolito sought damages for violations of New York's Property Maintenance Code and the Warranty of Habitability under Real Property Law ("RPL") § 235-b.[1]

Timothy Campolito's Motion to Dismiss and Motion to Stay Proceedings

With respect to Timothy Campolito's claim for improper rent demand in his motion to dismiss, Mr. Campolito plead that he currently resides at the subject premises pursuant to a Section 8 HAP Contract whereby he is only obligated to pay the Appellee a portion of the full market rent each month based on his income, and Tompkins Community Action ("TCA"), his Section 8 provider, is required to pay the remaining balance. Upon information and belief, Mr. Campolito claims that his current rental portion is around $275.00 per month, not the full market rent of $750.00 per month as alleged in the 14-Day Rent Demand and petition. As such, Appellee's 14-Day Rent Demand demands that Mr. Campolito pay Appellee approximately $5,700.00 more than what Mr. Campolito was legally required to pay under his Section 8 HAP Contract. Therefore, Mr. Campolito argues that the predicate 14-Day Rent Demand does not bear a reasonable relationship to the amount of rent involved in this proceeding and, thus, does not constitute an "approximate good faith amount of rent" that can serve as a viable predicate for maintaining the instant summary non-payment proceeding. Consequently, the trial court lacked jurisdiction to hear this case because defects in predicate notices are not subject to cure by amendment and require dismissal of the proceeding.

In the alternative, Mr. Campolito requested that the court stay the proceeding due to several code violations at the premises, which he claims have substantially interfered with his use and enjoyment of the premises over the past year, pursuant to RPAPL § 755(1)(a). Mr. Campolito claims that, on August 4, 2023, TCA sent Appellee a letter stating that the subject premises failed a HQS inspection and directed Appellee to make repairs within 30 days or else TCA would abate its rental payments. Then, on September 5, 2023, TCA sent Appellee another letter stating that Appellee failed to make corrections to the subject premises, and, consequently, TCA would abate any further rent payments until the conditions were resolved. Notably, TCA's September 5 letter also stated that the abatement "does not affect the share of rent for which the tenant is responsible[,]" and that "*[t]he tenant may not pay more than his/her share of the rent* as outlined in the HAP Contract and subsequent share letters in accordance with the Housing Choice Voucher Program." As of the date of filing, Timothy Campolito believed that Appellee still had not notified TCA of any corrections made to resolve the uninhabitable conditions in the premises, which resulted in the failed HQS inspection on August 4, 2023, TCA had not terminated Mr. Campolito's HAP Contract, and Mr. Campolito continues to reside at the subject premises pursuant to a Section 8 lease and is only obligated to pay Appellee a portion of the full market rent. Even if some of the code violations had been resolved, in whole or in part, Mr. Campolito argues that Appellee bears the burden of proof for showing that the subject premises no longer violates any code provision or other local or state housing law, pursuant to RPAPL § 755(1)(a). Absent proof of such, he argued the trial court should find that such violations are dangerous to Mr. Campolito's life, health, and safety, and stay the instant proceeding pursuant to RPAPL § 755(1)(a) until the code violations are addressed in full.

[1] The Supreme Court action was subsequently discontinued, by stipulation of discontinuance dated October 8, 2024.

Just as Ms. Campolito had done, Mr. Campolito also requested that the proceedings be stayed pending the resolution of the above-referenced Supreme Court action against Appellee and his business organization, The Roger W. Hatfield Trust.

Appellee's Responses In Opposition to Appellants' Motions

On October 10, 2024, Appellee, by and through counsel, filed affirmations in opposition to the motions to dismiss and motions to stay proceedings. With respect to Crystal Campolito's motion to dismiss, Appellee asserted that he had not received partial payments from IHA as payment of Ms. Campolito's HAP she is alleged eligible to receive, and that Ms. Campolito failed to provide documentation establishing she is entitled to HAP and that Appellee has received the HAP payments for the months wherein rent is due and owing. Appellee also argued that Ms. Campolito failed to provide documentation to show the "full market rent" for the Town of Dryden, County of Tompkins, and State of New York to support her claim that the "full market rent" is less than the amount referenced in the 14-Day Rent Demand. Additionally, Appellee asserted that, upon information and belief, an inspection of the premises was completed on or about August 3, 2023, wherein it was reported that three (3) items had failed the inspection; however, it further states that the inspection was a "Pass with Comments." Therefore, it appears that Crystal Campolito, if eligible, would continue to have received HAP assistance as the premises "passed." Further, he stated that Ms. Campolito failed to provide documentation to establish that HAP was not going to be provided to her as a result of the alleged repairs. Therefore, Appellee argued that the trial court should deny the motion to dismiss as the 14-Day Rent Demand notice is in compliance with the RPAPL.

With respect to Crystal Campolito's motion to stay the proceedings due to the alleged code violations, Appellee argued that Ms. Campolito failed to allege how these alleged issues have made the premises dangerous or likely to become dangerous to her life, health, or safety, as required in RPAPL § 755(1)(a). Additionally, he stated that it does not appear that Ms. Campolito was constructively evicted from the premises, the property has not been condemned, and Ms. Campolito has not been forcibly dispossessed of the premises. Lastly, Appellee noted that the action in Supreme Court had been discontinued since the filing of Appellants' motions and, therefore, that portion of her motion is moot.

With respect to Timothy Campolito's motion to dismiss, Appellee asserted that he had not received partial payments from TCA as payment of Mr. Campolito's HAP he is alleged eligible to receive, and that Mr. Campolito failed to provide documentation establishing he is entitled to HAP and that Appellee has received the HAP payments for the months wherein rent is due and owing. Appellee also argued that Mr. Campolito failed to provide documentation to show the "full market rent" is "around" $625.00 per month and not the $750.00 per month referenced in the 14-Day Rent Demand. Therefore, Appellee argued that the court should deny the motion to dismiss as the 14-Day Rent Demand notice is in compliance with the RPAPL.

With respect to Timothy Campolito's motion to stay the proceedings due to the alleged code violations, Appellee argued that Mr. Campolito failed to allege how these alleged issues have made the premises dangerous or likely to become dangerous to his life, health, or safety, as required in RPAPL § 755(1)(a). Additionally, he stated that it does not appear that Mr.

Campolito was constructively evicted from the premises, the property has not been condemned, and Mr. Campolito has not been forcibly dispossessed of the premises. Lastly, Appellee noted that the action in Supreme Court had been discontinued since the filing of Appellants' motions and, therefore, that portion of his motion is moot.

Answer Filed by Crystal Campolito

On or about October 15, 2025, Crystal Campolito, by and through counsel, filed a verified answer in which she raised two (2) affirmative defenses—the court lacks jurisdiction to hear the instant summary non-payment proceeding due to Appellee's failure to comply with RPAPL § 741(5), and the court should stay the instant proceeding due to code violations at the subject premises. Ms. Campolito also raised a counterclaim for an order for repairs and other relief for violations of the warranty of habitability and described the conditions that she claimed made the premises uninhabitable, including but not limited to deprivation of heat and hot water for nearly one (1) year, starting around September 2023.

