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

109TH AFFORDABLE HOUSING LLC,

Petitioner(s),

-against-

MATTHEW BECK, DENISSE BECK, "JOHN DOE" and "JANE DOE",

Respondent(s).

Index No. LT-315267-24/NY

Motion Seq. 1

DECISION/ORDER

Present: Hon. Adam R. Meyers
Judge, Housing Court

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of the motion:

Papers	NYSCEF Doc. Nos.
Notice of Motion (Seq. 1) and supporting papers	8-14
Affirmation in Opposition and supporting papers	19-25
Affirmation in Reply and supporting papers	28

Upon the foregoing cited papers, the court's decision and order is as follows:

Petitioner commenced this summary holdover proceeding in August 2024 (*see* Petition, NYSCEF Doc. No. 1). Respondent Matthew Beck appeared by counsel and answered on January 3, 2025 (*see* Answer, NYSCEF Doc. No. 7). The answer asserts, *inter alia*, that the unit was unlawfully deregulated. Simultaneously with the filing of an answer, Respondent moved for discovery in connection with the regulatory status of the unit (*see* Notice of Motion, NYSCEF Doc. No. 8).

In support of his motion, Respondent offers the unit's DHCR rent history, which shows that as of April 1, 2010, the legal rent was registered at $600.97, and that the following year the unit was registered as permanently exempt on the basis of high rent-vacancy deregulation (*see* DHCR Rent History, NYSCEF Doc. No. 14). Prior to June 23, 2011, the deregulation threshold—i.e., the legal rent that, upon vacancy and inclusive of any available rent increases, would have resulted in the lawful deregulation of the unit—was $2,000. Thus, Respondent correctly notes that deregulation would have required a basis to increase the rent well in excess of the automatic vacancy increase that would have been available. Respondent argues the need for additional information regarding

any legal rent increases and the fact that this information is available only to Petitioner merit leave to engage in discovery in this summary proceeding.

Petitioner opposes the motion on several grounds, including that Respondent has failed to establish indicia of a fraudulent scheme to deregulate the apartment as would be necessary to review the rent history beyond the base date for purposes of an overcharge claim. Petitioner also argues that because it does not have documents responsive to the proposed demands, the motion for discovery is "moot."

Discovery in a summary eviction proceeding is not permitted by right and may only proceed with leave of court pursuant to CPLR § 408. Courts allow discovery where a party can demonstrate "ample need" for the information sought (*see New York Univ. v. Farkas*, 121 Misc 2d 643, 643 [Civ Ct, NY Cnty 1983]). In *Farkas*, the seminal case addressing discovery in summary eviction proceedings, the court identified a series of factors for consideration in determining whether a party has ample need for discovery, including whether there is a need to determine information related to a cause of action, whether the disclosure is likely to clarify disputed facts, whether prejudice would result from a grant of leave to conduct discovery, and whether such prejudice could be mitigated (*id.*). Recent cases have considered the *Farkas* factors alongside the general preference for efficiency in summary proceedings, evaluating whether granting discovery would serve to expedite resolution of the underlying dispute (*see, e.g.*, *Temo Realty LLC v. Herrera*, 82 Misc 3d 299, 301 [Civ Ct, Kings Cnty 2023]; *50th Street HDFC v. Abdur-Rahim*, 72 Misc 3d 1210 [A] [Civ Ct, Kings Cnty 2023]).

It is the tenant's burden to establish ample need for discovery on the issue of an apartment's regulatory status (*see, e.g., Mautner-Glick Corp. v Higgins*, 64 Misc 3d 16, 18 [App Term, 1st Dept 2019]). A tenant may establish ample need on this issue by identifying irregularities in the rent history, including gaps and sizeable rent increases (*id.* at 18-19 [ample need for discovery regarding 69% rent increase and registration gaps]; *Aimco 322 E. 61st St., LLC v Brosius*, 50 Misc 3d 10, 12 [App Term, 1st Dept 2015] [ample need for discovery regarding alleged improvements]; *150 West 82nd Street Realty Assoc., LLC v Linde*, 36 Misc 3d 155[A] [App Term, 1st Dept 2012] [ample need for discovery regarding $1,061 rent increase]). While a tenant must identify indicia of fraud in order to obtain discovery beyond the base date for purposes of calculating rent overcharge (*see, e.g., Ioannou v 1 BK Street Corp.*, 203 AD3d 627, 627 [1st Dept 2022] [discovery beyond base date appropriate where fraud 'could be shown']), no such limitation applies to inquiries regarding regulatory status (*Gersten v 56 7th Ave. LLC*, 88 AD3d 189, 201 [1st Dept 2011], *appeal withdrawn* 18 NY3d 954 [2012]) and the legal regulated rent (*Syllman v New York State Div. of Hous. & Community Renewal*, 233 AD3d 977, 979 [2d Dept 2024]).

Here, the DHCR records and rent history offered by Respondents raise significant questions which establish ample need for discovery. Despite the unsupported representation of Petitioner's predecessor that it was entitled to $1,550.00 in Individual Apartment Improvement rent increases

(*see* Notice to First Tenant of Apartment Deregulated after Vacancy due to a Rent of $2,000 or More, NYSCEF Doc. No. 23), this remains an unproven allegation that is ultimately Petitioner's burden to prove. Discovery is thus necessary in order to determine whether the regulatory status is properly pleaded. The documents sought by Respondent are generally reasonable in scope and likely to yield admissible evidence relevant to the regulatory status of the premises, except that the demand in Paragraph 9 is rejected as overbroad and the other demands are properly limited to the period from July 1, 2008, through October 27, 2020, the date on which Respondent moved into the premises.

While Petitioner claims that it does not possess certain documents sought by Respondent as they pre-date its purchase of the property, this does not weigh against granting Respondent leave to conduct discovery. If, in fact, Petitioner lacks certain of these documents, it may bring the discovery process to an expeditious conclusion by preparing a *Jackson* affidavit detailing its search and the absence of the records in question (*see Jackson v New York*, 185 AD2d 768, 770 [1st Dept 1992]).

THEREFORE, it is

ORDERED that Petitioner shall produce documents responsive to Respondent's proposed demands (NYSCEF Doc. No. 12), subject to the limitations stated above at the penultimate paragraph of the decision, on or before September 5, 2025; and

ORDERED that concurrently with the completion of the above, Petitioner shall complete and file a *Jackson* affidavit addressing any documents not produced; and

ORDERED that the parties shall comply with the provisions of 22 NYCRR 202.20-f prior to engaging in motion practice regarding any discovery dispute; and

ORDERED that the parties shall appear in Part G, Room 581, on September 12, 2025, at 9:30 a.m., for a compliance conference.

This constitutes the decision and order of the court.

Dated: New York, New York
August 4, 2025

Hon. Adam R. Meyers
Judge, Housing Court