

Dugan v London Terrace Gardens, L.P.

2017 NY Slip Op 33216(U)

November 14, 2017

Supreme Court, New York County

Docket Number: 603468/2009

Judge: Lucy Billings

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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: LUCY BILLINGS
J.S.C.

PART 46

WILLIAM DUGAN, et al.

LONDON TERRACE GARDENS, LP

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INDEX NO. 603468/2009

MOTION DATE _____

MOTION SEQ. NO. 010

FILED

The following papers, numbered 1 to 5, were read on this motion for payment for use and occupancy

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s) 1-2

Answering Affidavits — Exhibits _____ No(s) 3

Replying Affidavits _____ No(s) 4-5

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Upon the foregoing papers, it is ordered ~~that this motion is~~ *and adjudged that:*

The court grants defendant's motion for past due and ongoing payments for use and occupancy of apartment 16ABEF at 445-55 West 23rd Street, New York County, by plaintiff class members David Blech and Margie Chassman as follows. Defendant is entitled to collect payments for use and occupancy from Blech and Chassman during the pendency of this action. R.P.A.P.L. § 745(2)(a); N.Y. Real Prop. Law § 220; Marbru Assoc. v. White, 114 A.D.3d 554, 555 (1st Dep't 2014); 43rd St. Deli, Inc. v. Paramount Leasehold, L.P., 107 A.D.3d 501, 501 (1st Dep't 2013); Oxford Towers Co., LLC v. Wagner, 58 A.D.3d 422, 423 (1st Dep't 2009); Levinson v. 390 W. End Assoc., L.L.C., 22 A.D.3d 397, 403 (1st Dep't 2005).

Defendant has failed to show, however, that it was entitled to charge a market rent for a newly created apartment under the Rent Stabilization Code, 9 N.Y.C.R.R. § 2520.11(r)(12), after the combination of apartments 16AB and 16EF in 2005. Defendant presents no evidence that this combination substantially moved the apartments' perimeter walls such that the individual apartments were eliminated or that the alterations to the apartments effecting the combination were so substantial that they obliterated the apartments' prior identities. Id.; Dixon v. 105 W. 75th St. LLC, 148 A.D.3d 623, 627 (1st Dep't 2017); Devlin v. New York State Div. of Hous. & Community Renewal, 309 A.D.2d 191, 193 (1st Dep't 2003).

Consequently, defendant may not use the market rent charged in 2005 to calculate the payments for use and occupancy owed by Blech and Chassman and must calculate the payments for use and occupancy of apartments 16AB and 16EF separately, according to the framework set forth in the order dated November 13, 2017, granting the plaintiff class partial summary judgment. Nevertheless, upon a future showing that the alterations performed to effect the combination of apartments 16AB and 16EF obliterated the apartments' individual identities, defendant may be permitted to use the 2005 market rent. The court grants the cross-motion for summary judgment by Blech and Chassman, insofar as it seeks to determine past overcharges of rent paid by Blech and Chassman, to the same extent as the court granted the plaintiff class' motion for partial summary judgment in the order dated November 13, 2017, and otherwise denies the cross-motion. C.P.L.R. § 3212(b) and (e).

Dated: 11/14/17

Lucy Billings, J.S.C.
LUCY BILLINGS
J.S.C.

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

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