Attached to the verified answer are various exhibits, including a notice from NYSEG Crystal Campolito received on September 27, 2023 informing her that the heat, hot water, and natural gas appliances in the building had been shut off. Ms. Campolito stated that said appliances were not restored until around July 2024. Also referenced within and attached to the verified answer are two (2) Notices of Violation/Order to Remedy from the Town of Dryden Code Enforcement Officer, Shelley Knickerbocker. The first notice is dated October 11, 2023 and it references three (3) NYSEG red tags issued for the property for (1) leaking appliance in Apartment B, (2) leaking fuel line, and (3) other substandard condition, which resulted in the gas being shut off to Apartment 2, leaving the apartments with no heat, hot water or cooking facilities, stating that the remedy is to contact NYSEG and make the necessary corrections to restore heat, hot water and cooking facilities, as required, and directing that Appellee either eliminate the violations or file plans with that office for corrective action by October 16, 2023. The second notice is dated October 17, 2023 and it references the same three (3) NYSEG red tags detailed above, noting that Appellee has attempted corrective action, stating that this notice is reissued for thirty (30) days, and directing that Appellee either eliminate the violations or file plans with that office for corrective action by November 17, 2023. Additionally, referenced within and attached to the verified answer are a Completed Inspections Report by Section 8 Inspector for inspections performed on August 3, 2023, stating that the result of said inspection was "Pass with Comments." The first comment relates to the building exterior and the condition of the stairs, rails and porches, stating "back covered porch entrance [and] back left corner unsupported multi[-]tier structure needs to be reinforced with footer and ne[]." The second comment relates to "general health and safety" and evidence of infestation, stating "GHS – Treat Unit for Insect Infestation [and] all units in building need to be PROFESSIONALLY treated by a pest control com[]."

Also attached to Ms. Campolito's verified answer is a letter dated August 15, 2024 from the IHA to Appellee stating, in relevant part:

> During a recent inspection of your unit, located at **183 North Road (Upper) (Crystal Campolito)**, certain deficiencies to the Section 8

Housing Quality Standards (HQS) were noted. On **June 11, 2024**, you were notified of those issues and asked to do the necessary housing repairs within **30 Days**, in order to assure that the housing unit is decent, safe and sanitary. As of this date **July 17th 2024**, you have failed to comply with the **30 Day** request for repair. As per the Housing Assistance Payments (HAP) contract this agency has the right to take appropriate action in order to assure the safety of the tenant. At this time we have no written verification that the repairs have been corrected.

Per HUD regulation 24 CFR Part 982, subpart 1, the IHA Administrative Plan, and the HAP Contract, **Ithaca Housing Authority is abating your payment until such time as the repair(s) are completed, and a re-inspection has been done. NOTE: This means that you will not receive any money for the period of abatement, when the re-inspection has been done and repairs are corrected, the HAP payments will be prorated for the number of days left in the month after the inspection.** Please be advised that the tenant is still responsible for their portion of the rent. The abatement will be effective **August 1st, 2024** and will continue until all the above provisions are met. YOU DID NOT GET SUBSIDY FROM IHA FOR THIS MONTH; AND WILL CONTINUE UNTIL YOU SHOW IHA THE REPAIRS ARE COMPLETE.

We are sorry to have to take this action. However, we are required by government regulations to assure that all participants live in a decent, safe and sanitary housing that passes the HUD, HQS inspection. Please be advised that the maximum length of time that HAP may be abated is **90** days.

Attached is a copy of the letter that was sent to you in June.

Please submit completed work order or completed photos to johnd@ithacaha.com (emphasis in original).

Answer Filed by Timothy Campolito

On or about October 15, 2025, Timothy Campolito, by and through counsel, filed a verified answer in which he raised the same two (2) affirmative defenses raised by Crystal Campolito—the court lacks jurisdiction to hear the instant summary non-payment proceeding due to Appellee's failure to comply with RPAPL § 741(5), and the court should stay the instant proceeding due to code violations at the subject premises. Just as Crystal Campolito had done, Mr. Campolito also raised a counterclaim for an order for repairs and other relief for violations of the warranty of habitability and described the conditions that he claimed made the premises

[* 8]

uninhabitable, including but not limited to deprivation of heat and hot water for nearly one (1) year, starting around September 2023.

Attached to the verified answer are various exhibits, including a notice from NYSEG Timothy Campolito received on September 27, 2023 informing him that the heat, hot water, and natural gas appliances in the building had been shut off. Mr. Campolito stated that said appliances were not restored until around July 2024. Also referenced within and attached to the verified answer are the same two (2) Notices of Violation/Order to Remedy from the Town of Dryden Code Enforcement Officer, Shelley Knickerbocker, dated October 11, 2023 and October 17, 2023 that were attached to Crystal Campolito's answer and are referenced above. Additionally, referenced within and attached to the verified answer is a letter dated August 4, 2023 from TCA to Appellee stating that a special inspection was conducted at subject premises on August 4, 2023 in accordance with the HQS, by John Decker, and the unit inspection resulted in a "FAIL" rating per HQS. The letter states that the deficiencies noted therein ("Water heating is leaking, floors through[out] unit are damp and water damaged walls in bedroom are water damaged and has a giant hole" and "due to water damage and dampness air quality is poor") must be corrected within 30 days from the date of this inspection and, if the deficiencies are not corrected by September 3, 2023, HAP for the property will be abated effective September 4, 2023.

Also attached to Mr. Campolito's verified answer is a letter dated September 5, 2023 from TCA to Appellee reiterating that he was notified by letter dated August 4, 2023 that the premises failed the Section 8 HQS inspection and given until September 3, 2023 to complete the necessary repairs, and stating that since Appellee failed to notify TCA of the completion of the required repairs, they must abate HAP on the unit effective September 4, 2023. Said letter also specifically stated, "[p]lease be reminded that this action does not affect the share of rent for which the tenant is responsible" and "[t]he tenant may not pay any more than his/her share of the rent as outlined in the HAP Contract that Appellee signed and subsequent share letters in accordance with the Housing Choice Voucher Program." Said letter also indicated how Appellee could notify TCA when the repairs are completed.

<u>Appearance on October 16, 2024</u>

At the appearance on October 16, 2024, after briefly reviewing the defenses and claims raised in the answers, the trial court returned to Appellants' previous motions to dismiss and denied "the procedural request for a dismissal based upon the 14-day notice" (October 16, 2024 tr at 10, lines 5-6). The trial court then addressed the alleged uninhabitable conditions in the premises, stating "clearly the issue is with no heat that abatement of rent would be significant starting in October of 2023. And if there was no heat in that premises up through 2024 . . . [t]hey would be entitled to an abatement of rent" (*id.* at 10, lines 9-16). Later during the appearance, counsel for Appellants noted that Appellants raised another basis for the trial court's lack of jurisdiction in their answers—no notice for good cause—and before he could finish his statement, the trial court stated:

> Stop. Stop. This needs to be resolved. The technicalities I understand, but we're all here now, there's, there's no prejudice to

> anybody at this point. The only prejudice is your clients clearly want to stay in this place, they don't want to leave, and they still want to not pay rent. So I don't think, once the dangerous conditions have been alleviated, I don't think they're entitled to any further stay here. The jurisdictional issue, we're all here now and that seems to be almost, so in other words I'm supposed to tell them okay start a new proceeding tomorrow and we'll be back here in a month with the same exact issues we have now. Now if you want to challenge that, that's fine, you guys, you can, you can do that. But it's time for them to either start paying rent or go. I, I mean it's simple. It's not, you know they, they've got the benefit of the, there were problems, there were issues, the abatement is going to be a, a lot, a significant portion of the rent, but now it's time for them to go. They've got to do something . . . Well it looks like I'm the one that's going to have to take the action. So here's what I'm going to do. I'm going to put this on for [November] 6th okay? If your clients haven't figured out what they're going to do, either stay or pay rent or not pay rent and rely on either another technicality or something else, it's time for them to go . . . At that point I'll give them their abatement but I'm also going to sign a, the warrant of eviction if they don't have a plan in place to get out . . . . (*id.* at 27, lines 6-25 and Page 28, lines 5-20).

