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| 217 Henry St. LLC v Fa Jian Lin |
| 2022 NY Slip Op 32825(U) |
| August 12, 2022 |
| Civil Court of the City of New York, New York County |
| Docket Number: Index No. 52097-20 |
| Judge: Evon M. Asforis |
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART H

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217 HENRY STREET LLC,

L&T Index #52097-20

Petitioner,

DECISION/ORDER

-against-

FA JIAN LIN, REINA CHEN,
JOHN DOE & JANE DOE,

Respondent(s)-Tenant(s).
-----X

HON. EVON M. ASFORIS

Recitation, as required by CPLR 2219(a), of the papers considered in the review of Respondent Fa Jian Lin’s motion to dismiss the Petition:

| <u>Papers</u> | <u>NYSCEF Doc.#</u> |
|---|---------------------|
| Notice of Motion, & Affidavits Annexed..... | __12-17__ |
| Answering Affirmation, and Exhibits..... | __20-25__ |
| Reply Affirmation, and Exhibits..... | __26__ |
| Other..... | _____ |

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

Relevant Procedural History

217 Henry Street LLC (“petitioner”) commenced this holdover proceeding against Fa Jian Lin, Reina Chen, John Doe, and Jane Doe (collectively “respondents”), to recover possession of Apartment B located at 217 Henry Street, New York, New York (“subject premises”). Petitioner served respondents with a Notice to Cure dated September 26, 2019. The Notice to Cure asserts respondents are violating a substantial obligation of their tenancy in that 1) respondents failed to sign and return the Renewal Lease commencing July 1, 2017 and expiring June 30, 2019; 2) respondents failed to remove illegally constructed partitions in the subject premises; 3) respondents are illegally subletting the premises; and 4) respondents have ignored the Stipulations of Settlement dated February 26, 2009 and December 9, 2016 wherein

respondents agreed not to erect partitions in the apartment and to discontinue multiple subletting. On October 28, 2019, petitioner served a Notice of Termination asserting respondents failed to cure the conditions specified in the Notice to Cure. Upon expiration of the Notice of Termination, petitioner served respondents with a Notice of Petition and Petition dated January 9, 2020.

Respondent, Fa Jian Lin, retained counsel, Mobilization for Justice (“MFJ”) who filed and served a verified answer dated October 19, 2021, on behalf of respondent. Respondent now moves by Notice of Motion dated February 28, 2022, to dismiss the proceeding pursuant to Civil Practice Law and Rules (“CPLR”) § 3211 (a) (1), (a)(2) and (7) based on petitioner’s failure to serve respondent with adequate predicate notices. Respondent argues that petitioner’s predicate notices fail to state specific causes of action pursuant to the rent stabilization code; the notices fail to identify any specific lease provisions or tenancy obligations; and the notice of termination fails to include specific allegations that the conduct in the Notice to Cure was not cured.

In opposition, petitioner argues that the predicate notices are not unreasonably vague and are sufficiently pled. Petitioner’s counsel argues he has been in litigation with respondent for the past 10 years, and respondent is aware he should not erect any partitions or change the layout of the apartment, but he continues to do so. Petitioner asserts respondents are not credible, they are aware of their actions, their failure to sign the lease and the predicate notices give respondent more than enough information for respondents to defend themselves.

Motion to Dismiss

“On a motion to dismiss pursuant to CPLR § 3211, the pleading is to be afforded a liberal construction (see, CPLR § 3026). We accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts

as alleged fit within any cognizable legal theory” (Leon v Martinez, 84 NY2d 83, 87 [1994]; see also, Morone v Morone, 50 NY2d 481, 484; Rovello v Orofino Realty Co., 40 NY2d 633, 634). “However, allegations consisting of bare legal conclusions, as well as factual claims inherently incredible or flatly contradicted by documentary evidence are not entitled to such consideration” (Caniglia v Chicago Tribune-N.Y. News Syndicate, 204 AD2d 233, 233 - 234 [App Div, 1st Dept 1994]; see also Skillgames, LLC v Brody, 1 AD3d 247, 250 [App Div, 1st Dept 2003]).

