King George Apts LLC v Barragan

2024 NY Slip Op 33424(U)

May 24, 2024

Civil Court of the City of New York, Queens County

Docket Number: L&T Index No. 306651/22

Judge: Clifton A. Nembhard

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This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS: HOUSING PART D

KING GEORGE APTS LLC
Petitioner-Landlord

-against-

DIEGO BARRAGAN
80-15 41st Avenue, Apt. 729
Elmhurst, New York 11373
Respondent-Tenant

KELLY VIVAS
"JOHN DOE" and "JANE DOE"
Respondents-Undertenants

L&T Index # 306651/22

DECISION/ORDER

Hon. Clifton A. Nembhard

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of respondent's motion.

Papers	**Numbered**
Notice of Motion and Affidavits Annexed	1
Order to Show Cause and Affidavits Annexed	
Answering Affidavits	2
Replying Affidavits	3
Exhibits	
Other	

Upon the foregoing cited papers, the decision/order on this motion is as follows:

Background

Petitioner commenced this nonpayment proceeding to recover rent arrears due through May 2022 totaling $24,111.27. Respondent Diego Barragan interposed a pro se answer generally denying the allegations in the petition. Respondent subsequently retained counsel and the parties stipulated that respondent would file an amended answer which would not include a traverse defense. Respondent then moved for leave to conduct discovery. Attached as an exhibit to the motion is a proposed amended answer which asserts a rent overcharge defense and counterclaim. A proposed Notice of Discovery and Inspection is also annexed as an exhibit.

Discussion

Respondent argues that he should be granted discovery in light of his rent overcharge claim. Moreover, the discovery should go beyond the four-year lookback period because there is indicia of fraud by petitioner. Petitioner counters that respondent should not be granted leave to file an amended answer or to conduct discovery. With respect to the former, the parties agreed that respondent would file an amended answer therefore the proposed answer is deemed served and filed.

As to the second branch of the motion, discovery is not inherently hostile to the nature of a summary proceeding. While there is a presumption against it, discovery may be granted upon a showing of ample need. *Mautner-Glick Corp. v. Higgins,* 64 Misc3d 16 [App Term 1st Dept 2019]. Ample need for discovery exists in nonpayment cases where: 1) the party seeking discovery has asserted fact to establish a claim or defense; 2) there is need to determine information directly related to the claim or defense; 3) the requested disclosure is carefully tailored and likely to clarify the disputed facts; 4) prejudice will not result from granting leave to conduct discovery; 5) the court can fashion an order to diminish any potential prejudice; and 6) the court can structure discovery so that pro se tenants in particular protected. *New York University v. Farkas*, 121 Misc2d 643 [Civ Ct NY 1983].

Respondent seeks discovery in the form of leases, lease rider, rent registrations, rent records and other documents concerning rent increases for the subject apartment from 2006 to present. In support of his request, respondent asserts that his apartment's rental history is "highly irregular, with the most egregious irregularities beginning in 2007". Respondent notes that in 2007 the legal regulated rent increased 26.05% from $1,190.00 to $1,500.00 without explanation and the tenant at the time received a preferential rent of $965.00. The following year the rent increased 17.33% to $ 1,760.00 based on a vacancy increase. In 2010 the apartment was registered as permanently exempt due to high rent vacancy and there was a preferential rent of $950.00. Thereafter, from 2011 to 2017, the apartment was listed as exempt from registration. In 2018 the apartment was registered as rent stabilized with a regulated rent of $2,559.34 and a preferential rent of $1,320.00. In 2019 and 2020 there is no registration on file. In 2021and 2022 the legal registered rent was listed at $2,669.64 with a preferential rent of $1,481.90. Additionally, neither the name of the tenant or the legal rent is listed when the apartment is first deemed to be exempt due to high rent deregulation.

Petitioner, in opposition, argues that respondent is not entitled to discovery because the rent history is not highly irregular. Moreover, respondent has not proven that it engaged in a fraudulent scheme to deregulate the subject apartment to justify eighteen years of discovery. Petitioner notes that it plead that the premises are rent stabilized and that it registered the apartment for the 2018 annual registration cycle after receiving a Notice of Proposed Action from the Division of Housing and Community Renewal in August 2020. Thereafter, it registered the apartment for 2021 and 2022. Additionally, petitioner argues that respondent has always paid a preferential rent, which was lower than the legal regulated rent, since moving into the apartment in 2014.

NYC Administrative Code 26-516(h) provides that "courts, in investigating complaints of overcharge … shall consider all available rent history which is reasonably necessary to make such determinations." The statute further provides that courts may review "whether the legality of a rental amount charged or registered is reliable in light of all available evidence including but not limited to whether an unexplained increase in the registered or lease rents, or a fraudulent scheme to destabilize the housing accommodation, rendered such rent or registration unreliable" NYC Administrative Code 26-516[h]. Prior to the June 14, 2019, enactment of the Housing Stability and Tentnat Protection Act ("HSTPA"), a tenant was permitted to look back four years at an apartment's rental history to establish a rent overcharge claim. The HSTPA extended the period to six years. However, this extension does not apply retroactively to overcharges which occurred prior to or continued after the enactment of the statute. *Regina Metro. Co., LLC v. New York State Div. of Hous. & Comm. Renewal*, 35 NY3d 332 [Ct App 2020]; *Austin v. 25 Grove,* 202 AD3d 429 [1st Dept 2022]. Under pre-HSTPA law, consideration of the rental history beyond the four-year lookback period will be permitted "only in the limited category of cases where the tenant produced evidence of a fraudulent scheme to deregulate, and even then, solely to ascertain whether fraud occurred not to furnish evidence for calculation of the base date rent or permit recovery for years of overcharges barred by the statute of limitations." *Regina Metro., supra.* When a colorable claim of a fraudulent scheme to deregulate is raised, the court shall consider the totality of the circumstances to determine whether the owner knowingly engaged in such fraudulent scheme. New York State Assembly Bill 2023-A8506; *DeLeon v. 560-568 Audubon Realty, LLC*, 2024 Misc LEXIS2142 [Sup Ct NY].

The respondent has resided in the subject premises since March 2012 and is paying a preferential rent. Notwithstanding this, respondent first appears as the tenant on the registration statement pursuant to a lease renewal in 2018. The registration statement list the regulated rent as $1,2559.34 with a $1,320.00 preferential. Rent Stabilization Code § 2521.2 states in pertinent part that "[w]here the amount of the legal regulated rent is set forth either in a vacancy lease or renewal lease where a preferential rent is charged, the owner shall be required to maintain, and submit where required to by DHCR, the rental history of the housing accommodation immediately preceding such preferential rent to the present which may be prior to the four-year period preceding the tilling of [an overcharge] complaint." "For purposes of establishing the existence or terms and conditions of a preferential rent under Section 2521(c) of this Title, review of the rental history of the housing accommodation prior to the four-year period preceding the filing of a complaint pursuant to this section shall not be precluded." RSC § 2526.1

Petitioner does not offer an explanation for 26.05% rent increase in 2007. This alone is insufficient to establish a colorable claim of fraud. *Matter of Grimm v. State of New York Div. of Hous. & Comm. Renewal*, 15 NY3d 358 [Ct App 2010]. The apartment purportedly reached the deregulation threshold in 2010 following another vacancy. Petitioner subsequently received J-51 tax benefits sometime between 2012 and 2017 but continued to register the apartment as exempt. Upon receiving the Notice of Proposed Action from DHCR, petitioner registered the apartment as rent stabilized in 2018. However, since respondent is paying a preferential rent and there is a gap in the registration statement immediately before respondent became the tenant, there is ample need for information relating to the rent paid by his predecessor. Moreover, since respondent has resided in the apartment since 2012, a lookback period longer than the statutory four years is justified. *In re Valentine*, 2023NY Misc LEXIS 19741 [Sup Ct Bx].

Conclusion

Based on the foregoing, the motion is granted as follows. Petitioner shall provide respondent with the information sought in the Notice of Discovery and Inspection. The Court however limits the scope of the disclosure to the lease prior to respondent's vacancy lease forward.

The matter shall remain off calendar pending compliance with this order.

This constitutes the decision and order of the Court.

Date: May 24, 2024
Queens, New York

Hon. Clifton A. Nembhard, JHC