Thereafter, the trial court asked counsel for Appellants, "[s]o what was, what's the latest jurisdictional defense?" and counsel for Appellants cited the "good cause law" in RPAPL § 741 and stated his understanding of what the law required and how it is applicable to the instant proceedings. The following exchange then took place:

> THE COURT: Come on, stop.
>
> MR. DOLAN: -- it's still predicate—
>
> THE COURT: Let's get it done. You can, look you can always take up on appeal if you don't like the warrant of eviction when I issue it, but it's time. They've got to, they're going to get this huge abatement of rent and it's time.
>
> MR. DOLAN: Okay.
>
> THE COURT: It's as simple as that at this - -
>
> MR. DOLAN: So for - -
>
> THE COURT: So November 6th, either they're going to have a plan in place to get moving, or if that's not the case I'm going to sign the

> warrant of eviction and I'll give them time to get out, but that's going to be about it.
>
> MR. DOLAN: If, if we haven't reached an agreement by then is, is the Court going to hear arguments and testimony on you know the, the relief that we're seeking?
>
> THE COURT: You, they're going, they're going to forgive the rent. You can, what, what better relief than that? Now you want punitive damages and, it's time. They're going to relieve the rent. These people are going, you know there's not going to be any rent to pay. So it's time to go (*id.* at 31 lines 10-25; 32, lines 1-10).

Appearance on November 6, 2024

At the appearance on November 6, 2024, the parties informed the trial court that they were unable to reach a settlement, and Appellants requested a trial (*see* November 6, 2024 tr at 1-2; 5-6). The trial court repeated that "the warrant of eviction would still issue. So that's why I don't understand why we can't resolve this" (*id.* at 11, lines 4-6), attempted to narrow the issues for trial, and scheduled an initial trial date for December 4, 2024, at 2:30 p.m. (*id.* at 17-19).

First Day of Trial – December 4, 2024

Before taking any testimony on December 4, 2024, the trial court engaged in another lengthy exchange with counsel regarding the relief being sought and appeared to express frustration and dismay with having to proceed with trial (*see* December 4, 2024 tr at 1-7).

Testimony of Todd E. Twigg

The first witness called by Appellee was Todd E. Twigg, a self-employed maintenance worker who performed plumbing, heating, and electrical contracting work for Appellee (*see id.* at 9-10). Mr. Twigg testified that he was contacted by the Appellee in early-June 2024 to install a boiler for him at the subject premises, and, upon assessing the issues at the premises, he determined that the boiler was not repairable, and there were a couple of leaks in the gas line, which had been shut off, and some of the baseboard needed to be repaired (*id.* at 14, lines 6-24). Mr. Twigg stated that he removed a water heater, repaired the gas line, installed a new boiler that provides both heat and hot water, repaired the baseboard in the first-floor apartment, and that the work was completed on July 24, 2024 (*see id.* at 14, lines 14-25; 16, lines 1-22). He also testified that he inspected the boiler once it was installed and confirmed that it was fully operable and there was hot water (*see id.*at 15, lines 1-7). He interacted with NYSEG during the job and stated that NYSEG came to the premises and reconnected the gas line on July 24, 2024 (*see id.* at 15, lines 8-13). On cross-examination, Mr. Twig acknowledged that he never received any formal training and has no certificates or licenses for maintenance repair work (*see id.* at 19, lines 1-9).

Testimony of Shelly Knickerbocker

Appellee's second witness was Shelly Knickerbocker, the Dryden Code Enforcement Officer. Ms. Knickerbocker testified that she came to know the Appellee after she received a complaint of no heat from Timothy Campolito in September 2023 (*see id.* at 26, lines 1-9). She stated that the same day she received the initial complaint she also received a complaint from the fire department indicating that a gas leak odor had been detected, and she responded the next day to inspect the cause of such (*see id.* at 26, lines 12-15). NYSEG shut the gas off on September 27, 2023 (*see id.* at 26, lines 14-18). When Ms. Knickerbocker arrived at the premises, she saw that NYSEG had issued three (3) red tags, which she made copies of, and she spoke with Timothy Campolito (*see id.* at 26, lines 21-25; 27, lines 1-4). Not only had NYSEG turned the gas meter off, but they also tagged the stove in Apartment B; therefore, there was no heat, no cooking appliance, and no hot water (*see id.* at 28, lines 24-25, 29, lines 1-2). She exchanged phone calls with Appellee over the next couple of days (*see id.* at 28, lines 21-24). On October 11, 2023, she performed an inspection, wherein she went inside Apartment B, which was occupied by Timothy Campolito, took photographs, and looked at the water heater (*see id.* at 29, lines 4-12). Following said inspection, she issued a violation notice dated October 17, 2023 to the Appellee, which was sent to him in Florida by certified mail (*see id.* at 29, lines 15-18). The mailing was subsequently returned, whereupon she revised the dates and re-sent the notice to him in Florida (*see id.* at 29, lines 18-22). That mailing, too, was returned, so she emailed the notice to the Appellee and called him on the telephone on October 23, 2023 to notify him that the document had been emailed to him (*see id.* at 30, lines 7-16). After discussions with the municipal attorney, she issued a notice of intent to condemn the property, which was posted at the site, emailed, and mailed by certified mail to the Appellee on December 6, 2023 (*see id.* at 30, lines 21-25, 31, lines 1-7).

Following said posting of the notice of intent to condemn, counsel for the parties requested a housing hearing, which entails the appointment of a hearing officer by the Town and took place on January 8, 2024 (*see id.* at 32, lines 21-25; 33, lines 1-7). At the conclusion of the hearing, the hearing officer, Ray Burger, stated that the tenants could stay in the residences (*see id.* at 33, lines 9-12; 14-16).

On or about January 22, 2024, Ms. Knickerbocker received another call from the fire department indicating that there were some broken pipes at the residence and the fire department had shut the water off (*see id.* at 33, lines 22-24; 34, lines 10). The broken pipe was repaired the same day and arrangements for the repair work were made by Sheila Guy, another tenant of Appellee's who owns a business next to the subject premises and whom Ms. Knickerbocker understood looked after the property for the Appellee (*see id.* at 34, lines 1-21; 35, lines 1-7). Based upon reports from another tenant, Ann Campolito, Ms. Knickerbocker understood that the cause of the broken pipes may have been due to the lack of heat at the premises (*see id.* at 35, lines 2-15).

On February 26, 2024, Ms. Knickerbocker went to the premises again and verified that the gas meter was still locked out, the hot water heater had not been replaced, the tenant in Apartment B, Timothy Campolito, had moved into the smaller office part of the premise because there was no heat and that was a smaller area to heat (*see id.* at 35, lines 19-25; 36, line 1). She issued another

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violation, which was mailed to Appellee by certified mail, and took more pictures (*see id.* at 36, lines 1-5).

On July 21, 2024, the Appellee submitted a building permit application for the repair of the hot water boiler, but the permit was never issued because the Town requires workers' compensation insurance or an exception form from Mr. Twigg and that was not provided (*see id.* at 36, lines 15-24). Other than repeatedly reminding Appellee that proof of workers compensation insurance was needed, she had no further contact with Appellee (*see id.* at 37, lines 1-3).

On cross-examination, Ms. Knickerbocker testified that on October 13, 2023, she had phone contact with Appellee, who informed her that a man named Bill Turner would make repairs to the premises, but Ms. Knickerbocker told Appellee that she had contacted Mr. Turner, and he reported that he is not making the repairs (*see id.* at 39, lines 22-25; 40, lines 1-6). Appellee stated he would hire someone else, and Ms. Knickerbocker told him to make the repairs, or she would be serving him with a code appearance ticket (*see id.* at 40, lines 7-8). Two notices of violations, dated October 11 and 17, 2023, were admitted into evidence (*see id.* at 40-42). Ms. Knickerbocker stated that the first violation is under 2020 New York State Property Maintenance Code ("Property Maintenance Code") § 603.1, which is mechanical equipment and appliances (*see id.* at 43, lines 9-11). The other violations are under Property Maintenance Code § 603.3, which relates to heat supply, Property Maintenance Code § 505.4, which relates to water heating facilities, and Property Maintenance Code § 404.7, which is food preparation (*see id.* at 43, lines 16-21). Ms. Knickerbocker did not receive notice from Appellee that the violations had been corrected in 2023 (*see id.* at 45, lines 8-14), and she has not verified that the boiler is working because Mr. Twig has not complied with the requirements to obtain a permit, which would trigger an inspection (*see id.* at 49, lines 3-13).

