CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART D
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SHUHAB HDFC,

Petitioner/Landlord, Index No. 69209/2012

- against -

DECISION/ORDER

PAUL ALLEN,

Respondent/Tenant.
---------- X
Present:
Hon. Jack Stoller
Judge, Housing Court
Recitation, as required by CPLR §2219(a), of the papers considered in the review of this motion.

Papers	**Numbered**
Order To Show Cause and Supplemental Affidavits	1
Notice of Cross Motion and Supplemental Affidavits Annexed.....	2
Notice of Cross Motion and Supplemental Affidavits Annexed	3
Affidavit in Opposition	4

Upon the foregoing cited papers, the Decision and Order on this Motion are as follows:

Shuhab HDFC, the petitioner in this proceeding ("Petitioner"), commenced this holdover proceeding against Paul Allen, the respondent in this proceeding ("Respondent"), seeking possession of 640 Riverside Drive, Apt. 12A, New York, New York ("the subject premises") pursuant to a predicate notice Petitioner served purporting to terminate Respondent's tenancy ("the Notice").

Upon an application for an adjournment by Respondent, while *pro se*, Petitioner made an application to this Court pursuant to RPAPL §745(2) seeking a rent deposit. The Court granted the application and entered into an order ("the Order") directing Respondent to deposit rent that had accrued since the commencement of the proceeding to Petitioner.

Respondent while still *pro se*, moved by order to show cause for relief from the Order. Petitioner now cross-moves for an order striking Respondent's answer for failure to comply with the Order. Respondent subsequently retained counsel, withdrew his *pro se* order to show cause, and now cross-moves for an order dismissing the proceeding or, in the alternative, vacating the Order. The Court consolidates all motions for disposition.

In support of his motion seeking vacatur of the Order, Respondent annexes a current award letter from the Social Security Administration evincing that Respondent is a recipient of Supplemental Security Income ("SSI"). SSI recipients only have to deposit one-third of their income on a rent deposit application. RPAPL §745(2)(b)(i). Respondent had not raised to the Court his source of income at the time of the Order because he was unaware of its relevance to the rent deposit statute as a *pro se* party, resulting in an order for Respondent to pay more than the statute provides. As the Order was based upon an inaccurate understanding of the facts resulting from Respondent's *pro se* status, the Court grants so much of Respondent's motion as seeks vacatur of the Order and denies Petitioner's motion for relief pursuant to the Order as moot. See Woodson v. Mendon Leasing Corp., 100 N.Y.2d 62, 68 (2003) (in addition to the grounds set forth in CPLR §5015(a), a court may vacate its own judgment for sufficient reason and in the interests of substantial justice).

Respondent cross-moves to dismiss on the ground that the petition fails to state a cause of action and on the ground that the Notice is defective. The Notice alleges, *inter alia*, that the subject premises is subject to the Rent Stabilization Laws and Code; that Respondent failed to execute a renewal lease that Petitioner had offered him; that Respondent therefore had a month-

to-month tenancy; that Petitioner was terminating Respondent's tenancy on thirty days' notice pursuant to RPL §232-a; and that Petitioner was terminating Respondent's tenancy for failure to renew his lease pursuant to 9 N.Y.C.R.R. §2524.3(f).

Petitioner, via the Notice and on the record on the motion practice before the Court, cites authority for the proposition that a rent-stabilized tenant's failure to execute an offer of a renewal lease does not entitle a property owner to deem the lease renewed, as had been provided by 9 N.Y.C.R.R. §2523.5(c)(2). Samson Mgt. LLC v. Hubert, 92 A.D.3d 932 (2nd Dept. 2012). Accordingly, Petitioner argues that Respondent is a month-to-month tenant and that Petitioner's termination of Respondent's tenancy on thirty days' notice is appropriate.

The petition and the Notice both acknowledge that the subject premises are subject to the Rent Stabilization Code. Termination of a month-to-month tenancy pursuant to RPL §232-a is not a recognized ground upon which a property owner may seek eviction of a rent-stabilized tenant. 9 N.Y.C.R.R. §2524.1 *et seq*. Assuming *arguendo* that Respondent failed to execute a renewal lease, such a failure would not render Respondent an unregulated tenant. Samson, supra, does not stand for a contrary proposition. Samson, supra, found that 9 N.Y.C.R.R. §2523.5(c)(2) operated to deprive tenants of rights pursuant to RPL §232-a, to wit, the right not to be liable for a full year of rent upon holding over after the expiration of a lease, in violation of the proposition that the Rent Stabilization Code may not impair or diminish any right of any party. N.Y.C. Admin. Code §26-511(b). Construing this holding to divest tenants of rent-stabilized status upon failure to renew a lease, a dramatic impairment of a right of a party, thus actually undermines the holding of Samson.

