

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: PART 87

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BB RETAIL LLC,

DECISION/ORDER

Petitioner-Landlord,

Index No.: L&T 78810/14

-against-

BT NEW YORK, INC.,

Respondent-Tenant,
-----X

Recitation, as required by CPLR 2219 [a], of the papers considered in the review of this (these) motion(s):

Papers	Numbered
Resp's mot, BD affid, SC affirm, exhs.....	1
JMT opp affirm, DB affid, exhs.....	2
SC reply affirm.....	3

LYNN R. KOTLER, J.:

This is a commercial nonpayment proceeding. Respondent moves pre-answer to dismiss this proceeding. Petitioner opposes the motion. For the reasons that follow, the motion is denied.

Respondent challenges service of the petition. However, respondent's principal, Biswajeet Das, has failed to come forward with any facts to support his denial of service. A mere denial of service is insufficient to warrant dismissal, let alone a traverse hearing on the issue, in the face of a process services' affidavit of service.

Respondent next argues that the rent demand, and alternatively the petition, seek a substantial sum towards additional security and projected real estate taxes and therefore the petition must be dismissed. Even if the Court were to adopt the respondent's proposition of law that these additional rents are impermissible in a nonpayment proceeding, the Court does not find the sum, which amounts to approximately twenty-one percent of the total amount demanded in the rent demand, and less than thirty percent of the amount demanded in the petition, as

substantial. Therefore, the Court rejects respondent's argument on this point. Respondent's remaining arguments concerning the specificity of the rent demand is also rejected and whether the rent demand was properly signed by petitioner are rejected. The Court finds the rent demand to adequately apprise respondent of the amounts petitioner claims were then due and owing.

Accordingly, the motion is denied. Respondent is directed to file and serve an answer within 10 days from the date of service of this Order with Notice of Entry.

Any requested relief not expressly addressed by the Court has nonetheless been considered and is hereby denied and this constitutes the decision and order of the Court.

Dated: December 11, 2014
New York, New York

So Ordered:



Hon. Lynn R. Kotler, J.C.C.