On November 10, 2023, Appellee left Ms. Knickerbocker a message stating that the situation had been rectified because electric heating units had been installed, but the tenant subsequently called and said that had not occurred (*see id.* at 50, lines 20-23). She also testified that she observed cockroaches at the premises in October 2023 (*see id.* at 51, lines 5-12). The tenants bought their own space heaters to heat the premises while the boiler was not working (*see id.* at 56, lines 12-14).

<u>Testimony of Appellee</u>

The final witness in the Appellee's case in chief was Appellee. He testified that Ann Campolito has been a tenant of his at the subject premises for the past 7 to 9 years and her monthly rent is $695.00 (*see id.* at 58, lines 8-14, 21-22). Crystal Campolito has been a tenant for 6 or 7 years, and her monthly rent is $975.00 (*see id.* at 58, lines 15-17). Timothy Campolito has been a tenant for approximately 9 years, and his monthly rent is $675.00 (*see id.* at 58, lines 18-20). He thinks he hasn't received any rent from any of those tenants since September 2022 (*see id.* at 59, lines 2-5). Appellee contacted Bill Turner to repair/replace the boiler in or about October 2023, but it was going to take up to six (6) weeks for a new boiler to arrive (*see id.* at 59). From October 2023 to May 2024, Appellee believed that Mr. Turner had ordered a new boiler and was going to perform the work, but Mr. Turner subsequently contracted COVID, resigned, and obtained other employment (*see id.* at 59-61). Before contacting Mr. Twigg to perform the work, Appellee had also contacted David Peak, who "priced himself out of it" because he wanted $45,000 to do the work, which he could not afford (*see id.* at 60, lines 1-14).

Appellee testified that Timothy Campolito lived in Apartment 2, accused Mr. Campolito of living in "uninhabitable conditions" that were caused by Mr. Campolito, and acknowledged that Mr. Campolito's apartment had been infested with cockroaches for the last two (2) to three (3) years (*see id.* at 63-66). He acknowledged being notified of code violations by Ms. Knickerbocker and claimed that "everything had been done" according to Sheila (*see id.* at 65, lines 22-23), whom he relies on to oversee the property (*see id.* at 63, lines 9-11). He also acknowledged that Mr. Twig had yet to provide Ms. Knickerbocker with the necessary paperwork to obtain a permit for the repair work (*see id.* at 66, lines 3-14). He thinks he saw the red tags left by NYSEG three (3) or four (4) days after they were issued, and he has not had any contact with NYSEG after they turned the gas back on (*see id.* at 67, lines 2-11). He had not spoken with any of the Campolito tenants in the past six months (*see id.* at 68, lines 10-13). He acknowledged that the tenants purchased the electric heaters (*see id.* at 69, lines 16-17).

On cross-examination, Appellee, who splits his time living in Florida and Dryden, New York (*see id.* at 71 to 72), admitted that he did not follow up with Mr. Turner to confirm if the work on the boiler had been performed for the period of October 2023 to June 2024 because he was under the impression that the electric heat was sufficient and there were no complaints by the tenants made to Sheila (*see id.* at 73, lines 10-24). He also confirmed that he had still not received confirmation from the Town of Dryden that the boiler had been fixed and has no idea whether the premises is still in violation of code (*see id.* at 75, lines 8-15).

<u>Testimony of Kayla Geiger</u>

Appellants' first witness, Kayla Geiger, is a housing specialist at Tompkins Community Action ("TCA") who was Timothy Campolito's caseworker on-and-off over the past four years (*see id.* at 82, lines 21-25; 83, lines 1-4). After explaining the Section 8 voucher program and confirming that Timothy Campolito had an active Section 8 voucher (*see id.* at 82, lines 18-25; 83, lines 1-7; 86, lines 23-25), she testified that Mr. Campolito's total contract of rent as of September 5, 2023 was $675.00, of which he was responsible for paying $300.00 (*see id.* at 86, lines 7-19). On December 1, 2024, TCA made a payment of $415.00 to Appellee (*see id.* at 87, lines 19-22). The last payment TCA made to Appellee was $375.00 on September 1, 2023 (*see id.* at 87, lines 23-25). She confirmed that Appellee had written notice in the form of "rent adjustment letters" sent to Appellee and Mr. Campolito by TCA stating that, effective January 1, 2023, Mr. Campolito had a Section 8 voucher and his portion of the rent was $300.00 (*see id.* at 88-90). On August 4, 2023, Mr. Campolito's apartment was inspected and failed, noting that there were "[p]oor conditions in the living room, there was water damage so it failed for that. Poor conditions in the kitchen, there was water damage so that failed. Wall conditions, there was a giant hole, and then there's also water damage to the floor and what looks like a bedroom" (*see id.* at 90-92). TCA notified Appellee of the failed inspection by letter dated August 4, 2023, which was sent to his Florida address and was admitted into evidence. Said letter advised that if the deficiencies listed were not corrected by September 3, housing assistance payments for the property will be abated effective September 4, 2023 (*see id.* at 92-94). TCA also sent Appellee a "notice of abatement" letter dated September 5, 2023 notifying him that housing payments were abated after September (*see id.* at 96-99). Following the issuance of said "notice of abatement," the tenant is still responsible for their portion of the rental obligation and the "half payments" made by TCA cease, leaving the tenant six (6) months to find a new place to live or hope that it gets fixed (*see id.* at 99, lines 13-19). Ms. Geiger also confirmed that Appellee has been Mr. Campolito's landlord since October 2015 and that Mr. Campolito had a Section 8 voucher from 2015 to June 2024 (*see id.* at 99-101).

Testimony of John Ducey

Appellants' second witness was John Ducey, who has worked for Ithaca Housing Authority ("IHA") for 16 years; for the past four (4) years, he has been IHA's inspector and performs annual inspections, special inspections, and initial inspections as part of the Section 8 voucher program (*see id.* at 107, lines 13-25). He is familiar with Ann and Crystal Campolito, as he has done inspections of their residences for approximately four (4) years (*see id.* at 108, lines 4-10).

On August 3, 2023, Mr. Ducey inspected Crystal Campolito's apartment and prepared an inspection report that was received as an exhibit in court on December 4, 2024 (*see id.*at 108). Said report states that the premises failed inspection based on the condition of the back covered porch entrance ("back covered porch entrance. Back left corner unsupported multitier structure. Needs to be reinforced with footer and new support. Starting to pull away from home") and insect infestation ("Treat Unit for Insect Infestation. All units in building need to be PROFESSIONALLY treated by a pest control company").

By letter dated August 15, 2024, Mr. Ducey advised Appellee that: (a) deficiencies in the Section 8 Housing Quality Standards were noted during a recent inspection of Crystal Campolito's apartment, (b) Appellee was notified of those issues on June 11, 2024 and asked to do the necessary repairs within 30 days, (c) as of July 17, 2024, he has failed to comply with the 30-day request for repairs, (d) consequently, IHA is abating his payment until such times as the repairs are completed, and a re-inspection has been completed (*see* IHA letter dated August 15, 2024 received as unmarked exhibit in court on December 4, 2024). Mr. Ducey confirmed that rent was abated for both Ann and Crystal Campolito in or about June 2024 and that Appellee had received partial rental payments from the IHA up until the abatement started (*see* December 4, 2024 tr at 118-119). Following the completion of Mr. Ducey's testimony, the matter was adjourned for further proceedings on December 16, 2024.

Second Day of Trial – December 16, 2024

On December 16, 2026, Ann Campolito[2], Crystal Campolito, and Timothy Campolito testified.

