

**Hyunseoung Choi v Linc LIC L.L.C.**

2025 NY Slip Op 32754(U)

August 5, 2025

Supreme Court, New York County

Docket Number: Index No. 154436/2024

Judge: Nicholas W. Moyne

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. NICHOLAS W. MOYNE PART 41M

Justice

-----X

HYUNSEOUNG CHOI,

Plaintiff,

- v -

LINC LIC L.L.C.,

Defendant.

-----X

INDEX NO. 154436/2024

MOTION DATE 11/27/2024

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 77, 78, 79

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER)

Upon the foregoing documents, it is

Upon the foregoing papers, and for the reasons set forth below, Defendant Linc LIC L.L.C.'s motion for summary judgment is DENIED, and Plaintiff Hyunseoung Choi's cross-motion for summary judgment is also DENIED.

I. Factual Background

Plaintiff Hyunseoung Choi ("Plaintiff") is a residential tenant in Apartment 2705 ("Apartment") at 43-10 Crescent Street, Long Island City, NY 11101. The building is a 41-story, Class-A multiple dwelling with 709 residential units. It is a 421-a tax-benefited building and Plaintiff has consistently been treated as a rent-stabilized tenant, with the Apartment duly registered with the DHCR.

Plaintiff's tenancy began on August 1, 2021, under an Original Lease for a two-year term, expiring on July 31, 2023. The initial rent listed in the Original Lease was \$3,901.11 per month. During the Original Lease term, Defendant Linc LIC L.L.C. ("Defendant") offered Plaintiff rent concessions through a Rent Abatement Agreement. These concessions were explicitly designated as temporary and applied to six specific months during the two-year term, where Plaintiff was not charged any rent. For the remaining 18

months of the Original Lease term, Plaintiff paid the full rent of \$3,901.11 per month. Defendant asserts these concessions were temporary relief measures due to the COVID-19 pandemic and did not alter the legal regulated rent of the Apartment. Defendant registered the legal regulated rent of the Apartment as \$3,901.11 with the DHCR at all relevant times.

Upon renewal, the First Renewal Lease (August 1, 2023 - July 31, 2024) was calculated using the \$3,901.11 figure as the base legal regulated rent, resulting in a monthly rent of \$4,027.89. Plaintiff paid this amount for all 12 months. The Second Renewal Lease (August 1, 2024 - July 31, 2025) continued this calculation, resulting in a monthly rent of \$4,148.72. Plaintiff claims the \$2,925.83 net effective rent (after concessions) should have been the preferential rent and the basis for all subsequent increases.

In September 2023, Plaintiff retained counsel to communicate with Defendant regarding alleged illegal rent overcharges. Following this, Defendant assessed two "Legal Charges" totaling \$3,408.10 (\$228.80 on September 12, 2023, and \$3,179.30 on October 17, 2023). Defendant stated these charges were in response to Plaintiff's claims concerning the rent stabilization status of the Apartment and were assessed pursuant to paragraph 18 of the Original Lease. Plaintiff paid these charges. Defendant later voluntarily reimbursed Plaintiff for these Legal Charges with interest on September 5, 2024.

Defendant has filed a counterclaim for attorneys' fees under Article 18 of the Original Lease, which allows for fees incurred "relating to Your actions or inaction". Plaintiff's Reply to the Counterclaim raises seven affirmative defenses, including that Article 18 is unconscionable.

## II. Standard for Summary Judgment

Summary judgment shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party (CPLR § 3212[b]). The proponent of a summary judgment motion, herein "moving party", must make a prima facie showing of entitlement to judgment as a matter of law, producing sufficient evidence to demonstrate an absence of any material issues of fact (*see Pullman v Silverman*, 28 NY3d 1060, 1062-1063 [2016]). The moving party's failure to make a prima facie showing of entitlement requires a denial of the motion,

regardless of the sufficiency of the opposing papers (*Vega v Restani Const. Corp.*, 18 NY3d 499, 503 [2012] [internal citations omitted]). “Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Conclusory allegations, expressions of hope, or mere denials are insufficient to either warrant or defeat summary judgment (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *McGahee v Kennedy*, 48 NY2d 832, 834 [1979]).

