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SKMMNY LLC v Pope
2020 NY Slip Op 34468(U)
April 1, 2020
Civil Court of the City of New York, Queens County
Docket Number: L&T 66589/19
Judge: Clinton J. Guthrie
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS: HOUSING PART A

-----X
SKMMNY LLC,

Petitioner-Landlord,

-against-

KATHERINE POPE, RAMONA POPE and
MARCELLA POPE,

Respondents-Tenants,

-and-

JOHN DOE and JANE DOE,

Respondents-
Undertenants.
-----X

Index No. L&T 66589/19

DECISION/ORDER

Present:

Hon. CLINTON J. GUTHRIE
Judge, Housing Court

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of Respondents' motion to dismiss pursuant to CPLR §§ 3211(a)(7) and (a)(8), or, in the alternative, for leave to interpose an answer:

Papers	Numbered
Notice of Appearance and Notice of Motion & Affirmation/Affidavit/Exhibits Annexed.....	<u>1</u>
Affidavit in Opposition & Exhibits Annexed.....	<u>2</u>
Affirmation in Reply.....	<u>3</u>

Upon the foregoing cited papers, the decision and order on Respondents' motion to dismiss, or in the alternative, for leave to interpose an answer, is as follows:

PROCEDURAL HISTORY

This holdover proceeding is predicated on a 30-day notice of termination. Following an initial adjournment, Respondents Katherine Pope, Ramona Pope, and Marcella Pope appeared by The Legal Aid Society and made the instant motion to dismiss, or in the alternative, for leave to interpose an answer. After adjournments for submission of opposition and reply papers, the Court heard argument on Respondents' motion on February 5, 2020 and reserved decision.

ANALYSIS

The first prong of Respondents' motion to dismiss argues that the Notice of Petition and Petition inaccurately describe the subject premises. Specifically, Respondents reference their expired lease with Petitioner, which describes the apartment as follows: "107-57 157th Street,-1F Jamaica NY 11433 (all other part of the property are not part of this lease)... The premises are a 1-family dwelling duplex which consists of the basement ('part of rear portion 1st floor duplex') and 1st floor ('rear portion part of basement duplex & 1-family dwelling duplex, part of 2nd floor duplex.')." Respondents' motion also includes an affidavit of Marcella Pope, who states that she lives on the first floor (which has a living room, kitchen, bathroom, and one bedroom) and second floor (which has two bedrooms), which are connected by a stairway. Petitioner opposes the motion and its officer, Peter Hidakis, states in his affidavit in opposition that the description in the Notice of Petition and Petition ("Apt. No. 1st Floor, 107-57 157th Street, Jamaica NY 11433") is adequate insofar as it tracks the lease language and merely rewords it.¹

RPAPL § 741(3) requires that every petition shall "describe the premises from which removal is sought." Failure to properly describe the premises will result in dismissal of the Petition.

¹ Presumably, this "rewording" addresses the variance between "1F" and "1st Floor."

See, e.g., Clarke v. Wallace Oil Co., 284 A.D.2d 492 (2d Dep't 2001); *US Airways, Inc. v. Everything Yogurt Brands, Inc.*, 18 Misc.3d 136(A), 859 N.Y.S.2d 899 (App. Term 2d Dep't 2008). To satisfy the requirement to describe the premises, "the petition must accurately describe the exact location of the premises in sufficient detail to allow a marshal executing a warrant to locate the premises in issue and effect an eviction without additional information." *Sixth Street Community Center, Inc. v. Episcopal Social Services*, 19 Misc.3d 1143(A), 867 N.Y.S.2d 20 (Civ. Ct. N.Y. County 2008).

Under this standard, the description of the subject premises in the Notice of Petition and Petition is improper. The lease does not use "1F" as shorthand for "1st Floor." Instead, Apartment 1F described in the lease includes *both* the basement and first floor of the subject building. Therefore, the description in the Notice of Petition and Petition omits significant details about the subject premises and would make it impossible to carry out an eviction at the actual premises without resort to additional information. *See Sixth Street Community Center, Inc., supra; see also 272 Sherman, LLC v. Vasquez*, 4 Misc.3d 370, 777 N.Y.S.2d 853 (Civ. Ct. N.Y. County 2004). Moreover, the 30-day notice of termination includes a different description of the premises (*vis-à-vis* the Notice of Petition and Petition), referring to "all rooms in the premises known by its street address as 107-57 Street, Jamaica, 1F NY 11433." The resulting ambiguity compounds the misdescription, not least because a notice of termination may not be amended. *See Chinatown Apts., Inc. v. Chu Cho Lam*, 51 N.Y.2d 786, 788 (1980); *see also SABA Realty Partners LLC v. APEX Limousines Inc.*, 32 Misc.3d 1229(A), 936 N.Y.S.2d 61 (Sup. Ct. Kings County 2011).

Accordingly, the Court grants Respondents' motion to dismiss, as the description of the subject premises in the Notice of Petition and Petition does not comport with RPAPL § 741(3). *See*


Clarke v. Wallace Oil Co. and US Airways, Inc. v. Everything Yogurt Brands, Inc., supra; see also 1646 Union, LLC v. Simpson, 62 Misc.3d 142(A), 113 N.Y.S.3d 459 (App. Term 2d, 11th & 13th Jud. Dists. 2019) (“Because a summary proceeding is a statutory proceeding (*see* RPAPL art 7), relief can be granted to a petitioner only where all the requirements of the petitioner’s cause of action have been made out, a requirement which is sometimes referred to as ‘jurisdictional’”) (Internal citations omitted). The Court does not reach the second prong of Respondents’ motion, based on alleged acceptance of rent after expiration of the termination notice and before commencement of this proceeding.

CONCLUSION

For the foregoing reasons, the Court grants Respondents’ motion to dismiss pursuant to CPLR § 3211(a)(7), as the Notice of Petition and Petition contain an improper description of the subject premises. This holdover proceeding is dismissed, without prejudice. Respondents’ alternative request to interpose an answer is denied as moot and without prejudice.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated: Queens, New York
April 1, 2020



HON. CLINTON J. GUTHRIE, J.H.C.

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SO ORDERED - HON. CLINTON J. GUTHRIE

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