Testimony of Crystal Campolito

Crystal Campolito testified that she is employed and her two children, age 14 and 16, have lived at the subject premises for approximately six (6) years (*see* December 16, 2024 tr at 39, lines 17-25). In or about August 2023, she was receiving Section 8 and the portion of the rent for the

[2] Ann Campolito's testimony is not summarized herein because she does not have an appeal pending.

premises that she was responsible for was $300.00 (*see id.* at 40, lines 1-4). After the trial court engaged in another lengthy discussion of the alleged improper rent demand in Appellee's 14-Day Rent Demand and petition, the trial court again rejected counsel's argument, stating in part, "so you want the petition dismissed so we can start all over again is basically what you're saying" (*id.* at 40, lines 23-25), and "we're in a position now where there's certainly been sufficient notice to say we need you to leave, you're holding over, we need you to leave" (*id.* at 42, lines 4-7). When counsel for Appellants took exception to the trial court incorrectly characterizing the proceedings as a hold over proceeding, the trial court stated, "[a]lright, well look, you know what? You want to appeal, you can appeal. That's all, I mean that's all you can say. But the abatement has been granted through December, so I'm ready to make a ruling. So finish up with your witnesses" (*id.* at 42, lines 8-14). By stating that it was "ready to make a ruling" before Appellants' first witness had even finished testifying and before Appellants had an opportunity to put on any other proof, the trial court arguably signaled that it had prejudged the case, which is very troubling to this Court. Thereafter, the trial court again engaged in a lengthy discussion with counsel and was again dismissive of Appellants' arguments regarding the alleged improper rent demand in Appellee's 14-Day Rent Demands and petitions (*see id.* at 42-49).

Crystal Campolito went on to testify to the approximate $800.00 in expenses that she incurred purchasing bottled water, heaters to heat the premises, and containers to store kitchen utensils and food in to ensure they weren't contaminated by pesticides for the cockroaches that had infested the premises, and the receipts for such purchases were admitted into evidence (*see id.* at 49-54).

Testimony of Timothy Campolito

Timothy Campolito testified that he has lived at 183 North Road, Dryden, New York since October of 2015 and is supposed to be renting the side apartment but is currently in an office (*see id.* at 54-55). Pictures of Timothy Campolito's apartment were admitted into evidence (*see id.* at 56-57). He testified that before August 2023, his apartment was cluttered because he was trying to research and sell some antiques for a friend online and explained that the garbage bags in the apartment were filled with returnable cans and bottles, not garbage (*see id.* at 57-58). He had to move everything out of the bedroom because the bedroom had been flooded by the water heater, which had been leaking for six (6) to eight (8) months, causing black mold and water damage to the wall between the water heater and his bedroom, the carpet under his bed, and his king sized mattress, which he had purchased for $2,399.00 with funds from a Social Security Disability settlement six (6) years earlier prior moving into the residence, was destroyed by the mold (*see id.* at 58-60). He also noted that the small office he was forced to occupy was a fraction of the size of the apartment space he was supposed to pay rent for and lacked a bathroom, kitchen, or cooking facilities (*see id.* at 60, lines 1-10).

Several weeks after Timothy Campolito moved into the side office, he was notified by Appellee that he had to be out of the office immediately and back into his apartment, even though the apartment was still uninhabitable (*see id.* at 62, lines 1-6, 6-21). During his testimony, Timothy Campolito read the notice, dated September 27, 2024, that had been posted to his door:

> I, Roger N. Hatfield[,] landlord[,] hereby give notice that your apartment must be brought up to health department code or, on or before October 7th or I will consider our lease to be null and void and you will have to vacate the apartment on or before that date. This means inside and outside of anything that belongs to you. Either myself or the health department will be there to do an inspection on October 7, 2023. Sincerely yours, Roger Hatfield, owner and landlord. P.S. New York Code says that, New York State has a code that states there is to be no smoking within 25 feet of any building that has three or more apartments. Also once you have your apartment ready for inspection the mold situation will be taken care of. You will no longer have access to the room next door as I have a business tenant that will be moving in. Thank you for your understanding and cooperation. Id' really hate to see you have to move (*Id.* at Page 62, lines 23-25; Page 63, lines 1-15).

The only inspection that was completed on October 7, 2023 was an inspection done by the other tenant, Sheila (*see id.* at 63, lines 16-19).

Shortly after receiving said notice, Timothy Campolito and his mother, Ann Campolito, had left. When they got back, they smelled gas coming from Timothy Campolito's apartment, prompting them to call NYSEG, which ultimately issued "red tags" (*see id.* at 62, lines 6-10).

At some point in September, a police officer tried to remove Timothy Campolito from the side office, stating that Mr. Campolito had attacked Appellee in the driveway and laid his hands on Appellee, and he needed to be out of the office immediately because he was there without Appellee's permission (*see id.* at 63, lines 20-25). The officer also stated that he was willing to arrest Timothy Campolito right then and there (*see id.* at 64, lines 1-3). Following this incident, Timothy Campolito contacted his attorney and "started this whole process" (*see id.*). When asked about the incident the police officer was referring to, Mr. Campolito stated that he had approached Appellee, who was on a tractor in Sheila's driveway, with the three (3) NYSEG shut off tags in hand and handed the tags to Appellee, stating "here's our tickets to your shitshow." Appellee then grabbed Mr. Campolito's hand "very aggressively and tightly and would not let [Mr. Campolito] go, and started moving the tractor forward," almost running over Mr. Campolito, who was standing near the "big wheel" on the left side of the tractor (*see id.* at lines 4-16). To get Appellee away from the steering wheel and out of control of the tractor, so he would not be run over, Mr. Campolito grabbed Appellee by the back of the shirt and brought him over the left fender (*see id.* at lines 16-22). Mr. Campolito then testified about the search he and his mother had engaged in for a new apartment and testified that Appellee had given him bad landlord references, claiming that Mr. Campolito had destroyed property and had not paid him in years (*see id.* at 55, lines 1-19). Mr. Campolito said, "[i]t feels like I'm being held prisoner by my landlord" (*see id.* at line 19). Some of the aforementioned landlord references were admitted into evidence (*see id.* at 67-68).

With respect to the work that was done at the premises, Timothy Campolito stated that Todd Twigg started to do work in June or July 2024, tearing out the old water heater and replacing it with an all-in-one water heater/boiler, requiring pipes to be ripped out and moved inside his apartment (*see id.* at 70, lines 4-16). When asked why he had not moved back into the portion of the premises that was his original apartment, Mr. Campolito stated:

> Because there is still holes in the wall in my bedroom from where they had to cut out the drywall to get to the pipes that needed to be replaced. There's two holes in the bedroom that are still there. There's still mold on the carpet, that hasn't been replaced. And they removed several pieces of drywall to take stuff out and never put it back, so there's cosmetic issues as well that were never fixed . . . and debris left everywhere. I meant they left all of, this is still there, all of their packages from all the nuts and bolts they needed to install everything. They tore a wooden shelf in the closet out and totally just threw, sorry, and totally just threw that out into the living room and piled it on top of my stuff that I had packed against a wall that has been ready for me to move out of this said apartment for almost a year now . . . [the conditions referred to] started around the time that the heater and hot water started having issues. I meant the hole started, the drywall started rotting out in the bedroom in one spot because there were leaky pipes . . . Oh and the construction materials, they're still there and that was started around, they left that when they were, they said they were done with the hot water heater and that was in July . . . So I still have construction debris and my room is full of all kinds of stuff that doesn't belong to me (*see id.* at Page 70, lines 21-25; Page 71, lines 1-25; Page 72, lines 2-3).

Timothy Campolito then testified to the expenses that he incurred for items he needed to "get through not having heat and hot water," which amounted to approximately $300.00 and included a heater, a heating blanket, and an air conditioner (*see id.* at 72-73).

<u>Trial Court Recalled Appellee to Testify</u>

The trial court then re-called Appellee and proceeded to question him about why he gave bad landlord references for the Campolitos (*see id.* at 77-78). When the trial court inquired why it took so long for Appellee to have the boiler replaced, Appellee blamed Bill Turner and mentioned that he offered a new lease to Crystal Campolito with a raised rent of $1,100.00 (*see id.* at 79-80).

