

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF BRONX: HOUSING PART I

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HIGHBRIDGE APARTMENTS EQUITIES LLC

L&T Index No.: 022029/2014

Petitioner

**DECISION/ORDER**

-against-

GERMANIA OLIVER

Respondent

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Recitation, as required by CPLR § 2219 (a), of the papers considered in the review of Respondent's motion.

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<b>PAPERS</b>	<b>NUMBERED</b>
• Notice of Motion, Affirmation in Support, Affidavit and Exhibits ("A" – "G")	1, 2, 3, 4
• Affirmation in Opposition	5
• Affirmation in Reply	6

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

Highbridge Apartments Equities LLC ("Petitioner") commenced the within nonpayment proceeding against Germania Oliver ("Respondent"), the rent stabilized tenant of record, seeking a money judgment and possession of 1055 University Avenue, Apt. 1P, Bronx, New York ("the subject premises") on the basis of nonpayment of rent. The matter first appeared on the Court's calendar on May 2, 2014 and would thereafter be adjourned twenty-five (25) times as the parties awaited a determination of Respondent's rent overcharge complaint before the Division of Housing and Community Renewal ("DHCR"). After a finding in her favor, Respondent moved this Court for an Order pursuant to CPLR §3212 dismissing the subject nonpayment proceeding on the ground that the petition is predicated on a defective rent demand. For the reasons cited below, the Court

GRANTS Respondent's motion and DISMISSES the underlying nonpayment proceeding.

### BACKGROUND

The instant nonpayment proceeding was filed on April 14, 2014 by Petitioner Highbridge Apartments Equities LLC against Respondent Germania Oliver. The Petition in the instant proceeding plead that the subject premises is governed by the Rent Stabilization Law and sought a total of \$12,004.66 in rent arrears for a period covering January 2014 through April 2014 at a monthly rent of \$3,027.33.

On April 28, 2014, the Respondent submitted a *pro-se* answer raising the following four defenses to this proceeding:

1. The monthly rent asked for is not the legal rent or amount on the current lease;
2. The rent, or a part of the rent, has already been paid to the Petitioner;
3. There are or were conditions in the apartment and/or building/house which the Petitioner did not repair and/or services which the Petitioner did not provide; and
4. Other counterclaim: Disputes Amount.

The Petition was first noticed to be heard by the court clerk on May 2, 2014. The parties thereafter adjourned the instant proceeding twenty-five (25) times from the initial return date as they awaited a determination on Respondent's rent overcharge complaint before DHCR. Respondent had filed her rent overcharge complaint with the agency on December 28, 2012, and did not receive a determination on the merits of such complaint until August 16, 2016 or some twenty-eight (28) months after this nonpayment case was first filed. It was on that date that DHCR issued an order in favor of the Respondent by finding a rent overcharge. Petitioner subsequently filed a petition for administrative review ("PAR") which at the time of this Decision/Order was still pending.

Respondent, now represented by counsel, has filed the instant motion seeking to dismiss the underlying proceeding under CPLR §3212. The essential facts in review of this motion are not in dispute by the parties. Petitioner offered a

renewal lease, dated December 31, 2013, which gave the Respondent a choice of renewing her lease for either one or two year term at a “legal regulated rent” of \$3,027.33 per month: the renewal lease term was to commence on January 1, 2014. This renewal lease also provided the Respondent a “preferential rent” of \$1,500 per month for a similar term of one or two years. Respondent never executed the renewal lease offer but instead continued to pay a monthly rent of \$1,275 to the Petitioner.

Respondent argues that she is entitled to summary judgment as the Petition seeks a rent that is not reserved in any leases between the parties to this proceeding. Petitioner counters that the rent sought for in the Petition is a good faith approximation of the rent due. The Court disagrees with Petitioner that it accurately demanded and sued for rent that it believed was due and owing at the time it commenced the instant nonpayment proceeding.

## DISCUSSION

It is a basic tenet that a landlord is required to demand payment of outstanding rent from a tenant prior to the commencement of a nonpayment proceeding (RPAPL 711 [2]). A proper demand for rent, whether made orally or in writing, must fairly afford the tenant actual notice of the alleged amount due and of the period for which such claim is made (*Schwartz v Weiss–Newell*, 87 Misc.2d 558 [Civ Ct, New York County 1976]). The sum demanded need not be precise but, at the very least, must be a good faith approximation of the rent owed so as to allow the tenant an opportunity to avoid litigation (*FAV 45 LLC v McBain*, 42 Misc.3d 1231[A] [Civ Ct, New York County 2014]; *545 W. Co. v Schachter*, 16 Misc.3d 431, 432 [Civ Ct, New York County 2007]).

This standard has not been satisfied as the rent demanded herein far exceeded the amount Petitioner was entitled to collect. Petitioner had no right to deem the December 31, 2013 lease offer and seek to collect the amount in the un-executed lease agreement which represented a 137% increase in rent over the amount Respondent had paid (*Samson Mgmt., LLC v Hubert*, 92 AD3d 932 [2d Dept

2012]). After the expiration of her rent-stabilized lease, Respondent became a month-to-month tenant at the same rent as the parties had previously agreed to so long as she remained in possession. (Real Property Law § 232-c; *Sacchetti v Rogers*, 12 Misc 3d 131A [App Term, 1st Dept. 2006]; see also *B.N. Realty Assoc. v. Lichtenstein*, 96 AD3d 434, 435 [1st Dept. 2012]). In seeking the higher amount, Petitioner rendered its demand defective and subjected the instant matter to dismissal.

### CONCLUSION

Based on the foregoing, the Court GRANTS Respondent's motion pursuant to CPLR §3212 and DISMISSES the instant nonpayment proceeding without prejudice to recommencement based upon a proper rent demand pursuant to RPAPL § 711(2).

This constitutes the Decision and Order of this Court.

Dated: August 11, 2017  
Bronx, New York

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HON. KRZYSZTOF LACH  
Judge, Housing Part