

LANDLORD-TENANT LAW

Termination Notices Must Contain Sufficient Facts



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Under the typical conditional limitation clause in a lease, when a tenant violates a substantial obligation of its tenancy, the landlord is permitted to serve a notice to cure on the tenant demanding that the tenant cure the conduct alleged on or before the expiration of the cure period. If the tenant fails to cure, the landlord is then permitted to serve a notice of termination terminating the lease.

An often litigated issue is the question of how specific a predicate notice must be in order to constitute a valid notice. Oftentimes, the issue concerns the specificity of the notice to cure, in which the tenant claims that the notice fails to allege sufficient facts to apprise the tenant of what it must do to cure the alleged

defaults set forth in the notice. The issue, however, also arises in the context of the termination notice, and a very recent decision issued by Judge Marc Finkelstein of Civil Court, Kings County in *BEC Continuum Owners v. Taylor*, NYLJ, 1527198386NY7184417 (May 30, 2018) (*Taylor*) is just such a case where the adequacy of the termination notice was at issue.

“Incorporated by Reference”

In *Taylor*, the landlord served a 10-day notice to cure on the rent stabilized tenant alleging that the tenant was in default under the lease based upon claims of illegal subletting and failing to complete the income tax credit recertification, and demanding that the tenant cure the defaults by the expiration date of the notice. Because the tenant failed to cure within the cure period in the notice, the landlord served a notice of termination. The notice of termination merely “incorporated by

reference” the alleged violations contained in the notice to cure and alleged that the tenant “failed to cure such violations after ten day written notice from your landlord.”

The landlord thereafter commenced a summary holdover proceeding in the Civil Court, Kings County, based on the predicate notice to cure and notice of termination. The tenant, represented by counsel, moved for summary judgment dismissing the petition asserting that (1) the petition failed to state a cause of action due to a lack of specificity in the predicate notices, (2) the landlord failed to cite to any specific instances in the notice of termination “of respondent’s failure to cure the conduct alleged in the notice to cure,” and (3) the tenant had purportedly “cured the alleged violation of the lease.” The landlord opposed the motion, arguing that the predicate notices met the requirements of the Rent Stabilization Code and applicable

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caselaw and, in addition, that the tenant had failed to cure the defaults alleged in the notice to cure.

Civil Court (Hon. Marc Finkelman) granted the tenant's motion and dismissed the petition. The court based on ruling on its finding that the notice of termination failed to contain sufficient facts and was thus defective as a matter of law.

At the outset, the court, relying on Appellate Division precedent, observed that in examining the sufficiency of a predicate notice, "the standard is not that a predicate notice must be as specific as possible but, rather, the appropriate standard...is one of reasonableness in view of all the attendant circumstances." The court stated that "[t]he notice must be as specific as reasonably necessary in order to give the tenant reasonable notice of the landlord's claim and an opportunity to prepare a defense."

The court then went on to reject the tenant's contention that the notice to cure was defective, finding that the notice "fairly and reasonably apprises respondent of the conduct alleged by petitioner which underlies the commencement of this holdover proceeding." It, however, found that the notice of termination was deficient, citing numerous decisions from the New York City Civil

Courts whereby petitions were dismissed "because the notice of termination failed to state facts that constituted the misconduct or breach that occurred subsequent to the notice to cure and where the notice of termination failed to allege facts to support the claim that the tenant failed to comply with the notice to cure." Among other decisions, the court

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relied on *76 West 86th Corp. v. Junas*, 45 NYS3d 921 (Civ Ct, NY County 2017); *St. James Investors v. Ford*, NYLJ 1202787007020 (Civ Ct Kings Co 2016) and *Hew-Burg Realty v. Mocerino*, 163 Misc2d 639 (Civ Ct Kings Co. 1994).

The court found that the notice of termination, which merely incorporated by reference the allegations contained in the notice to cure and alleged that the tenant "failed to cure such violations," was insufficient and was therefore fatally defective. Simply, it found that the notice of termination did not contain sufficient

conclusion that the tenant failed to comply with the notice to cure.

Finally, the court rejected the landlord's attempt to allege new factual allegations concerning the tenant's failure to cure in its papers opposing the tenant's motion. It stated that "the court must examine the four corners of the termination notice itself which cannot be added to for the first time in an affidavit submitted in opposition" to the tenant's motion.

Conclusion

The Civil Court's decision in *Taylor* stands as an important reminder that notices to cure and notices of termination must contain sufficient factual allegations to withstand scrutiny by the court. Specifically, notices of termination must allege sufficient facts to support the landlord's claim that the tenant failed to cure the defaults set forth in the notice to cure. The failure to do so could be a fatal defect which will lead to the dismissal of any summary holdover proceeding brought in reliance on such a defective notice.