Moreover, the Rent Stabilization Code does not contain any support for the proposition that failure to renew a lease divests a tenant of rent-stabilized status. Rather, the Rent Stabilization Code provides a remedy for property owners when tenants do not renew a lease: commencement of a holdover proceeding. 9 NYCRR § 2524.3(f). No other remedy is provided. Regulations are generally subject to same canons of construction as statutes. ATM One, LLC v. Landaverde, 2 N.Y.3d 472, 477 (2004). Where a statute expressly describes a particular thing to which it shall apply, an irrefutable inference must be drawn that what is omitted or not included was intended to be omitted or excluded. Town of Riverhead v. N.Y. State Bd. of Real Prop. Servs., 5 N.Y.3d 36, 42-43 (2005). In this light, the remedy the Rent Stabilization Code provides for a owner whose tenant does not renew a lease must be deemed to be the only remedy. See Also Federal Home Loan Mortg. Corp. v. New York State Div. of Hous. & Community Renewal, 87 N.Y.2d 325, 332 (1995) (courts are to interpret laws regulating rents broadly to effectuate their intended, remedial purpose of amelioration of the dislocations and risk of widespread lack of suitable dwellings that accompany a housing crisis). Accordingly, Petitioner does not have a cause of action against Respondent pursuant to RPL §232-a.

In addition to purporting to terminate Respondent's tenancy on thirty days' notice, the Notice also cites 9 N.Y.C.R.R. § 2524.3(f) as a ground upon which to terminate Respondent's tenancy. A notice terminating a tenancy on this ground must give the tenant at least fifteen days' notice. 9 N.Y.C.R.R. §2524.2(c)(1). The Notice gives more than fifteen days' notice. The fact that the Notice combined this allegation with a thirty-day notice pursuant to RPL §232-a notice does not implicate its validity. 3657 Realty Co. LLC v. Jones, 52 A.D.3d 272 (1st Dept. 2008)

(predicate notices to eviction proceedings are allowed to plead alternative theories of relief).

Respondent's cross-motion raises several factual disputes, some of which are compelling, with the contention of the petition that Petitioner properly offered Respondent a renewal lease. However, Respondent identified his notice of cross-motion as a motion to dismiss for failure to state a cause of action, and asserted a claim that the Notice is defective. Without putting Petitioner on notice that it had to lay bare its proof as such, the Court will not deem Respondent's motion to seek summary judgment pursuant to CPLR §3212(c), Nonnon v. City of New York, 9 N.Y.3d 825, 827 (2007), Sokol v. Leader, 74 A.D.3d 1180, 1183 (2nd Dept. 2010), and will not dismiss this proceeding on Petitioner's failure to interpose evidence to dispute the factual material presented by Respondent.

What the Court is left with is a motion to dismiss for failure to state a cause of action. On a motion to dismiss for failure to state a cause of action, the Court must accept the allegations of the petition as true, accord Petitioner the benefit of every favorable inference, and strive to determine only whether the facts alleged fit within any cognizable legal theory. Hurrell-Harring v. State of New York, 15 N.Y.3d 8, 20 (2010), Matter of Walton v. New York State Dept. of Correctional Servs., 13 N.Y.3d 475, 484 (2009), Vig v. New York Hairspray Co., L.P., 67 A.D.3d 140 (1st Dept. 2009).

Accordingly, the Court grants Respondent's cross-motion to the extent of dismissing any of Petitioner's cause of action seeking possession of the subject premises on the grounds of the termination of a month-to-month tenancy pursuant to RPL §232-a. The Court denies so much of Respondent's cross-motion with regard to Petitioner's cause of action pursuant to 9 N.Y.C.R.R.

§ 2524.3(f), without prejudice to the assertion of Respondent's defenses to such a cause of action at trial of this matter.

The Court restores this matter to the Court's calendar on December 20, 2012 at 9:30 a.m. in part D, Room 524 of the Courthouse located at 111 Centre Street, New York, New York, for all purposes.

This constitutes the decision and order of this Court.

Dated: New York, New York
November 19, 2012

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HON. JACK STOLLER
J.H.C.