

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS: HOUSING PART D

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4545 EAST COAST LLC,

Index No. L&T 303187/20
 54653/20

Petitioner,

-against-

DECISION/ORDER

WILLIAM DAVENPORT ULMER,
 Respondent-Tenant,
ERIBERT A. CARRASCO, JOHN DOE and JANE DOE,
 Respondents-Undertenants.

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Present:

Hon. Sergio Jimenez
Judge, Housing Court

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of petitioner’s motion for summary judgment including a default judgment, and for issuance of a warrant and execution thereon:

Papers	Numbered
Notice of Motion & Affirmation/Affidavit/Exhibits Annexed.....	<u>1</u>

Upon the foregoing cited papers, the decision and order on petitioner’s motion is as follows.

PROCEDURAL HISTORY

This holdover proceeding was commenced in March of 2020. 4545 East Coast LLC (petitioner) seeks possession of the premises located at 4545 Center Boulevard Apartment 3920 in Long Island City, New York 11109 from William Davenport Ulmer (respondent) and under-tenants Eribert A. Carrasco, John Doe and Jane Doe. This proceeding was calendared in the Z2 part June 23, 2021, where no respondent appeared. It was then adjourned to July 26, 2021 for respondents to appear and the respondents’ contact information was sent to NYLAG for possible representation. It was then further adjourned to August 18, 2021 and September 16, 2021.

Petitioner made the instant motion seeking a default judgment and related relief. Due to an administrative error, this proceeding exists under two index numbers a NYSCEF number and a regular index number. The court, sua sponte, consolidated the proceedings to the latest adjourn date between the two calendared cases, October 6, 2021. Upon a continued non-appearance by the respondents on that date, the court deemed the motion to be submitted and reserved decision.

DISCUSSION

Petitioner's motion seeks summary judgment as to their prima facie case. They have presented, in documents, a certified deed, the original lease and most recent lease renewal, a certified Multiple Dwelling Registration, a certified DHCR registration, the notice of petition and petition and the relevant affidavits of service, the notice of termination and its annexed affidavit of service and the petitioner's rent ledger. In an uncontested affidavit, petitioner's agent, Melissa Otero, who is the assistant director of collections and compliance for the managing agent of the petitioner, attested to the deregulated status of the premises, knowledge of the respondent, the leases, the deed, the terms of the lease, the service of the papers, notice of the immediate motion, the notice of termination, the lack of military status of anyone in the household, that no one is known to be elderly, infirm or otherwise in need of protection, that no COVID-19 Hardship Declaration has been received by the petitioner, that no ERAP applications has been filed and laid the foundation for the documents submitted.

Summary judgment is a drastic remedy. CPLR §3212; *Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851 (1985).. One which may be denied even in a situation where the non-moving party did not oppose the motion. *PC 444 LLC v. Priority Pediatrics PLLC*, 133 AD3d 645 (App Div 2d Dept, 2015); *Exit Empire Realty v. Zilelian*, 137 AD3d 742 (App Div 2d Dept, 2016).

Here no opposition was filed as no appearances were made by the respondents. However, petitioner has carefully and competently set forth every aspect needed to prove their prima facie case and has supplemented that with the addressing of every aspect of CEEFPA as amended. Further, the court had three appearances which would constitute as possible conferences for the purposes of the Administrative Orders and CEEFPA. As such, after a search of the record, the court, pursuant to CPLR §409(b), grants the request sought in part and denies part of the request sought without prejudice. *1646 Union, LLC v. Simpson*, 62 Misc 3d 142[A], 2019 Slip Op 50089[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2019]. Petitioner is granted a final judgment of possession and a warrant of eviction may issue forthwith against all the respondents, William Davenport Ulmer, Eribert A. Carrasco, John Doe and Jane Doe. Execution of the warrant is stayed to November 12, 2021 for respondents to vacate the premises with dignity. The (fictional) first possible eviction date (following service of the Marshal’s warrant) is November 15, 2021. The court exercises its discretion and does not grant petitioner’s request for a money judgment, partly due to petitioner’s failure to include the necessary elements for a use and occupancy finding. *Nisim v. Ramirez*, 2021 NY Slip Op 50877(U) (App. Term, 2d Dept, 2021). It is denied without prejudice to be sought in a plenary or supreme court action.

This Decision/Order is being filed to NYSCEF and mailed to the non-appearing respondents. Petitioner’s attorney shall serve a copy of this Decision/Order upon each respondent by first class mail no later than seven (7) business days following the date of this order. This constitutes the decision and order of the court.

Dated: October 18, 2021
Queens, New York


Sergio Jimenez
Judge, Housing Court
Sergio Jimenez, JHC

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