Analysis

Herein, the Court will consider the Notice of Termination first. Respondent argues that the Notice of Termination fails to state any factual basis or specific details asserting how respondent failed to comply with the Notice to Cure. The Notice of Termination simply states that respondents failed to cure the conditions complained of in the Notice to Terminate. Upon careful consideration of the pleadings, the court finds that the Notice of Termination fails to allege sufficient facts regarding respondent’s failure to cure.

It is undisputed that the subject premises is subject to rent stabilization. Therefore, RSC § 2524.2(b) applies and requires the termination notice provide the tenant with the basis for the eviction proceeding. Every termination notice must state the facts necessary to establish the grounds for eviction (see, RSC § 2524.2(b)).

Additionally, it is well settled that a termination notice must state facts necessary to establish the ground upon which possession of the premises is sought and state facts upon which the special proceeding is based (RSC § 2524.2; RPAPL § 741(4)). If a notice is too generic and conclusory, it will fail to meet the required standards for notices. The standard by which the sufficiency of a predicate notice is to be measured is one of reasonableness in light of attendant circumstances (Hughes v Lenox Hill Hospital, 226 AD2d 4, 18 [1st Dept 1996], *lv to app den*, 90

NY2d 829 [1997]; see also, Domen Holding Co. v Aranovich, 1 NY3d 117 [2003]; London Terrace Gardens, L.P. v Heller, 40 Misc3d 135 [1st Dept 2009]).

Herein, the Notice to Cure provides respondent until October 24, 2019, to cure the alleged violations of respondent's tenancy: (1) respondent failed to sign and return the renewal lease; (2) respondent failed to remove illegally constructed partitions in the subject premises; (3) respondent is illegally subletting the premises; and (4) respondent has ignored the Stipulations of Settlement wherein respondent agreed not to erect partitions in the apartment and to discontinue multiple subletting. Petitioner's Notice of Termination fails to provide respondent and the court with facts to support its claim that respondent has failed to cure the allegation listed in the Notice to Cure.

The Notice of Termination states "you have failed to cure the conditions specified in the Notice to Cure, which was served on October 8, 2019 ... attached hereto and incorporated by reference herein . . ." The court finds that the allegations stated in the termination notice are conclusory and vague. The termination notice fails to explain the basis of the landlord's belief that respondent failed to cure. The Notice simply states a conclusion that respondent "failed to cure the conditions in the Notice to Cure" without offering any supporting facts.

Moreover, the court notes that the time to cure ended on October 24, 2019, and the Notice of Termination is dated October 28, 2019. Petitioner makes no reference to any inspection of the premises or basis to believe the partition remains in the premises, that petitioner has not received a copy of the signed lease or that Reina Chen still resides in the subject premises. The court also notes that in petitioner's opposition to respondent's motion petitioner's counsel refers to another person Rong Lin not referenced in the notice (*see, Berinato Affirmation, Para. 9*).

Consequently, the court finds that the Notice of Termination is insufficient, and the proceeding must be dismissed. A summary proceeding is statutory in nature and in order for a party to recover possession of a housing accommodation pursuant to RPAPL § 741 and RSC § 2524.2, the party must abide by the terms of the statutes. A proper notice is a condition precedent to a summary proceeding, and if the notice of termination is insufficient, the proceeding must be dismissed Chinatown Apts. Inc. v Chu Cho Lam, 51 N.Y.2d 786, 788 [App. Term 1st Dept 1980].

Conclusion

Therefore, the portion of respondent’s motion seeking to dismiss the Petition is granted and the Petition is dismissed without prejudice to petitioner’s claims for possession.

The foregoing constitutes the decision and order of this court.

Dated: New York, New York
August 12, 2022


EVON M. ASFORIS
JUDGE HOUSING COURT

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