

Matter of Salmeron v New York State Div. of Hous. & Community Renewal

2014 NY Slip Op 30358(U)

February 4, 2014

Supreme Court, New York County

Docket Number: 101218/13

Judge: Jr., Alexander W. Hunter

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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

Index Number : 101218/2013
SALMERON, SHARON FISHER

PART 33

vs
NYS DIVISION OF HOUSING

INDEX NO. _____

Sequence Number : 001

MOTION DATE _____

ARTICLE 78

MOTION SEQ. NO. _____

The following papers, numbered 1 to 24, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). 1-6

Answering Affidavits — Exhibits _____ | No(s). 7-14; 15-19

Replying Affidavits _____ | No(s). 20-24

Upon the foregoing papers, it is ordered that this motion is

*decided in accordance with the
Decision and Judgment annexed hereto.*

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 2/4/14

OK

ALEXANDER W. HUNTER, JR., J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
 DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 33**

-----X

In the Matter of the Application of
Sharon Fisher Salmeron,

Index No.: 101218/13

Petitioner,

Decision and Judgment

-against-

New York State Division of Housing and
Community Renewal,

Respondent

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-and-

Lincoln Spencer Apartments Inc.,

Respondent-Intervenor

-----X

HON. ALEXANDER W. HUNTER, JR.

The application of petitioner for an order pursuant to CPLR Article 78, annulling the Order and Opinion dated July 11, 2013 of respondent New York State Division of Housing and Community Renewal ("DHCR"), is denied and the proceeding is dismissed without costs and disbursements.

Petitioner is a hotel rent-stabilized tenant of apartment 46A ("subject apartment") at 140 West 69th Street, New York (the "subject premises"). Respondent-intervenor Lincoln Spencer Apartments Inc. ("Lincoln Spencer") is the owner of the subject premises.

In January 2009, petitioner filed an application with DHCR for a rent reduction. Petitioner averred that she did not have a full-size refrigerator or stove and that the electrical receptacle for the stove was defective.

Lincoln Spencer opposed the application, averring that petitioner performed alterations to the electrical outlet and that it was not required to provide petitioner with a full-size refrigerator and stove, as petitioner was never promised those services. Lincoln Spencer maintained that petitioner was provided with a compact refrigerator and hot plate when she commenced occupancy. However, petitioner replaced the compact refrigerator with a series of full-size refrigerators that she purchased and replaced the hot plate with a series of stoves that she also purchased.

By Rent Reduction Order dated June 9, 2009, the application of petitioner was granted based on a finding that petitioner was entitled to a full-size refrigerator and stove (the "services"). DHCR also determined that a Department of Housing Preservation and Development ("DHPD") electrical outlet violation existed.

On or about October 20, 2009, Lincoln Spencer filed an application to restore rent, as services had been restored. Petitioner purchased and installed in the subject apartment a full-size refrigerator. Lincoln Spencer provided petitioner with a stove and the DHPD electrical violation was removed as of record.

On February 22, 2010, DHCR conducted an inspection of the subject apartment. The inspection revealed a functioning electrical outlet. The inspector noted that the stovetop elements including the broiler were operational. The inspection also revealed the presence of a full-size refrigerator. On April 27, 2010, the Department of Buildings ("DOB") conducted an inspection and found no deficiencies with the stove outlet, stovetop, or broiler.

By Order Restoring Rent dated February 13, 2012 (the "February 13, 2012 order"), the DHCR rent administrator determined that services had been restored and the legal regulated rent was restored to the level in effect prior to the Rent Reduction Order dated June 9, 2009. The determination was based on the February 22, 2010 inspection. The rent administrator also determined that the DHPD violation had been removed as of record.

On or about March 15, 2012, petitioner filed a petition for administrative review ("PAR") challenging the February 13, 2012 order. Petitioner acknowledged that the stove and full-size refrigerator were installed and functioning but averred that the electrical outlet was still unsafe. Petitioner attached a DOB electrical application overview, averring that there remained an electrical violation.

