

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF KINGS, HOUSING PART S

Navy Green PACC LLC

Petitioner-Landlord

-against-

Toni Miguel,

Respondent-Tenant(s)

Index No. LT-316562-23

DECISION/ORDER

Motion Seq #1

Present: Hon. Tashanna B. Golden

Recitation as required by CPLR 2219(a), of the papers considered in the review of the Respondent's Motion to Dismiss:

<b>Papers:</b>	<b>Numbers</b>
Respondent's Motion, Memo in Support, Affirmation/Affidavit in Support, and Exhibits.....	7-18
Petitioner's Affirmation in Opposition .....	21
Respondent's Reply and Exhibits.....	23-26
Court File.....	Passim

Petitioner filed this instant nonpayment proceeding on or about June 1, 2023, seeking a money judgment in the amount of \$14,007.56 and final judgment and possession of the premises located at 40 Vanderbilt Ave, Brooklyn, New York 11205, from Respondent-tenant, Toni Miguel. The premises is subject to rent stabilization and to a regulatory agreement between Petitioner and the City of New York Department of Housing Preservation and Development ("DHPD"). Petitioner predicated its nonpayment proceeding upon service of a 14-day rent demand. On June 16, 2023 Respondent submitted a pro se answer asserting conditions, a general denial, and a counterclaim for rent abatement.<sup>1</sup> On October 6, 2023 New York Legal Assistance by Lisa Rivera entered a notice of appearance on behalf of Respondent. On November 7, 2023, Respondent

<sup>1</sup> See NYSCEF doc 5.

filed the instant motion to dismiss pursuant to CPLR §3211(a)(2) and (a)(7) on the basis that the predicate notice is defective due to Petitioner's failure to provide the notice required under the federal Coronavirus Aid, Relief and Economic Security Act, (the "CARES Act").

Pursuant to CPLR 3211 (a) Motion to dismiss. "a party may move for judgment dismissing one or more causes of action asserted against them on the ground that 2) the court has not jurisdiction of the subject matter of the cause or action...7) the pleading fails to state a cause of action." The court unequivocally has subject matter jurisdiction over this matter pursuant to Section 110 of the New York Civil Court Act which conferred jurisdiction for housing court to hear summary proceedings and cases involving the enforcement of state and local laws for the maintenance of housing standards. Therefore, Respondent's claim pursuant to CPLR 3211 (a)(2) is denied.

The Court thus turns to Respondent's claim under CPLR 3211 (a)(7). It is well-established that "when a party moves to dismiss a complaint pursuant to CPLR § 3211 (a) (7), the standard is whether the pleading states a cause of action, not whether the proponent of the pleading has a cause of action. In considering such a motion, the court must 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." (*Sokol v. Leader*, 74 A.D.3d 1180, 1181 [2d Dept. 2010] (citations omitted); see *Guggenheimer v. Ginzburg*, 43 N.Y.2d 268, 275 [1977]). Further, in evaluating the facial sufficiency of a predicate notice in a holdover proceeding, "the appropriate test is one of reasonableness in view of the attendant circumstances." *Hughes v. Lennox Hill Hosp.*, 226 AD2d 4 (1st Dept. 1996).

A proper rent demand is a condition precedent to a nonpayment proceeding which Petitioner must plead and prove along with the other elements of its case. *RPAPL § 711(2)*. See e.g. *JDM Washington St, LLC v. 90 Washington Rest Assoc, LLC* (36 Misc. 3d 769, 950 N.Y.S. 2d 647 [Civ. Ct. N.Y. 2012] ("the service of a valid predicate notice is a condition precedent for a nonpayment proceeding...") *Zenila Realty Corp v. Masterandrea* (123 Misc.2d 1, 472 N.Y.S.2d

980 [Civ Ct N.Y. Co 1984] )(a proper rent demand is "a long-established prerequisite to the maintenance of a summary proceeding"). RPAPL 711(2) requires a fourteen-day rent demand. However, the CARES Act imposes an enhanced thirty-day notice requirements on "covered dwellings." 15 U.S.C. § 9058 (c). A "covered dwelling" is one occupied by a tenant pursuant to a residential lease in a "covered property." 15 U.S.C. § 9058 (a)(1). A "covered property" includes any property participating in a covered housing program pursuant to 34 U.S.C. § 12491(3). *Id* at § (a)(2). In its opposition, Petitioner concedes that the Respondent resides in a covered dwelling and is entitled to a 30-day notice under the CARES ACT. They also acknowledge that they did NOT serve a 30-day notice in the instant case but argue that service of the 30-day notice in a prior nonpayment suffices. The Court rejects this argument. Each summary proceeding requires the proper predicate notices. Despite arguing to the contrary, Petitioner did not neglect to serve new predicate notices in this nonpayment, but only to comply with the requirement of the CARES ACT. Petitioner's failure to adhere to the enhanced requirement under the CARES ACT renders the predicate notice defective and therefore warrants dismissal. As such Respondent's motion to dismiss is granted.

It is ORDERED Respondent's Motion to Dismiss pursuant to CPLR 3211(a)(7) is GRANTED.

The foregoing is the Decision/Order of this court.

Dated: Brooklyn, New York  
February 20, 2024

**Hon. Tashanna B. Golden**  
Judge, Housing Court



SO ORDERED  
HON. TASHANNA B. GOLDEN  
JUDGE, HOUSING COURT