

Mauro v 99 John St., L.L.C.

2024 NY Slip Op 31268(U)

April 3, 2024

Supreme Court, New York County

Docket Number: Index No. 151613/2020

Judge: Louis L. Nock

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LOUIS L. NOCK **PART** **38M**

Justice

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BELLAVIA MAURO and WESLEY MORROW,
Plaintiffs,

INDEX NO. 151613/2020

MOTION DATE 04/14/2023

MOTION SEQ. NO. 001

- v -

99 JOHN STREET, L.L.C.,

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, and 39 were read on this motion for SUMMARY JUDGMENT.

LOUIS L. NOCK, J.S.C.

Upon the foregoing documents, the motion for summary judgment is granted, and the cross-motion is denied, for the reasons set forth in the moving and reply papers (NYSCEF Doc. Nos. 5, 14, 37) and the exhibits attached thereto, in which the court concurs, as summarized herein.

In this action on an alleged rent overcharge on a rent stabilized apartment,¹ the appropriate base rent for the overcharge calculation where, as here, the overcharge pre-dates enactment of the Housing Stability and Protection Act of 2019 (“HSTPA”), is four years prior to the commencement of the action (*Regina Metro Co., LLC v New York State Div. of Hous. & Community Renewal*, 35 NY3d 332, 361 [2020]; *Austin v 25 Grove Street LLC*, 202 AD3d 429, 431 [1st Dept 2022]). Plaintiffs’ argument to the contrary is unsupported by any binding

¹ Defendant has never contested that the apartment must be considered rent stabilized, which requires denial of plaintiff’s request for a declaratory judgment stating as much. The court also notes that plaintiffs did not plead such a cause of action in the complaint.

authority, and, to the extent they present alternative interpretations of *Regina, supra*, and other binding authority, the court finds such argument unpersuasive. To the extent that plaintiffs seek to rely on the longer look-back period available for claims of a fraudulent scheme to deregulate (*Regina, supra*, at 356 n 8), the record is utterly devoid of any evidence of such a scheme. Accordingly, the base rent date herein is February 13, 2016, four years prior to the date the complaint was filed.

Upon receipt of the complaint, and following the Court of Appeals' decision in *Regina, supra*, defendant correctly calculated the amount of the overcharge and the applicable interest as of April 2020, and sent a check for same to plaintiffs, along with a rent stabilized lease reflecting the correct legal rent (Brancato aff, NYSCEF Doc. No. 5, ¶¶ 26-30). Plaintiff argues that the overcharge amount is slightly higher than the amount refunded by defendant because defendant is not entitled to any increases prior to registering the apartment as rent stabilized. *Altschuler v Jobman 478/480, LLC* (135 AD3d 439 [1st Dept 2016]), relied on by plaintiffs for this proposition, is unavailing, as there, the court found a fraudulent scheme to deregulate before imposing the rent freeze (*id.* at 440-41). Here, no such scheme has been established or even sufficiently pleaded. Indeed, the Court of Appeals has specifically addressed this issue, stating that "rent freezing is inapplicable in *Roberts* cases² where the failure to timely register resulted directly from [the Division of Housing & Community Renewal's] endorsement of a misunderstanding of the law" (*Regina, supra* at 358 n 9).

As defendant properly calculated the overcharge, plus interest, and refunded that amount to plaintiffs on May 19, 2020, plaintiff's first and second causes of action for rent overcharge and interest thereon must be dismissed. Plaintiff's third cause of action for treble damages on the

² Referring to *Roberts v Tishman Speyer Props., L.P.* (13 NY3d 270 [2009]).

overcharge must also be dismissed, in the absence of any evidence that defendant willfully overcharged plaintiffs (*Regina Metro. Co., LLC v New York State Div. of Hous. and Community Renewal*, 164 AD3d 420, 423 [1st Dept 2018], *affd*, 35 NY3d 332 [2020] [“DHCR's denial of tenants' request for treble damages was rational. Landlord demonstrated that its deviation from rent stabilization was not willful”]).

Finally, the fourth cause of action for attorneys’ fees relies on plaintiffs’ anticipated hope of being the prevailing party in this action (Real Property Law § 234 [1]). As plaintiffs have not prevailed on their claims, they are not entitled to recover attorneys’ fees.

Defendant also seeks use and occupancy in the amount of the difference between what plaintiff has been paying and the correct legal rate as calculated by defendant. “The award of use and occupancy during the pendency of an action or proceeding “accommodates the competing interests of the parties in affording necessary and fair protection to both” (*MMB Assocs. v Dayan*, 169 AD2d 422 [1st Dept 1991]). Plaintiffs cite no provision that an award of use and occupancy must be based on a cause of action or counterclaim pleaded for same. Plaintiffs also do not challenge the amount calculated by defendant. Accordingly, the court grants defendants’ application for the unpaid balance of the rent through April 30, 2023, in the amount of \$2,372.41, as well as the amount that has accumulated during the further pendency of the action of \$1,906.41,³ for a total of \$4,278.82.

Accordingly, it is hereby

ORDERED that the motion for summary judgment dismissing the complaint is granted, and the cross-motion is denied; and it is further

ORDERED that complaint is dismissed; and it is further

³ The amount based on the monthly regulated rent of \$3,123.31 minus the monthly amount paid by plaintiffs, \$2,950.00.

ORDERED that the Clerk of the Court is directed to enter judgment in favor of defendant and against plaintiffs, jointly and severally, in the amount of \$4,278.82, representing the unpaid difference in the legal regulated rent and the amount paid by plaintiffs during the pendency of this action as use and occupancy, together with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs.

This constitutes the decision and order of the court.

ENTER:



<u>4/3/2024</u> DATE					<u>LOUIS L. NOCK, J.S.C.</u>		
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED		<input type="checkbox"/>	NON-FINAL DISPOSITION		
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE