

<b>Williams v Daphne Realty Corp.</b>
2019 NY Slip Op 31739(U)
June 21, 2019
Supreme Court, New York County
Docket Number: 155186/2018
Judge: W. Franc Perry
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. W. FRANC PERRY PART IAS MOTION 23EFM

*Justice*

-----X  
DAMON WILLIAMS INDEX NO. 155186/2018  
Plaintiff, MOTION DATE N/A  
- v - MOTION SEQ. NO. 001  
DAPHNE REALTY CORP.,

**DECISION AND ORDER**

Defendant.  
-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17

were read on this motion to/for DISMISSAL

In this action plaintiff, Damon Williams, seeks to recover damages for alleged rent overcharges and seeks an order declaring the subject apartment to be rent stabilized. Defendant, Daphne Realty Corp., seeks to dismiss the action so that plaintiff's claims can be determined by the New York State Division of Housing and Community Renewal ("DHCR"), and alternatively pursuant to CPLR 3211(a)(1), (a)(2), (a)(5), and (a)(7), and CPLR 213(a).

**BACKGROUND**

Plaintiff seeks an award of money damages in the amount of \$84,288.00 for alleged rent overcharge for the last four years, an award of treble damages and attorney's fees. (NYSCEF Doc. No. 1). Plaintiff also seeks a declaration that 302 West 51<sup>st</sup> Street, Unit 4B, is rent stabilized. According to the allegations set forth in the complaint, plaintiff-tenant took possession of the subject unit pursuant to the terms of a written lease in 2008 at a monthly rental of \$2,000/month. Prior to taking possession, the unit had been registered with the DHCR as

vacant from 1989 and as temporarily exempt due to owner/employee occupied use, from 2003 to 2007, and as permanently exempt in May, 2008. (NYSCEF Doc. No. 12).

Plaintiff alleges that the last rent that is registered with DHCR with respect to the subject unit was \$381.50 in 2002, and that defendant-landlord would have had to have spent an estimated \$90,000 in qualifying Individual Apartment Improvements (IAI), during the vacancy period to have lawfully deregulated the subject unit. (NYSCEF Doc. No. 1, ¶¶14, 15). Plaintiff contends that no such improvements were completed by the landlord and as such, defendant was required to offer a rent-stabilized lease in accordance with the provisions of Rent Stabilization Code ("RSC") §2526.1, as he was the first stabilized tenant to take occupancy of the unit in July 2008, following a period of temporary exemption. According to plaintiff, the legal rent for the subject unit must remain at \$381.50 because defendant-landlord did not properly deregulate the subject unit. As such, plaintiff asserts that he is entitled to damages for rent overcharged by defendant for the last four years. Specifically, plaintiff contends that he paid rent to defendant in the amount of \$102,600 from 2000 to 2014, when he should have only paid \$18,312 in rent for the last four years, amounting to an alleged overcharge amount of \$84,288. (NYSCEF Doc. No. 1, ¶¶20-22).

Additionally, plaintiff contends that he is entitled to a declaratory judgment that the subject unit is a rent stabilized apartment, as the defendant-landlord has done nothing that would justify the deregulation of the subject unit. Plaintiff seeks an award of treble damages alleging that defendant's actions were intended to deprive him of his rights under the applicable rent stabilization laws and also seeks an award of legal fees.

Defendant argues that plaintiff's rent overcharge claim should be dismissed so that it may be determined by the DHCR pursuant to the doctrine of primary jurisdiction. Alternatively,

should this court retain jurisdiction, defendant seeks an order dismissing the complaint, claiming that plaintiff entered into a free market lease commencing July 1, 2008 and negotiated a first rent with defendant in the amount of \$2,000 per month. Defendant contends that the rent registrations report filed with DHCR demonstrates that the subject unit was properly deregulated as permanently exempt in May, 2008, following the temporary exemption period from 2003 to 2007, and as such, plaintiff's complaint should be dismissed. (NYSCEF Doc. No. 12).

Defendant claims that the RSC and procedures established by the DHCR permitted the permanent exemption of the subject unit from rent regulation after it had been exempt for a permissible reason for over four years. Defendant asserts that the complaint should be dismissed as the unit was deregulated in 2008 and that plaintiff is time-barred from raising an objection to the status of the apartment or the amount of rent being charged.

### STANDARD OF REVIEW/ANALYSIS

This court has concurrent jurisdiction with DHCR to adjudicate actions seeking to recover rent overcharges. (*Downing v First Lenox Terrace Assocs.*, 107 A.D.3d 86, 91, 965 N.Y.S.2d 9 [1st Dept 2013], *aff'd sub nom. Borden v 400 E. 55th St. Assocs., LP*, 24 N.Y.3d 382, 998 N.Y.S.2d 729, 23 N.E.3d 997 [2014]). It is well settled however, that the Supreme Court may invoke the doctrine of primary jurisdiction to transfer a rent overcharge claim to the DHCR, even where the claim was first filed in court, where resolution of the claim involves the interpretation and application of the RSC, which is the agency's field of expertise. See e.g., (*Collazo v Netherland Prop. Assets LLC*, 155 AD3d 538, 538, 64 N.Y.S.3d 537 [1st Dept 2017], citing *Olsen v Stellar W. 110, LLC*, 96 AD3d 440, 441-442, 946 N.Y.S.2d 128 [1st Dept 2012]). Indeed, deferral to DHCR reflects the understanding that when an administrative agency has the

necessary expertise to dispose of an issue, a judicial tribunal should withhold ruling on it pending resolution of the administrative proceeding. (*Wilcox v Pinewood Apt. Assoc., Inc.*, 100 AD3d 873, 874, 954 N.Y.S.2d 590 [2d Dept 2012], citing *Wong v Gouverneur Gardens Hous. Corp.*, 308 AD2d 301, 303, 764 N.Y.S.2d 53 [1st Dept 2003]).

