Matter of 900 Riverside Dr. LLC v New York State Div. of Hous. & Community Renewal
2018 NY Slip Op 30713(U)
April 19, 2018
Supreme Court, New York County
Docket Number: 161086/17
Judge: Carol R. Edmead
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 35

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In the Matter of the Application of

900 RIVERSIDE DRIVE LLC,
Petitioner,

For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules,

Index Number 161086/17

-against-

NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL,

Respondent.

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CAROL R. EDMEAD, J:

Petitioner 900 Riverside Drive LLC (Owner) brings this Article 78 proceeding to reverse the October 17, 2017 order denying Owner's petition for administrative review of the rent administrator's (RA) December 29, 2016 order imposing treble damages upon Owner for willful overcharges of rent, and affirming said order.

Owner purchased the building located at 900 Riverside Drive in Manhattan, in which nonparty Zaida Castillo rented apartment 4F (Apartment), in November, 2012. Castillo filed a rent overcharge complaint with respondent New York State Division of Housing and Community Renewal (DHCR) on January 8, 2015. After receiving notice of the complaint from DHCR, Owner investigated, and, in February 2016, issued a rent credit, in the amount of the overcharge plus interest, to Castillo.

Rent Stabilization Law § 26-516 (a) provides that any owner who has collected an

overcharge

> "shall be liable to the tenant for a penalty equal to three times the amount of the overcharge. If the owner establishes by a preponderance of the evidence that the overcharge was not willful, [DHCR] shall establish the penalty as the amount of the overcharge plus interest."

Thus, owners bear the burden of rebutting the presumption that rent overcharges were willful. *See Matter of Bauer v New York State Div. of Hous. & Community Renewal*, 225 AD2d 410, 410 1st Dept 1996); *Matter of Gattiboni v Aponte*, 188 AD2d 434, 434 (1st Dept 1992). DHCR Policy Statement 89-2 provides that an owner will be deemed to have met that burden where:

> "an owner adjusts the rent on his or her own within the time afforded to furnish DHCR with an initial response when initially served with an overcharge complaint initiated by the tenant, and submits proof to the DHCR that he or she has tendered, in good faith to the tenant, a full refund by check or cash of all excess rent collected, plus interest as provided by CPLR Section 5004. Refunds tendered after the initial period in which to respond will be reviewed in conjunction with other evidence to determine the issue of willfulness."

Answer, exhibit D at 1. Courts routinely defer to DHCR's policy statements (*see e.g. Matter of Pavia v New York State Div. of Hous. & Community Renewal,* 22 AD3d 393, 393-394 (1st Dept 2005).

It is undisputed that Owner extended the rent credit to petitioner in February 2016, more than a year after Owner's 30-day time to respond to Castillo's complaint had run. Accordingly, the R.A. and the deputy commissioner considered the following "other evidence." First, Owner failed, altogether, to tender "a full refund by check or cash of all excess rent collected, plus interest." Instead, Owner recorded a credit to be used over time, without any payment for the time value of the money. Secondly, Owner failed to register the Apartment in 2014 and 2015. Thirdly, although DHCR had previously imposed a rent reduction order for failure to maintain

services, Owner improperly raised the rent for the Apartment, and treated it as deregulated, prior to the effective date of a DHCR order restoring the rent.

Owner argues that, inasmuch as Castillo continued to live in the Apartment, without paying rent, thereby making use of the credit extended to her, DHCR should not penalize petitioner for having extended a credit, rather than returning petitioner's overpayments in the form of cash, or a check. Clearly, however, a credit, to be used over time, is not equivalent to a payment by check or cash, not only because of the time value of money, but also because a tenant may move out before exhausting the credit.

Owner also argues that the imposition of treble damages, here, is inconsistent with DHCR's action in *Matter of Carl George,* Docket No. DO410019RT, and that DHCR violated petitioner's right to due process, by failing to send petitioner a copy of a February 17, 2016 letter from Castillo to DHCR. In *Carl George*, where the landlord gave the tenant a credit, as here, but DHCR did not impose treble damages, there was no evidence that the owner knew that a rent reduction order had been imposed prior to the time that the tenant filed his complaint.. Here, by contrast, Owner knew about the rent reduction order, having filed two applications to restore the rent, prior to the time that Castillo filed her complaint. In addition, in *Carl George*, unlike here, the owner filed updated registrations promptly after the tenant filed the overcharge complaint. As for Castillo's letter, which DHCR received on February 29, 2016, it simply states that Castillo's rental account had received the credit; her monthly rent had been reduced from $1,750 to $1,660; and she awaited DHCR's decision, and "do[oes] not agree with the term my management has made." Return, exhibit A-4. Owner does not disclose whether, or how, it would have responded to those statements, had DHCR sent Owner a copy of the letter. Accordingly, it

does not appear that Owner was prejudiced by failing to receive same.

Finally, Owner argues that it charged the proper legal regulated rent on the base date, four years prior to Castillo's filing of her overcharge complaint. However, Owner was barred from collecting rent from Castillo, to which it would, otherwise, have been entitled, by the rent reduction order issued on April 16, 2009, which remained in effect until July 1, 2014, the effective date of the rent restoration order. *See* Rent Stabilization Law § 26-514; *Scott v Rockaway Pratt LLC*, 17 NY3d 739, 739 (2011) citing *Matter of Cintron v Calogero,* 15 NY3d 347, 354-355 (2010).

In sum, the order challenged here is neither arbitrary nor irrational in concluding that Owner failed to rebut the presumption that its overcharge of Castillo was willful.

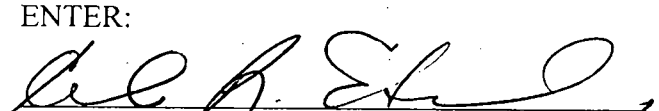
Accordingly, it is hereby

ADJUDGED that the petition is denied and the proceeding is dismissed, without costs and disbursements to respondent New York State Division of Housing and Community Renewal. And it is further

ORDERED that counsel for Petitioner shall serve a copy of this Order with Notice of Entry within twenty (20) days of entry on counsel for Respondent.

Dated: April 19, 2018

ENTER:



Carol Robinson Edmead, J.S.C.

HON. CAROL R. EDMEAD
J.S.C.