When reviewing a motion for summary judgment, the non-moving party’s facts must be accepted as true and the benefit all favorable inferences which may be drawn therefrom (*Asabor v Archdiocese of New York*, 102 AD3d 524, 527 [1st Dept 2013]; *Demshick v Community Hous. Mgt. Corp.*, 34 AD3d 518, 520 [2d Dept 2006]). Accordingly, a motion should not be granted where there is any doubt as to the existence of a factual issue, conflicting inferences may be drawn, or where there are issues of credibility, as those are the functions of a jury (*Id.*).

### III. Discussion

#### A. Legal Charges (Plaintiff's First Cause of Action)

Plaintiff's first cause of action alleges illegal rent overcharge based on two legal charges assessed by Defendant, claiming a violation of Real Property Law § 234-a and N.Y.C. Admin. Code § 26-512(g). Both of these provisions provide that “[a]n owner, lessor or agent thereof shall be prohibited from assessing a lessee any fee, surcharge or other charges for legal services in connection with the operation or rental of a residential unit unless the owner, lessor or agent has the legal authority to do so pursuant to a court order.” Plaintiff argues that these charges, which related to challenging the Apartment's rent stabilization status, were in connection with the rental of a residential unit and were assessed without a court order, making them illegal. Plaintiff cites legislative intent, as expressed by State Senator Robert Jackson and Assemblymember Jeffrey Dinowitz, emphasizing the need for court sanction for legal fees charged by landlords.<sup>1</sup> Plaintiff further contends that overcharges are presumed

---

<sup>1</sup> State Senator Robert Jackson, the original sponsor of Senate Bill 2021-S2014 which enacted these changes, clearly stated the bill’s purpose in his Sponsor’s Memo: This bill would prohibit a landlord from including any legal fees not awarded pursuant to a court order on any correspondence to a tenant. (NYS Bill and Veto Jackets: 2021, Chapter

willful, placing the burden on Defendant to prove non-willfulness for treble damages, and alleges Defendant's actions were willful given its admissions regarding the basis for the charges.

Defendant counters that the Legal Charges were not prohibited by law as they were not charges for legal services in connection with the operation or rental of a residential unit. Instead, Defendant asserts the charges were assessed in response to Plaintiff's claims concerning the rent stabilization status of the Apartment, which Defendant believed was permitted under paragraph 18 of the Original Lease. Defendant also points out that it voluntarily reimbursed Plaintiff for these charges with interest, arguing this negates any claim of willful overcharge and thus treble damages.

The central dispute here hinges on the interpretation of "in connection with the operation or rental of a residential unit" under Real Property Law § 234-a and N.Y.C. Admin. Code § 26-512(g). Plaintiff argues that fees related to challenging rent stabilization are in connection with the rental, while Defendant argues they are not. Defendant's agent, Alyssa Brennan claims that the Legal Charges were not assessed in connection with the operation or rental of the Apartment. Instead, she claims that they were assessed directly in response to Plaintiff's decision to retain counsel to challenge the Apartment's rent stabilization status. This conflicting interpretation highlights the ambiguities in the statutory provisions and creates a triable issue of law regarding the scope of the statutory prohibition. Furthermore, even with the reimbursement, the question of whether Defendant's actions were willful, thereby triggering treble damages, remains a factual dispute. Given these unresolved legal and factual issues, summary judgment on this cause of action is inappropriate.

#### B. Rent Concessions and Preferential Rent (Plaintiff's Second and Third Causes of Action)

Plaintiff's second and third causes of action allege illegal rent overcharges due to Defendant's failure to calculate renewal lease rents based on a "net effective rent," which Plaintiff contends should be considered the preferential rent. Plaintiff argues that DHCR's former Fact

---

695, Page 6. Exhibit 6). Similarly, State Assemblymember Jeffrey Dinowitz, the sponsor of the corresponding bill in the Assembly, clearly stated during the debate of this bill that: MR. DINOWITZ: [...] What we want to make sure is that if a landlord is going to charge a legal fee, that it's sanctioned and ordered by the court. (NYS Assembly Proceedings, June 2, 2021, Page 189. Exhibit 7)