In an Order and Opinion dated July 11, 2013, the deputy commissioner determined that services were restored and that the legal regulated rent should be increased to the level in effect prior to the rent reduction. The deputy commissioner determined that the rent administrator correctly relied upon the February 22, 2010 DHCR inspection. The deputy commissioner determined that the DOB electrical application overview was not a violation and that it was not the basis for the Rent Reduction Order dated June 9, 2009. The claims by petitioner that the stove was plugged into a dryer outlet via a dryer outlet cord were determined to be unsubstantiated.

Petitioner avers that: (1) she is unable to purchase a full-size electric stove because the dedicated kitchen outlet and the cord being used for the stove are for a dryer; (2) the HPD inspector was not qualified to inspect the stove outlet; and (3) it was arbitrary and capricious for DHCR to reach its decision restoring rent.

Lincoln Spencer opposes the instant proceeding on the grounds that the petition fails to name Lincoln Spencer as a necessary party and the petition is barred by the statute of limitations. Lincoln Spencer avers that: (1) the Order and Opinion dated July 11, 2013 was not arbitrary and capricious and in accordance with the applicable provisions of the law; (2) there is no basis to challenge the Order and Opinion dated July 11, 2013, as the stove and full-size refrigerator have been installed and the DHPD electrical violation has been removed; and (3) the DOB electrical application overview submitted by petitioner cannot be considered for the first time in the instant proceeding.

DHCR opposes the instant proceeding on the ground that there is no basis for granting any of the relief sought by petitioner.

In reply, petitioner avers that Lincoln Spencer did not do any work to correct the electrical violation and there still exists a DOB violation relating to the kitchen outlet, preventing petitioner from installing a full-size stove.

Review of the instant proceeding by this court is limited to “whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion.” CPLR 7803(3); see Classic Realty, LLC v. N.Y. State Div. of Hous. & Cmty. Renewal, 2 N.Y.3d 142, 146 (2004); Matter of 333 E. 49th Assoc., LP v. N.Y. State Div. of Hous. & Cmty. Renewal, Off. of Rent Admin., 9 N.Y.3d 982 (2007).

The Rent Stabilization Law (“RSL”) requires DHCR to reduce the rent of a stabilized apartment to the level in effect prior to the most recent guidelines increase when it finds that an owner has failed to maintain required services. Section 2520.6(r) of the Rent Stabilization Code (“RSC”) defines required services as “[t]hat space and those services which the owner was maintaining or was required to maintain. . . . These may include, but are not limited to . . . repairs. . . .” If it is determined that the owner has restored services, then the rent will be increased back to the level in effect prior to the rent reduction. See Administrative Code § 26-514; RSC 2523.3.

It is for DHCR to determine factual issues in the first instance. Oriental Boulevard Co. v. N.Y. City Conciliation & Appeals Bd., 92 A.D.2d 470 (1st Dept. 1983). Questions relating to the nature, extent and rental values of services are factual issues, which are to be determined by DHCR. 230 East 52nd Street Associates v. State Div. of Hous. & Cmty. Renewal, 131 A.D.2d 349 (1st Dept. 1987); Stratford Leasing Corp. v. Gabel, 17 A.D.2d 332 (1st Dept. 1962). In making such a determination, it is entirely proper for DHCR to rely on the results of impartial inspection reports. Sherman v. Commissioner, N.Y. State Div. of Hous. & Cmty. Renewal, 210 A.D.2d 486, 487 (2nd Dept. 1994).

In the instant proceeding, this court finds that there was a rational basis supporting the determination that services had been restored and the legal regulated rent should be increased to the level in effect prior to the rent reduction. DHCR properly relied upon its inspectors to

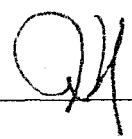
determine the existence of a functioning full-size refrigerator and operational stove. Thus, this court sustains the Order and Opinion dated July 11, 2013.

Accordingly, it is hereby

ADJUDGED that the application of petitioner for an order pursuant to CPLR Article 78, annulling the Order and Opinion dated July 11, 2013 of DHCR, is denied and the proceeding is dismissed without costs and disbursements.

Dated: February 4, 2014

ENTER:



J.S.C.

ALEXANDER W. HUNTER, JR.

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