

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART A

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SHARON OLSEN,

Petitioner-Landlord,

Index No. 84045/06

- against -

DECISION/ORDER

ALICE RIVERA,
16 West 64th Street, Apt. 2C
New York, New York 10023

Respondent-Tenant,

“JOHN DOE” and “JANE DOE”

Respondents-Undertenants.

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HON. DAVID J. KAPLAN:

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion by petitioner to restore the proceeding and cross motion by respondent for summary judgment.

Papers

Numbered

Notice of Motion and Affidavits Annexed
Affidavit in Opposition and Memorandum of Law
Reply Affirmation

1, 2
3
4

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

Sharon Olsen (“petitioner”) commenced this holdover proceeding against Alice Rivera (“respondent”) to recover possession of the subject rent stabilized premises for her personal use. Respondent answered the petition by interposing the following affirmative defenses: (1) “The notice of non-renewal is defective as it fails to provide sufficient factual information required by law”; (2)

Petitioner is not entitled to possession and she has no present intention of occupying the premises and/or is acting in bad faith; (3) Petitioner failed to renew respondent's lease ending in 2004; (4) The petition is improperly verified; (5) counterclaim for reasonable attorney's fees; and (6) counterclaim that petitioner is required to offer her a renewal lease.

Petitioner now moves to restore the case to the calendar for trial. Respondent cross-moves for summary judgment dismissal of the petition based on her assertion that the notice of non-renewal fails to state necessary facts and that it is incapable of being implemented in the foreseeable future. The motions are consolidated for disposition.

Respondent is the rent stabilized tenant of record of the subject premises having entered into a lease with petitioner's predecessor in interest in 1974. Petitioner purchased the subject building in 2004 and is now seeking to recover the majority of its 15 units on the basis of owner's use. Respondent was notified of petitioner's intention to recover the subject apartment by a notice of termination and notice of intention not to renew lease dated April 28, 2006. Said notice states:

"PLEASE TAKE FURTHER NOTICE, that pursuant to Section 2524.2(a), (b) and (c)(3) and 2524.4(a) of the New York City Rent Stabilization Code ("RSC") the landlord hereby elects not to renew your Lease upon the expiration thereof, on the ground that the landlord, Sharon Olsen ("Landlord:") desires to recover possession of the Subject Premises for her personal use and occupancy as her primary residence.

"PLEASE TAKE FURTHER NOTICE, that the facts which support the aforementioned ground for your removal or eviction from the Premises are as follows: the Landlord intends to recover possession of all of the apartments on the second, third, fourth and fifth floors of the subject building, including the Subject Premises, and combine said apartments to form a single, multi-level unit to be used as her, and her immediate family's, primary residence."

Respondent argues that the above predicate notice is defective in that it fails to set forth a

factual basis for why recovery of the apartment is being sought. A predicate notice that merely recites the legal ground for the eviction, but fails to set forth any facts upon which the proceeding is based, renders the petition defective (Berkeley Assocs. Co. v Camlakides, 173 AD2d 193, 194 [1st Dept 1991] [citations omitted]; Kaycee West 113th Street Corp. v Diakoff, 160 AD2d 573, 574 [1st Dept 1990]). Furthermore, where the notice of non-renewal in an owner's use holdover is "devoid of any specifics as to the nature of the landlord's current living arrangements" and fails to inform the tenant why it would rather live in the tenant's apartment rather than its current residence, dismissal is mandated (Haruvi v Rosen, 10 Misc3d 137 [A] [App Term, 1st Dept 2005]).

In Haruvi, the predicate notice was deemed insufficient by the Appellate Term as it only referenced where the landlord currently lives without specifying a basis for why he would rather live in the rent stabilized tenant's apartment (Id.). Likewise, the Appellate Term recently held that a predicate notice which only identified that the landlord sought possession of the apartment for their daughter's use was factually insufficient to serve as a basis for the proceeding (see Isdahl v Pogliani, 22 Misc 3d 14 [App Term, 1st Dept 2008]). The court noted that "the mere mention in the notice of the daughter's name, without identifying the location of her current residence or describing the nature of her current living arrangements, provided tenant with 'no more useful information than simply [alleging that the] owners want the apartment' for their own use or for the use of an unnamed family member, the type of unadorned assertions which fall far short of satisfying the Code's specificity standards" (Id.).

The predicate notice at issue offers no more a meaningful factual basis than that in Haruvi and Isdahl. Thus, constrained by appellate case law, this court holds that the blanket assertion in the present notice of non-renewal – that respondent wishes to use the building for her family as their

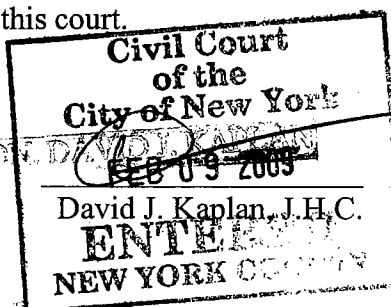
primary residence – without anything more, fails to properly afford respondent the notice she is entitled to under the Rent Stabilization Code. Not only does the subject notice fail to reference who specifically is intended to reside in the premises, but it also fails to identify where respondent resides nor details a basis of her desire to possess this specific unit instead of her present residence. As the information pertaining to petitioner's desire to recover the subject premises is solely in her hands, the notice "must state at least some actual reason why the owner wants to reside in the tenants' apartment" (Riley v Raphael, NYLJ Feb. 6, 2006, 18:1 [Civ Ct, NY County]). As the subject notice is devoid of meaningful factual information as otherwise required by the Code and appellate case law, the notice is deemed defective and the petition must be dismissed.

Accordingly, respondent's motion is granted to the extent of dismissing the petition. The court need not address the parties' remaining arguments.¹

This constitutes the decision and order of this court.

Dated: February 9, 2009
New York, New York

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¹ Respondent's alternative argument for summary judgment dismissal is based on her claim that petitioner is incapable of effectuating the plan stated in the notice of non-renewal in the foreseeable future as some of the apartments in the building are rent controlled and used by senior citizens.