CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART G

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66 FORT WASHINGTON ASSOCIATES LLC,

PETITIONER/LANDLORD

L&T: 300262-24/NY

-against-

DECISION/ORDER

TIARA FRIESON,

RESPONDENT/TENANT

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Hon. Alberto Gonzalez

Recitation of the papers considered in review of Respondent's motion. NYSCEF Doc. No. 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 45, 46.

Respondent's motion is granted to the following extent:

The instant nonpayment proceeding was initiated by the filing of a notice of petition and petition on January 4, 2024, seeking $4,838.72 in unpaid rent. *See NYSCEF # 1*. The petition further asserts the apartment is subject to rent stabilization. Thereafter, Respondent filed an answer with the court on January 29, 2024, making the petition returnable on February 5, 2024 at 2:30pm in Part G. *See NYSCEF # 6*.

On February 5, 2024, the proceeding was adjourned to April 4, 2024 for Respondent to be screened for legal services. On April 4, 2024, the Respondent (Pro Se and unrepresented by counsel) entered into a stipulation of settlement with the Petitioner. *See NYSCEF # 8*. The stipulation grants Petitioner a final judgment and a warrant of eviction. *See NYSCEF # 8*. The stipulation further provides that Respondent shall pay $10,755.44 by May 31, 2024. *See NYSCEF # 8*.

Respondent thereafter filed a pro se order to show cause to "vacate the judgment based upon failure to comply with a stipulation," returnable on July 8, 2024. *See NYSCEF # 15*. On July 8, 2024, the court granted Respondent's order to show cause to the extent of staying execution of the warrant until August 9, 2024 for payment of $15, 990.53 and August's 2024 rent. *See NYSCEF # 16*.

Respondent retained counsel and files the instant order to show cause.

Respondent's order to show cause seeks to: "a) [vacate] the stipulation of settlement dated April 4, 2024; b) [permit] Respondent to interpose an amended answer pursuant to CPLR 3025 (b); and upon, interposing Respondent's Proposed Verified Answer, c) [deem] Respondent's Proposed Verified Answer served and filed nunc pro tunc; and, upon deeming Respondent's Proposed Verified Answer served and filed, d) [grant] Respondent leave to conduct limited discovery pursuant to CPLR 408 to determine how the legal regulated rent for the subject premises increased from $400.0 in 1996 to $2,697.69 in 2021; or, in the alternative, if the stipulation is not vacated, e) [stay] execution of the judgment and warrant for the Legal Aid Society to advocate on behalf of Respondent to obtain the stipulated rent arrears; and f) [grant] such further relief as this Court deems just and proper." *See NYSCEF # 19* ¶ 2.

Respondent's basis to vacate the stipulation is that, "[t]his Court should vacate the April 4, 2024 Stipulation of Settlement because Respondent, who was self represented at the time, entered into it without being aware of her meritorious defense of rent overcharge." *See NYSCEF # 19* ¶ 29.

Respondent argues in favor of its overcharge claim as follows:

"First, in the rental history for the subject premises, there are five unexplained

increases in the registered legal regulated rent: an unexplained 7.75% increase in the registered legal regulated rent between the penultimate lease renewal ($400.00) and the last lease renewal ($431.00) of Laudelina Molina's tenancy, where the Rent Guidelines Board provided for a 4% increase for a two-year lease renewal, see supra ¶ 3 and Exhibit O – Rent Guidelines Board Apartment Orders #1 through #56; an unexplained 231% increase in the registered legal regulated rent between the final lease renewal of Julio Meoronta's tenancy, which was registered at $568.10, and the vacancy lease of Anette James's tenancy, which was registered at $1,312.18, which exceeded the permissible vacancy increase of 17%, see supra ¶¶ 4, 6, and Exhibit O – Rent Guidelines Board Apartment Orders #1 through #56; an unexplained 20% increase in the registered legal regulated rent between registration year 2015, when the apartment was registered as vacant with a purported legal regulated rent at $2,039.08, and the vacancy lease of Micheal Reayes, which exceeded the permissible vacancy increase of 18.25%, see supra ¶¶ 10-11 and Exhibit O – Rent Guidelines Board Apartment Orders #1 through #56; and successive unexplained 5% increases between the sole year of Micheal Reayes's tenancy and registration year 2017, ostensibly pursuant to Rent Stabilization Law § 26-511(c)(5-a) as amended by the Rent Act of 2015, and between registration years 2017 and 2018, even though the apartment's continued vacant status precluded Petitioner from knowing how large a vacancy increase to take, see supra ¶¶ 11-12 and N.Y. City Admin. Code § 26-511(c)(5-a) (repealed 2019).See also 9 N.Y.C.R.R. § 2522.8 (amended 2023).

Second, Petitioner's predecessor-in-interest BPII – 66 Ft. Washington LLC failed to submit a rent registration for the subject premises for registration year 2007, which preceded the unexplained 231% increase recorded in registration year 2008 for Ms. James's vacancy lease. See supra ¶ 5.

Third, there were two overlapping tenancies in the period for which Respondent seeks discovery: the term of Julio Meoronta's vacancy lease partly overlapped with the final lease renewal of Laudelina Molina's tenancy, and the term of Kunal Patel's vacancy lease partly overlapped with the final lease renewal of Douma Awatif's tenancy.See supra ¶¶ 8-9.

Fourth, Petitioner and its predecessors-in-interest began using preferential rents to conceal improperly inflated rents beginning with Ms. James's vacancy lease, which continued as the registered legal regulated rent was approached then-applicable $2,500 deregulation threshold pursuant to former Rent Stabilization Law § 26-504.2.See supra ¶¶ 6-11, 18-19; see also N.Y.City Admin. Code § 26-504.2 (repealed 2019).

Finally, neither Petitioner nor its predecessors-in-interest have filed jobs with the New York City Department of Buildings (DOB) particular to the subject premises, and the DHCR rent histories do not reflect notations for IAIs in the years where the aforementioned unexplained increases took place. See Exhibit P – DOB Job Filings Prior to Respondent's Tenancy. Indeed, the only notations for IAIs appear to be mistaken references to MCIs collected in those registration years. Taken together, these factors provide for indicia of fraud." *See NYSCEF # 19* ¶ 76-80.

Respondent also seeks to file a proposed amended answer, because Respondent has meritorious defenses and counterclaims that Respondent was previously unaware of. S*ee NYSCEF # 19* ¶ 45.

Respondent further seeks disclosure from 1996 to the present. *See NYSCEF # 19* ¶ 51. Petitioner argues that the court should grant disclosure because there is "sufficient indicia to allege that the base date rent is a product of a fraudulent scheme by Petitioner and its predecessors-in-interest to charge a rent in excess of the proper legal regulated rent for the subject premises." *See NYSCEF # 19* ¶ 55. Respondent further writes, "[i]n evaluation the motion at bar, this Court should apply Chapters 760 of the Laws of 2023, as amended, and construe it to reinstate the framework for assessing claims of fraudulent schemes to remove apartments from deregulation as set forth by the Thornton and Grimm Courts and their progeny." *See NYSCEF # 19* ¶ 57.

In opposition, Petitioner writes that Respondent has "benefitted from the terms of the April 4, 2024 agreement" by accepting the payment arrangement and failing to demonstrate "ample need" per the factors laid out in NYU vs. Farkas. *See NYSCEF # 45* ¶ 4, 22. Petitioner further writes, that Petitioner has not overcharged Petitioner, as Petitioner has charged the Respondent a monthly rent as required by law, that a sizeable increase in the rent at some point earlier than the base rent is not enough to establish a claim of fraud, that there must be evidence of a fraudulent scheme to remove the apartment from rent regulation, and any claim of fraud is false. *See NYSCEF # 45* ¶ 27. Petitioner further opposes the motion to vacate the stipulation because Respondent voluntarily entered into the lease agreement with Petitioner. Petitioner further opposes the motion to amend the answer because Respondents proposed answer contains defenses that are palpably insufficient as a matter of law or totally devoid of merit. *See NYSCEF # 45* ¶ 38.

"Stipulations of settlement are favored by the courts and not lightly cast aside" (Hallock v. State of New York, 64 N.Y.2D 224, 230, 485 N.Y.S.2d 510, 474 N.E.2d 1178 [1984]). Strict enforcement of stipulations of settlement serve the interest of efficient dispute resolution, and is essential to the management of court calendars and the integrity of the litigation process (id; see Mitchell v. New York Hosp., 61 N.Y.2d 208, 473 N.Y.S.2d 148, 461 N.E.2d 285 [1984]; City of New York v. 130/40 Essex St. Dev. Corp., 302 A.D.2d 292, 756 N.Y.S.2d 23 [2003]." *Hotel Cameron, Inc. v. Purcell*, 35 A.D.3d 153, 87 N.Y.S.2d 13 (App. Div. 1st. Dept.2006).

Vacatur of a stipulation of settlement, should not be granted absent "fraud, collusion, mistake or accident[,] especially when represented by counsel. *104-106 East 81st Street v. O'Brien*, 12 Misc.3d 1175 (A), 824 N.Y.S.3d 764 (Civ. Ct. N.Y. Cty. 2006). Vacatur may also occur, if it appears, "that a party has inadvertently, inadvisably or improvidently entered into an agreement which will take the case out of the due and ordinary course of proceeding in the action, and in so doing may work to his prejudice." *BML Realty Group vs. Samuels, 15 Misc.3d 30, 833 N.Y.S.2d 348 (App. Div. 1st. Dep't. 2007)*.

"[C]ourts possess the discretionary authority to relieve parties from the consequences of a stipulation "if it appears that the stipulation was entered into inadvisedly or that it would be inequitable to hold the parties to it." " *125 Court Street, LLC vs. Nicholson*, 67 Misc.3d 28, 115 N.Y.S.3d 817 (App. Term. 1st. Dept. 2019).

Court's further frequently vacate stipulations entered into by Pro Se Tenants, who are subsequently represented by counsel and offer defenses to a landlord's claim. *2722 8th LLC vs. Watson*, 10 Misc.3d 140(A), 814 N.Y.S.2d 565 (App. Term. 1st. Dep't. 2006); *Tabak Assoc., LLC vs. Vargas*, 48 Misc.3d 143 (A), 20 N.Y.S.3d 294 (App. Term. 1st. Dep't. 2015) ("In this case, tenant, now represented by counsel, has demonstrated that she has a potentially meritorious rent overcharge claim, which should not be deemed forfeited by her uncounseled decision to consent to judgment."); *Chauncey Equities, LLC vs. Murphy*, 62 Misc.3d 141(A), 112 N.Y.S.3D 861 (App. Term. 2nd. Dep't. 2019); *Northtown Roosevelt LLC vs. Daniels*, 35 Misc.3d 137(A), 951 N.Y.S.2d 87 (App. Term. 1st. Dep't. 2012).

In the instant matter, vacatur of the stipulation and the judgment relies on whether Respondent possesses a valid overcharge claim.

Pursuant to CPLR § 213-a, "[n]o overcharge penalties or damages may be awarded for a period more than six years before the action is commenced or complaints is filed, however, an overcharge claim may be fled at any time, and the calculation and determination of the legal rent and the amount of the overcharge shall be made in accordance with the provisions of law governing the determination and calculation of overcharges." CPLR § 213-a. Prior to the 2019, and the passage of the Housing Stability and Tenant Protection Act of 2019 (HSTPA), overcharge claims were subject to a four year statute of limitations.

Review beyond the four-year statute of limitations is permitted, most notably to determine if the apt is rent regulated or "whether a fraudulent scheme to destabilize the apartment tainted the reliability of the rent on the base date." *See Gersten v. 56 7th Ave LLC*, 88

AD3d 189, 928 NYS2d 515 (App. Div. 1st. Dept); *Matter of Grimm v. State of New York Div of Hous and Community Renewal Office of Rent Admin*, 15 N.Y.3d 358, 912 N.Y.S.2d 491 (2010).

Moreover, Pursuant, to the Section 2-a of Part B of Chapter 760 of the Law of 2023 , as follows:

"When a colorable claim than an owner has engaged in a fraudulent scheme to deregulate a unit is properly raised as part of a proceeding before a court of competent jurisdiction or the state division of housing and community renewal, a court of competent jurisdiction or the state division of housing and community renewal shall issue a determination as to whether the owner knowingly engaged in such fraudulent scheme after a consideration of the totality of the circumstances. In making such determination, the court or the division shall consider all of the relevant facts and all applicable statutory and regulatory law and controlling authorities, provided that there need not be a finding that all of the elements of common law fraud, including evidence of a misrepresentation of material fact, falsity, scienter, reliance and injury, were satisfied in order to make a determination that a fraudulent scheme to deregulate a unit was committed if the totality of the circumstances nonetheless indicate that such fraudulent scheme to deregulate a unit was committed." *See* Section 2-a of Part B of Chapter 760 of the Law of 2023.

Notwithstanding, "[g]enerally, an increase in the rent alone will not be sufficient to establish a "colorable claim of fraud," and a mere allegation of fraud alone, without more, will not be sufficient to required DHCR to inquire further. What is required is evidence of a landlord's fraudulent deregulation scheme to remove an apartment from the protection of rent stabilization. As in *Thorton*, the rental history may be examined for the limited purposes of determining whether a fraudulent scheme to destabilize the apartment tainted the reliability of the rent on the base date." *Grimm vs. State of New York Division of Housing and Community Renewal Office of Rent Administration* (2010).

In the instant matter, the court finds that Respondent has properly made out, under the totality of the circumstances, a colorable claim that Petitioner engaged in a fraudulent scheme to deregulate the premises. The rent registration's unexplained increases, improper vacancy increases, missing entries, overlapping tenancies, use of preferential rents and lack of IAIs support said defense. The claims made by Respondent demonstrate an indicia of fraud, and as such requires vacatur of the judgment, warrant and stipulation. As such, the court vacates the judgment, warrant and the April 4, 2024 stipulation.

The court next reviews Respondent's motion to amend their answer.

The CPLR provides that a party may amend a pleading at any time by leave of court, and that leave "shall be freely given upon such terms as may be just." CPLR Rule 3025(b). Leave to amend under CPLR Rule 3025(b) is "committed to the court's discretion," and should be granted "freely." *See Norwood vs. City of New York*, 203 A.D.2d 147, 610 N.Y.S.2d 249 (App. Div. 1st Dep't 1994).

Although trial courts retain broad discretion in determining when to grant leave to amend a pleading, courts have consistently held that, absent "significant prejudice to the opposing party," leave to amend should routinely be granted. *1515 Macombs LLC vs. Jackson*, 50 Misc.3d 795, 20 N.Y.S.3d 869 (Civ. Ct. Bronx. Cty. 2015).

A motion to amend a pleading should be granted absent a showing of prejudice or surprise to the opposing party. *1614 Midwood Holding LLC vs. Tiliaeva*, 80 Misc.3d 628, 196 N.Y.S.3d 636 (Civ. Ct. N.Y. Cty. 2023).

In the instant matter, the court grants Respondent's motion to amend their answer. Respondent proffers objections in point of law, defenses and counterclaims – including the breach of the warranty of habitability, the issuance of an order to correct, treble damages, overcharge, failure to comply with RPAPL 741(4), a fraudulent scheme to overcharge, and a defective rent demand. Petitioner will not be hindered in its preparation or pursuit of its claims with the amendment. Further, the court notes that the proposed amended answer was filed after the Respondent retained counsel, and Respondent would be prejudiced if they are unable now to amend their answer and include all of their defenses. As such the proposed amended answer is deemed duly filed, served and interposed.

Next the court turns to Respondent's motion for disclosure.

Section 408 of the CPLR authorized the use of discovery in summary proceeding with permission of the court if ample need is shown. Disclosure, "may assist the speedy disposition of a case when it has served the purpose of clarifying the issues for trial." *New York University v. Farkas*, 121 Misc.2d 643, 468 N.Y.S.2d 808 (Civ. Ct. N.Y. Cty. 1983).

In *New York University v. Farkas*, the court set forth six factors to consider when determining whether discovery is appropriate pursuant to CPLR § 408:

1) whether the party seeking discovery has asserted facts to establish a cause of action or defense;
2) whether there is a need to determine information directly related to the cause of action;
3) whether the requested discovery is carefully tailored and likely to clarify the disputed facts;
4) whether prejudice will result;
5) Whether prejudice can be diminished or alleviated, for example by prescribing a short time period to conduct discovery; and
6) Whether the court, in its supervisory role, can structure discovery so that the party against whom discovery is sought, particularly pro se tenant, will be protected and not adversely affected by the discovery requests.

In the instant matter, the Respondent has asserted facts establishing their defense of overcharge and a fraudulent scheme to deregulate. A need exists to determine Respondent's defense, and though the demands and interrogatory goes back several decades, both sides are

represented by counsel and the court in its supervisory role will supervise the disclosure so that the parties are not adversely affected.

As such, Petitioner is ordered to produce items # 3, 5, 6, 7, 8, 9, 10, 11, 13, 15, 16 in Respondent's document demand. Petitioner shall not have to respond to item # 1 as said items are not in the exclusive control of the Petitioner. Petitioner shall not have to respond to items # 2 and 14 as Respondent may obtain said documents by subpoena on DHCR. Petitioner shall not have to respond to items # 4, 12, 13, 17 as they are overbroad and/or beyond the scope of the facts and claims made herein. Petitioner's response shall be within 45 days of service of this decision and a Notice of Entry. To the extent that Petitioner does not have custody or control of the documents, it shall produce an affidavit from someone with personal knowledge stating such. Petitioner shall further not be required to respond to Respondent's interrogatories as they are duplicative of the document demand.

CONCLUSION

For the reasons stated above, it is hereby ORDERED that Respondent's Motion is GRANTED as per the directives above. The parties are to appear in Part G, Room 581 on November 15, 2024 at 10:30am for all purposes.

Hon. Alberto M. Gonzalez, HCJ

ALBERTO GONZALEZ
JUDGE, HOUSING COURT

Dated: New York, New York
September 27, 2024