Arguments on Appeal

Appellants present three (3) arguments as the basis for each of their appeals. First, they argue that the predicate 14-Day Rent Demands were defective because they failed to state an approximate good faith amount of rent owed and, therefore, the motions to dismiss should have been granted by the trial court. Second, Appellants argues that it was a "clear error of law" for the trial court to issue a warrant of eviction while also granting a full abatement of rent from October 2023 to December 2024 based on Appellants' counterclaims under RPL § 235-b seeking abatement of rent for Appellee's violation of the warranty of habitability. Third, Appellants assert an affirmative defense that the petitions were jurisdictionally defective, warranting dismissal, because the notices of petition and petitions for non-payment of rent that were served upon Appellants on September 4, 2024 failed to include a notice of good cause required by RPAPL § 741(5-a), which became effective August 18, 2024.

Appellee argues that the trial court properly awarded warrants of eviction in these matters having found, after a lengthy hearing, that the back rent was abated but that Appellants were holdover tenants on the month-to-month lease. Furthermore, Appellee asserts that Appellants have not suffered any prejudice because of the alleged defects, the 14-Day Rent Demands at issue were proper and based upon a good faith estimates of the rent due and owing, Appellants suffered no prejudice by the lower court awarding warrants of eviction, and the premises are exempt from to the "good cause eviction law" because Appellee is a "small landlord."

Analysis

Point I

Eviction proceedings are governed by the summary proceedings provided for in Article 7 of the RPAPL. "A summary proceeding is a special proceeding governed entirely by statute and it is well established that there must be strict compliance with the statutory requirements to give the court jurisdiction" (*Berkeley Associates Co. v Di Nolfi*, 122 AD2d 703, 705 [1st Dept 2008]; *see also Burke v. Aspland*, 56 AD3d 1001, 1002 [3d Dept 2008] ["For a court to obtain jurisdiction in a proceeding governed entirely by statute, the parties must strictly comply with the statutory requirements."]; *Matter of Cat Hollow Estates, Inc. v. Savoia*, 46 AD3d 1293, 1294 [3d Dept 2007] ["We note that summary landlord-tenant proceedings are special proceeding[s] governed entirely by statute and it is well established that there must be strict compliance with the statutory requirements to give the court jurisdiction."]). Tenants, as defined in RPAPL § 711, may only be evicted through a special proceeding maintained on certain statutory grounds outlined in RPAPL § 711(1)-(6). RPAPL § 711(2) provides that a special proceeding may be maintained upon the ground that:

> Tenant has defaulted in the payment of rent, pursuant to the agreement under which the premises are held, and a written demand of the rent has been made with at least fourteen days' notice requiring, in the alternative, the payment of rent, or the possession of the premises, has been served upon the tenant as prescribed by section seven hundred thirty-five of this article. *The fourteen-day notice shall append or contain the notice required pursuant to section two hundred thirty-one-c of the real property law, which shall state the following*: (i) if the premises are or are not subject to article six-A of the real property law, the "good cause eviction law," and if the premises are exempt, such notice shall state why the premises are exempt from such law; (ii) if the landlord is not

> renewing the lease for a unit subject to article six-A of the real property law, the lawful basis for such non-renewal; and (iii) if the landlord is increasing the rent upon an existing lease of a unit subject to article six-A of the real property law above the applicable local rent standards, as defined in subdivision eight of section two hundred eleven of the real property law, the justification for such increase . . . (emphasis added).

In relevant part, the notice required under RPL § 231-c shall read as follows:

> NOTICE TO TENANT OF APPLICABLITY OR INAPPLICABILITY OF THE NEW YORK STATE GOOD CAUSE EVICTION LAW. This notice from your landlord serves to inform you of whether or not your unit/apartment/home is covered by the New York State Good Cause Eviction Law (Article 6-A of the Real Property Law) and, if applicable, the reason permitted under the New York State Good Cause Eviction Law that your landlord is not renewing your lease. Even if your apartment is not protected by Article 6-A, known as the New York State Good Cause Eviction Law, you may have other rights under other local, state, or federal laws and regulations concerning rents and evictions. This notice, which your landlord is required to fill out and give to you, does not constitute legal advice. You may wish to consult a lawyer if you have any questions about your rights under the New York State Good Cause Eviction Law or about this notice.
> NOTICE (THIS SHOULD BE FILLED OUT BY YOUR LANDLORD)
> UNIT INFORMATION
> STREET:
> ______________________________________
> UNIT OR APARTMENT NUMBER:
> ______________________________________
> CITY/TOWN/VILLAGE:
> ______________________________________
> STATE:
> ______________________________________
> ZIP CODE:
> ______________________________________
> 1. IS THIS UNIT SUBJECT TO ARTICLE 6-A OF THE REAL PROPERTY LAW, KNOWN AS THE NEW YORK STATE GOOD CAUSE EVICTION LAW? (PLEASE MARK APPLICABLE ANSWER)
> YES ____________________
> NO ____________________
> 2. IF THE UNIT IS EXEMPT FROM ARTICLE 6-A OF THE REAL PROPERTY LAW, KNOWN AS THE NEW YORK

STATE GOOD CAUSE EVICTION LAW, WHY IS IT EXEMPT FROM THAT LAW? (PLEASE MARK ALL APPLICABLE EXEMPTIONS)

A. Village/Town/City outside of New York City has not adopted good cause eviction under section 213 of the Real Property Law ______________________;

B. Unit is owned by a "small landlord," as defined in subdivision 3 of section 211 of the Real Property Law, who owns no more than 10 units for small landlords located in New York City or the number of units established as the maximum amount a "small landlord" can own in the state by a local law of a village, town, or city, other than New York City, adopting the provisions of Article 6-A of the Real Property Law, known as the New York State Good Cause Eviction Law, or no more than 10 units, as applicable. In connection with any eviction proceeding in which the landlord claims an exemption from the provisions of Article 6-A of the Real Property Law, known as the New York State Good Cause Eviction Law, on the basis of being a small landlord, the landlord shall provide to the tenant or tenants subject to the proceeding the name of each natural person who owns or is a beneficial owner of, directly or indirectly, in whole or in part, the housing accommodation at issue in the proceeding, the number of units owned, jointly or separately, by each such natural person owner, and the addresses of any such units, excluding each natural person owner's principal residence. If the landlord is an entity, organized under the laws of this state or of any other jurisdiction, then such landlord shall provide to the tenant or tenants subject to the proceeding the name of each natural person with a direct or indirect ownership interest in such entity or any affiliated entity, the number of units owned, jointly or separately, by each such natural person owner, and the addresses of any such units, excluding each natural person owner's principal residence (exemption under subdivision 1 of section 214 of the Real Property Law) ______________________; . . .

4. IF THIS UNIT IS SUBJECT TO ARTICLE 6-A OF THE REAL PROPERTY LAW, KNOWN AS THE NEW YORK STATE GOOD CAUSE EVICTION LAW, AND THIS NOTICE SERVES TO INFORM A TENANT THAT THE LANDLORD IS NOT RENEWING A LEASE, WHAT IS THE GOOD CAUSE FOR NOT RENEWING THE LEASE? (PLEASE MARK ALL APPLICABLE REASONS)

A. This unit is exempt from Article 6-A of the Real Property Law, known as the New York State Good Cause Eviction Law, for the reasons stated in response to question 2, above (IF THIS ANSWER IS CHECKED, NO OTHER ANSWERS TO THIS QUESTION SHOULD BE CHECKED): ______________________; . . .