DCHR has the necessary expertise and discretion in rent regulation matters, especially as it relates to calculating legal rent and determining whether a unit is subject to rent stabilization (see *Olsen v Stellar W. 110, LLC*, 96 AD3d at 441-42, citing *Sohn v Calderon*, 78 NY2d 755, 587 N.E.2d 807, 579 N.Y.S.2d 940 [1991]; *Davis v Waterside Hous. Co.*, 274 AD2d 318, 711 N.Y.S.2d 4 [2000], lv. denied 95 N.Y.2d 770, 745 N.E.2d 393, 722 N.Y.S.2d 473 [2000]). In *Davis*, the Court held that the trial court should have dismissed a complaint by tenants seeking a declaratory judgment that their apartments were subject to rent stabilization, observing that rent regulation issues are matters routinely within DHCR's area of expertise. (*Davis v Waterside Hous. Co.*, 274 AD2d at 318). The Court noted that "the doctrine of primary jurisdiction is intended to co-ordinate the relationship between courts and administrative agencies to the end that divergence of opinion between them not render ineffective the statutes with which both are concerned, and to the extent that the matter before the court is within the agency's specialized field, to make available to the court in reaching its judgment the agency's views concerning not only the factual and technical issues involved but also the scope and meaning of the statute administered by the agency." (*id.*).

Here, plaintiff claims that the doctrine of primary jurisdiction does not apply as the court is well equipped to follow and apply the statutory and regulatory standards necessary to resolve the issues presented by the complaint, conceding that the issues presented are not unique and do

not involve policy considerations or the interpretation of statutes or caselaw that is outside of the DHCR's special field of competence.

A review of the complaint demonstrates that this is precisely the type of claim that should be adjudicated by the DHCR. (See *Olsen*, 96 AD3d at 442 [referring rent overcharge case to DHCR given its expertise in rent regulation]; *Collazo v Netherland Prop. Assets LLC*, 155 AD3d 538, 64 N.Y.S.3d 537 [1st Dept 2017], lv granted 31 N.Y.3d 910, 81 N.Y.S.3d 368, 106 N.E.3d 751 [2018] [adjudication of claim for rent overcharge should be resolved in first instance by DHCR]; *390 W. End Assocs. v Nelligan*, 35 A.D.3d 306, 827 N.Y.S.2d 128 [1st Dept 2006]. Here, plaintiff has not cited any reason for the Supreme Court to retain jurisdiction over this rent overcharge claim, which falls squarely within the expertise of the DHCR.

Plaintiff's claims that defendant unlawfully deregulated the subject unit and that legal rent for the subject unit must remain at \$381.50, involves the interpretation and application of the RSC, which is the DHCR's particular field of expertise. Moreover, plaintiff's claim that the defendant-landlord has not made qualifying individual apartment improvements during the vacancy period to have lawfully deregulated the subject unit, should be resolved by the DHCR in accordance with the RSC and its own regulations. See e.g., (*Matter of Bronx Boynton Ave. LLC v New York State Div. of Hous. & Community Renewal*, 158 AD3d 589, 71 N.Y.S.3d 472 [1st Dept 2018]). Finally, the DHCR is in the best position to determine and calculate the amount of treble damages, if any, that the RSC allows for "willful" rent overcharges. RSC § 2526.1 (a)(2)(i). Based on the foregoing, the court, in its discretion, refers the issues to DHCR for determination. (*Collazo v Netherland Prop. Assets LLC*, 155 AD3d 538, 64 N.Y.S.3d 537 [1st Dept 2017], lv granted 31 N.Y.3d 910, 81 N.Y.S.3d 368, 106 N.E.3d 751 [2018]).

Accordingly, it is hereby,

ORDERED that the motion to dismiss by defendant, Daphne Realty Co., sequence no. 001, is granted and the complaint is dismissed, without prejudice, and plaintiff is directed to file an appropriate claim with the New York State Division of Housing and Community Renewal. Any requested relief not expressly addressed by the Court has nonetheless been considered and is hereby denied and this constitutes the decision and order of the Court.

6/21/2019

DATE

CHECK ONE:

CASE DISPOSED  
 GRANTED  DENIED

APPLICATION:

SETTLE ORDER  
 INCLUDES TRANSFER/REASSIGN

CHECK IF APPROPRIATE:

NON-FINAL DISPOSITION  
 GRANTED IN PART  OTHER  
 SUBMIT ORDER  
 FIDUCIARY APPOINTMENT  REFERENCE

*WP*  
HON. W. FRANC PERRY, III  
J.S.C.