

6220 Bay Realty Corp. v Bahghazi
2025 NY Slip Op 35267(U)
August 20, 2025
Civil Court of the City of New York, Kings County
Docket Number: Index No. LT-311103-24/KI
Judge: Rachel Vincent
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Civil Court of the City of New York
County of Kings

Index # LT-311103-24/KI



6220 BAY REALTY CORP.

Petitioner(s)

-against-

Present:

Hon. Rachel Vincent

DECISION/ORDER

HASSI BAHGHAZI; FATIMA UUBAITA

Respondent(s)

RECITATION, AS REQUIRED BY CPLR 2219(A), OF THE PAPERS CONSIDERED IN
THE REVIEW OF THIS MOTION BY RESPONDENT TO DISMISS

Papers

Numbered

Order to show Cause/ Notice of Motion and

Affidavits /Affirmations annexed

Answering Affidavits/ Affirmations

Reply Affidavits/ Affirmations

Exhibits

NYSCEF #11 - #13

NYSCEF #23

NYSCEF #27

NYSCEF #14 - #19, #24 - #26

UPON THE FOREGOING CITED PAPERS, THE DECISION/ORDER IN THIS MOTION IS
AS FOLLOWS:

Petitioner commenced this nonpayment proceeding on March 28, 2024, seeking possession of apartment 7A located at 6220 Bay Parkway, Brooklyn, NY, based on the allegation that respondent owes rental arrears.

Respondent moves for leave to amend her *pro se* answer and for leave to conduct discovery going back to 2011. In support of the motion, respondent contends that there was a 45% rent increase in April 2013 and a 7.5% increase in July 2019, both of which exceeded permissible Rent Guidelines Board (“RGB”) increases. Respondent also argues that she should be permitted to amend her *pro se* answer because she has raised meritorious defenses, and the amendment would not surprise or prejudice petitioner.

In opposition, petitioner argues that the motion should be denied because respondent’s discovery request seeks disclosure beyond the four or six-year lookback period permissible to support an overcharge claim. Petitioner asserts that the initial lease was executed before the enactment of the Housing Stability and Tenant Protection Act (“HSTPA”) and therefore is not subject to its provisions. Petitioner further contends that respondent has not alleged fraud or any indicia of a fraudulent scheme to deregulate the premises to justify review beyond these statutory limits.

In reply, respondent clarifies that she is pursuing two distinct legal theories. First, she claims petitioner overcharged her based on an unlawful increase taken in July 2019. Second, she asserts that the proper legal regulated rent is lower than the amount calculated from permissible increases, and that the discovery going back to April 2013 is relevant solely to determine the correct prospective legal rent. Respondent argues that the dispositive date for determining if the HSTPA applies should be the effective date of the lease, July 1, 2019, and not the handwritten date of June 13, 2019, written atop the lease, as petitioner argues.

Leave to Interpose Amended Answer

Respondent seeks leave to file an amended verified answer with additional affirmative defenses and counterclaims, including rent overcharge. Under CPLR §3025(b), leave to amend should be freely granted in the absence of prejudice or surprise resulting directly from the delay. Petitioner does not articulate any prejudice from permitting the amendment and does not oppose this branch of respondent's motion.

Accordingly, respondent's request to amend the answer is granted. The amended answer annexed to the motion (NYSCEF Doc. Number 14) shall be deemed served and filed as of the date of this order.

Leave for Discovery

It is well-settled that discovery within the context of a summary proceeding is not granted as a matter of right, and that instead it must be obtained with leave of court (*see* CPLR §408). Notwithstanding, it has been held that "discovery is not...inherently hostile to the nature of the summary proceeding", and that "although there may be [a] presumption against discovery in summary proceedings, exceptions to this rule have emerged...and if ample need is demonstrated discovery may be ordered" (*New York University v Farkas*, 121 Misc2d 643, 645, 468 NYS2d 808 [Civ Ct, NY County 1983] [internal quotation marks and citation omitted]).

The Court in *Farkas, supra*, enunciated the following factors to aid in the determination of whether ample need has been established: 1) whether a cause of action exists; 2) whether the information sought is directly related to the cause of action; 3) whether the disclosure is carefully tailored and likely to clarify disputed facts; 4) whether prejudice will result from granting disclosure; 5) whether such prejudice can be alleviated or diminished by a court order; and 6) whether disclosure can be structured to protect the parties.

Here, respondent has shown ample need for the requested disclosure as it is directly related to determining the legal regulated rent and whether an overcharge occurred. The request is limited to records necessary to test the reliability of the registered rent and is likely to clarify disputed facts.

Overcharge

Turning to the scope of discovery, petitioner argues that the HSTPA does not apply because the lease agreement is dated June 13, 2019, prior to the effective date of the HSTPA. This argument is unavailing. Although the lease bears that date, the record does not establish that it reflects the actual execution date. More importantly, the lease term commenced on July 1, 2019, after the HSTPA's effective date. Because the lease took effect after the effective date, the HSTPA governs. Under Part F, respondent need not plead or prove fraud to challenge the rent demanded or to obtain discovery within the six-year statutory lookback.

Pursuant to the HSTPA, a tenant is entitled to review rent history going back six years before an overcharge claim is filed or raised. Respondent asserted an overcharge claim on January 8, 2025; therefore, the base date is January 8, 2019, and discovery may be directed back to that point.

Calculation of the Legal Regulated Rent

When discovery is sought to determine the lawful regulated rent on a prospective basis, the RSC §2526.7, authorizes review of the rental history at least to June 14, 2015, and earlier, if necessary, where an unexplained rent increase renders the registered rent unreliable (*see Matter of Syllman v New York State Div. of Hous. & Community Renewal*, 233 AD3d 977 [2d Dept 2024]). Here, the DHCR rent registration history reflects that the rent increased from \$794.50 in

2012 to \$1,150.00 in April 2013, an increase exceeding 45 percent without explanation such as a documented Individual Apartment Improvement. This renders the registered rent unreliable and justifies review of the rental history from 2011 for the limited purpose of determining the lawful regulated rent going forward (see *Matter of West Pierre Assocs. v Harvey*, __NYS3D__, 2025 NY Slip Op 04611 [1st Dept 2025]).

Respondent's motion is GRANTED to the extent that petitioner shall comply with respondent's discovery request and produce the documents requested in NYSCEF Doc. Number 15. Petitioner shall provide responsive documents within (45) days of respondent filing a notice of entry of this decision and order on NYSCEF.

The proceeding is adjourned to October 7, 2025, at 9:30 a.m. for compliance and status conference.

This constitutes the decision and order of the Court.

Date: 8/20/2025

SO ORDERED


HON. RACHEL VINCENT
Hon. Rachel Vincent
Housing Court Judge