> E. The landlord is not renewing the lease because the tenant has failed to pay rent due and owing, and the rent due or owing, or any part thereof, did not result from a rent increase which is unreasonable. A rent increase is presumptively unreasonable if the increase from the prior rent is greater than the lower of: (a) 5 percent plus the annual percentage change in the consumer price index for all urban consumers for all items as published by the United States Bureau of Labor Statistics for the region in which the housing accommodation is located, as published not later than August 1st of each year by the Division of Housing and Community Renewal; or (b) 10 percent (good cause for eviction under paragraph a of subdivision 1 of section 216 of the Real Property Law): ______________________; . . . (RPL § 231-c[1]).

A proper demand for rent is a "long-established pre-requisite to the maintenance of a summary proceeding" (*Zelina Realty Corp. v. Masterandrea*, 472 NYS2d 980, 987 [Civ Ct, NY County 1984]; *see also* RPAPL § 711[2]) and must fairly afford the tenant actual notice of the alleged amount due and the period for which such claim is made (*see, ShopRite Supermarkets, Inc. v. Yonkers Plaza Shopping, LLC*, 29 AD3d 564, 565-566 [2d Dept 2006] [citing to *Schwartz v. Weiss-Newell*, 87 Misc 2d 558, 561 [Civ Ct, NY County 1976]). "At a minimum, the landlord or his agent should 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" (*ShopRite*, 29 AD3d at 565-566). Predicate notices cannot be amended (*Chinatown Apts. v. Chu Cho Lam*, 51 NY2d 786, 788 [1980]).

Here, the predicate notices (i.e., the 14-Day Rent Demands) are deficient because they do not contain an "approximate good faith sum" of rent due for the applicable time periods, and, as such, they fail to provide the tenants with the information necessary to cure their default to prevent litigation and/or identify and interpose potential defenses (*see EOM 106-15 217th Corp. v. Severine*, 2019 NY Misc. LEXIS 218 [2d Dept 2019] [finding that tenant may have been prejudiced in his ability to respond to the demand, formulate defenses, and avoid litigation or eviction due to "the magnitude of the inaccuracies" in the amounts sought in the predicate rent notice caused by the landlord receiving payments that were earmarked for May and June 2016 but failed to apply those payments to the respective period for which they had been intended and omitted another rent payment from the notice]). Specifically, with respect to Crystal Campolito, the amount of rent claimed due and owing in said demand, to wit $1,100 each month, is contradicted by Appellee's own testimony, as he testified that Crystal Campolito's monthly rent was $975.00 (*see* December 4, 2024 tr at 58, lines 15-17). Additionally, the $1,100 amount cited in said demand for each month during the period of September 2023 to August 2024 fails to include any reference to the fact that Ms. Campolito was receiving Section 8 HAP and was only responsible for paying a portion of the rent in the amount of $300.00 during a portion of the applicable period, or that the IHA began abating any further rent payments effective August 1, 2024 until certain repairs to the premises were made, as detailed in the letter dated August 15, 2024 from the IHA to Appellee. As such, this Court finds that the 14-Day Rent Demand served upon Ms. Campolito did not state an "approximate good faith sum" of rent due for the applicable time period (*see, ShopRite*, 29 AD3d at 565-566). Accordingly, the 14-Day Rent demand is a defective predicate notice, requiring dismissal of the summary proceeding against Crystal Campolito.[3]

Similarly, the amount of rent claimed due and owing in the 14-Day Rent Demand served upon Timothy Campolito, to wit $750 each month, is also contradicted by Appellee's own testimony, as he testified that Timothy Campolito's monthly rent was $675.00 (*see* December 4, 2024 tr at 58, line 25; 59, line 1), and the $750 amount cited in said demand for each month during the period of September 2023 to August 2024 fails to reference to the fact that Mr. Campolito was receiving Section 8 HAP from 2015 to June 2024 and was only responsible for paying a portion of the rent in the amount of $300.00 during the applicable period, or that TCA began abating any further rent payments after September 2023 until certain repairs to the premises were made, as detailed in the letter dated September 5, 2023 from TCA to Appellee. As such, this Court finds that the 14-Day Rent Demand served upon Mr. Campolito did not contain an "approximate good faith sum" of rent due for the applicable time period (*see*, *ShopRite*, 29 AD3d at 565-566). Accordingly, the 14-Day Rent demand is a defective predicate notice, requiring dismissal of the summary proceeding against Timothy Campolito.

POINT II

"A nonpayment proceeding is a statutory remedy and in order for the landlord to obtain a final judgment he must establish that the 'tenant has defaulted in the payment of rent, pursuant to the agreement under which the premises are held'" (*Covington v. McKeiver*, 88 Misc 2d 1000, 1001 [2d Dept. 1976][citing to RPAPL § 711[2]]). It is improper for a court to award judgment for a landlord in the absence of a tenant being in default (*see id.* [holding that it was improper for the lower court to have awarded judgment to the landlord in a non-payment proceeding in the absence of the tenant being in default where the tenant raised the defense of breach of the implied warranty of habitability and court found that the tenant justifiably withheld payment of rent because the condition of the premises]).

Here, Appellee brought summary non-payment eviction proceedings against Appellants seeking possession of the premises for Appellants' alleged defaults in the amounts of $13,200 and $9,000, respectively. At trial, however, the court found that Appellee violated the warranty of habitability and granted Appellants a full abatement of the alleged arrears in addition to compensatory and punitive damages (*see* December 16, 2024 tr at 99-101). In doing so, the trial court effectively held that Appellants did not owe Appellee any arrears. Consequently, it was a clear error of law for the trial court to issue a warrant of eviction where Appellants had not defaulted in the payment of rent (*see Covington*, 88 Misc 2d at 1001).

[3] The Court notes that the 14-Day Rent Demands were served upon Appellants *prior* to the effective date of the notice requirements in the Good Cause Eviction law (discussed in greater detail below), as they were served on August 7, 2024. Had they been served *as written* on or after August 18, 2024, the effective date of said notice requirements, they would also be deemed deficient for failing to contain the notice required by RPL §§ 711(2) and 231(c). Appellee's contention that the premises are not subject to the "good cause eviction law" would also be unavailing under those circumstances because regardless of whether the premises is subject to "good cause eviction law" contained in Article 6-A of the Real Property Law, RPL § 711(2) clearly and unequivocally mandates that the aforementioned notice shall be appended or contained in the fourteen-day notice.

POINT III

The Good Cause Eviction Law ("GCEL")[4] became law on April 20, 2024 (*see* L 2024, ch 56, § 1, part HH) and took effect immediately, applying to all actions and proceedings commenced on or after such effective date (*see id.*, part HH, § 7), except that sections two, three, four, and five took effect 120 days thereafter on August 18, 2024. The statute imposes several new notice provisions obligating landlords to state if housing accommodations are subject to good cause in lease offers and pre-eviction notices (see *id.*, part HH, §§ 2-5). The new notice requirements were phased in on August 18, 2024 (see *id.*, part HH, § 7[a]).

Section 1 of the GCEL adds article 6-A of the Real Property Law and provides that a GCEL-covered tenant can only be removed from possession based on one of the good cause grounds enumerated in RPL § 216(1)(a)-(j). Therefore, "for any eviction proceeding commenced on or after April 20, 2024, a petitioner must plead if the housing accommodation is subject to the GCEL [*see* RPAPL § 741], and in the case of covered units it must demonstrate a good cause ground for removal [*see* RPL § 216]" (*QN St. Albans Holdings LLC v. Sands*, 85 Misc.3d 275, 277 [Civ Ct, Queens County 2024] [holding where the petition was filed approximately 30 days before the statute's effective date of April 20, 2024, petitioner was not required to plead or establish a good cause ground for eviction and denying respondent's motion to dismiss on that basis]).

RPL § 214(1) creates an exception to the GCEL for:

> premises owned by a small landlord provided that in connection with an eviction proceeding in which the landlord claims an exemption from the provisions of this article on the basis of being a small landlord, such landlord shall provide to the tenant or tenants subject to the proceeding the name of each natural person who owns or is a beneficial owner of, directly or indirectly, in whole or in part, the housing accommodation at issue in the proceeding, the number of units owned, jointly or separately, by each such natural person owner, and the address of any such units, excluding each natural person owner's principal residence; provided further that if the landlord is an entity, organized under the laws of this state or of any other jurisdiction, then such landlord shall provide to the tenant or tenants subject to the proceeding the name of each natural person with a direct or indirect ownership interest in such entity or any affiliated entity, the number of units owned, jointly or separately, by each such natural person owner, and the addresses of any such units, excluding each natural person owner's principal residence

RPL § 211(3)(a) defines "small landlord" as a landlord of no more than 10 units in the state, unless a different number of units is applicable under a local law outside of New York City. RPL § 211 (3)(b) states that a single natural person landlord qualifies as a "small landlord" if

[4] Codified in RPL §§ 210 to 218.

they "own or are a beneficial owner of, directly or indirectly, in whole or in part, no more than the number of units established pursuant to paragraph (a) of this subdivision."

RPAPL § 741 sets forth the required contents of a petition in a proceeding to recover possession of real property. "It is well settled that where a landlord seeks to recover possession of a premises in a summary proceeding, he or she must allege in the petition the regulatory status of the premises and compliance with the regulations associated therewith" (*Homestead Equities v. Washington*, 176 Misc 2d 459, 462 [Civ Ct, Kings County 1998] [citing to *Villas of Forest Hills Co. v. Lumberger*, 128 AD2d 701, 702 [2d Dept 1987]; *Giannini v. Stuart*, 6 AD2d 418 [1st Dept 1958]; RPAPL § 741[1] [the petition must "[s]tate the interest of the petitioner in the premises from which removal is sought"]; RPAPL § 741[2] [the petition must"[s]tate the respondent's interest in the premises and his relationship to petitioner with regard thereto"]; RPAPL § 741[3] [the petition must "[d]escribe the premises from which removal is sought"]; RPAPL § 741[4] [the petition must "[s]tate the facts upon which the special proceeding is based"]). Additionally, RPAPL §§ 741(5-a) and (5-b) were promulgated as part of the GCEL. RPAPL § 741(5-a) plainly states that every petition filed in a summary eviction proceeding:

> "*shall* . . . [a]ppend or incorporate the notice required pursuant to section two hundred thirty-one-c of the real property law, which shall state the following: (i) *if the premises are or are not subject to article six-A of the real property law, the "good cause eviction law,"* and if the premises are exempt, such notice shall state why the premises are exempt from such law; (ii) if the landlord is not renewing the lease for a unit subject to article six-A of the real property law, the lawful basis for such non-renewal: and (iii) if the landlord is increasing the rent upon an existing lease of a unit subject to article six-A of the real property law above the applicable local rent standards, as defined in subdivision eight of section two hundred eleven of the real property law, the justification for such increase (emphasis added).

RPAPL § 741(5-b) states that a petition must "append or incorporate the information required pursuant to [RPL § 214(1)]" if an exemption from the GCEL pursuant to RPL § 214(1) is claimed.

The requirement that the specific information that an individual "small landlord" must provide to tenants pursuant to RPL § 214(1) and RPAPL § 741(5-b) "be pleaded in the petition via the amendment of RPAPL § 741 clearly indicates that the legislature created a prima facie obligation on any petitioner claiming the 'small landlord' exemption in a summary eviction proceeding" [*Munjal v. Ziebke*, 87 Misc 3d 956, 958-959 [Civ Ct, NY County 2025] [*citing to* [*Matter of MB*, 6 NY3d 437, 447 [2006][statutory text "is the clearest indicator of legislative purpose"]; *1646 Union, LLC v. Simpson*, 62 Misc 3d 142[a], *2 [App Term, 2d Dept 2019] ["Because a summary proceeding is a statutory proceeding, relief can be granted to a petitioner only where all the elements of the petitioner's cause of action have been made out, a requirement which is sometimes referred to as 'jurisdictional'"]).

Here, Appellants argue that the petitions were jurisdictionally defective, warranting dismissal, because the notices of petition and petitions for non-payment of rent that were served on September 4, 2024 failed to include a notice of good cause required by RPAPL § 741(5-a), which became effective August 18, 2024. Having reviewed the notices of petition and petitions for non-payment of rent, noting that both RPAPL §§ 741(5-a) and (5-b) are applicable because these actions were commenced weeks after August 18, 2024, this Court finds that they are devoid of the notices required by RPAPL §§ 741(5-a) and (5-b). Accordingly, the petitions are defective as a matter of law and the motions to dismiss should have been granted by the trial court on those grounds.

The petitions were deficient in another way as well. "Pursuant to Section 8 (42 USCS § 1437f), the federal government provides rent subsidies to low-income individuals and families to enable them to rent privately-owned housing" (*Matter of Banos v. Rhea*, 25 NY3d 266, 273 [2015]). "[W]here the tenant sought to be removed participates in a section 8 program, the petition must allege the section 8 status of the tenant and the premises and must allege petitioner's compliance with the section 8 regulatory scheme" (*Homestead Equities*, at 462). "These pleadings are required because they may determine the scope of the rights of the parties and may affect the manner in which the court 'proceed[s]' with the action" (*id.* [internal citations omitted]). Additionally, a failure to allege the section 8 status of the tenancy affects not only the petition but also fatally undermines a petitioner's attempt to comply with the requirement imposed by 24 CFR 982.310(e)(2)(ii)[5], which requires that landlords seeking to terminate section 8 tenancies serve upon the public housing authority a copy of the notice of termination and petition in order to give notice to the public housing agency administering section 8 funding that the continued possession of occupants in whom it has a substantial interest is threatened not only to ensure that the public housing agency does not continue to make housing subsidy payments on behalf of a tenant who is no longer in possession, but also to enable it to monitor the actions of the landlord and to afford it the opportunity to intervene if it deems it necessary to protect the interests of the section 8 tenant (*see id.* at 463).

Here, as demonstrated by the aforementioned letters from the IHA and TCA to Appellee, Appellee knew or should have known that Appellants were in receipt of Section 8 subsidies, and those subsidies were being abated due to the failure of the premises to pass inspections under the Section 8 HQS. Nonetheless, neither the Section 8 status of the Appellants or premises, nor compliance with the regulations related thereto, were alleged in the petitions or notices of petition in these proceedings and no proof of service upon the public housing authorities administering Appellants' respective Section 8 funding, namely the IHA and TCA, was filed. This additional pleading defect should have precluded the trial court from rendering a judgment in favor of Appellee (*see, id.* at 462 [citing to *Villas of Forest Hills Co. v. Lumberger*, 128 AD2d 701 , 702 [2d Dept 1987]; *251 E. 119th St. Tenants Assoc. v. Torres*, 125 Misc 2d 279, 280 [Civ Ct, NY County 1984]); *see also 433 W. Assoc. v. Murdock*, 276 AD2d 360, 360 [1st Dept. 2000][a holdover proceeding against a tenant with a NYCHA Section 8 subsidy wherein the court noted that the petition "failed to plead that it and the predicate termination notice were served on the New York City Housing Authority, as required by Federal consent decree and regulation in order

[5] 24 CFR 982.310(e)(2)(ii) specifically states that "[t]he owner must give the [public housing authority] a copy of any owner eviction notice to the tenant."

to regain possession of a Federally subsidized, so-called 'Section 8' housing, and also failed to plead the tenancy's Section 8 status, as required by RPAPL 741"]).

Based upon the foregoing, the appeals are GRANTED, the judgments of the lower court are REVERSED, and the warrants of eviction issued below are VACATED.

Digitally signed by
Hon. Maura Kennedy-Smith
5/12/2026, 3:14:05 PM

Enter: May 12, 2026
Ithaca, New York

Hon. Maura Kennedy-Smith
Tompkins County Court Judge