Sheet #40, which distinguishes between prorated and specific-month concessions, is no longer binding or relevant, especially given its revisions since the Housing Stability & Tenant Protection Act (HSTPA) of 2019 and the DHCR's inability to produce prior versions. Plaintiff asserts that administrative deference to DHCR's interpretation is not warranted for pure statutory interpretation issues like this. Plaintiff also points to Matter of Parsons Manor LLC as DHCR precedent limiting concessions to three months, which Defendant's six-month concession exceeds.<sup>2</sup>

The First Department has repeatedly found that a landlord may not improperly manipulate the legal regulated rent of apartments by offering the tenants concessions that are not designed to reimburse the tenants for temporary inconveniences such as construction work or pandemic-related issues, but rather, are part of a fraudulent scheme to register the rents charged at inflated rates (see *Wise v 1614 Madison Partners, LLC*, 214 AD3d 550, 550 [1st Dept 2023]; *Chernett v Spruce*, 200 AD3d 596, 597 [1st Dept 2021]; see also *Bascom v 1875 Atlantic Ave Development, LLC*, 227 AD3d 767, 768-769 [2d Dept 2024]). Plaintiff cites to these judicial precedents, arguing that they support the view that concessions can be preferential rents, especially when landlords advertise “net effective” rates or if concessions manipulate legal rents, warranting discovery. Plaintiff further asserts that DHCR's former Fact Sheet #40, which distinguishes concession types, is no longer binding or accessible and that DHCR's own administrative precedent (Matter of Parsons Manor LLC) limits rent

---

<sup>2</sup> Defendant initially cited to the DHCR case *Matter of Parsons Manor LLC* (DHCR Docket No. GS110023RO, 06/28/2019, attached as part of Exhibit 13) as DHCR precedent for temporary rent concessions being allowable. In *Parsons Manor LLC*, the landlord charged a concession rent of \$1,695 per month from 12/01/2016 to 10/31/2017, and a concession rent of \$1,700 per month from 11/01/2017 to 10/31/2018, while the full legal rent was \$1,860.13 over the course of the two-year lease. At the time of this decision, the HSTPA had only been in effect for two weeks. The bill had been passed by the Legislature on June 14, 2019, and signed into law by Governor Cuomo on the same day.

Defendant relies on this decision being technically issued after the HSTPA's enactment to show that DHCR's Fact Sheet #40 still applies, even though the events of the case were well before its enactment, and a revised Fact Sheet had not yet been published. 3 months later, DHCR would eventually update Fact Sheet 40 to remove any mention of rent concessions. In any case, in *Parsons*, the DHCR found in favor of the tenant holding that it was consistent with DHCR policy that while a landlord may offer a concession rent for a specified time, such time may not exceed three months.” As such, the DHCR affirmed the Rent Administrator's decision that the \$1,695 concession rent amount was to be applied as a preferential rent across the entire two-year lease. Plaintiff argues that the fact pattern in *Parsons* applies in this case given that the Defendant offered a concession rent for six months in its Original Lease with Plaintiff, exceeding DHCR's allowance of up to three months in rent concessions. Therefore, even if this Court gives weight to the agency interpretation in former Fact Sheet 40, the Plaintiff insists that it still does not apply in this case, as the rent concessions in this case exceed what is deemed by DHCR to be acceptable under its interpretation of the law.

concessions to three months, which Defendant's six-month concession exceeded. Finally, Plaintiff argues that the cited judicial precedent supports examining concessions, especially when "net effective" rates are advertised or fraud is alleged. Plaintiff seeks to have the rent frozen at \$2,925.83 due to improper registration and argues Defendant's counterclaim for attorneys' fees is unconscionable

Defendant vehemently argues that the "net effective rent" concept lacks a valid legal basis. Defendant asserts that the rent credits provided to Plaintiff during the COVID-19 pandemic were temporary, one-time, month-specific concessions and did not create a preferential rent. Defendant claims Plaintiff paid the full legal regulated rent for 18 of the 24 months in the original lease, with no rent due for three specific months in each year. Defendant argues that Plaintiff's concept of a "net effective rent" is fictitious, and has been repeatedly rejected by DHCR and courts. Defendant relies on DHCR's former Fact Sheet #40 and several First Department decisions which distinguish between prorated concessions (considered preferential rent) and specific-month concessions (not considered preferential rent) (see *Burrows v 75-25 153rd Street, LLC*, 215 AD3d 105, 114-116 [1st Dept 2023]; *Flynn v Red Apple 670 Pacific Street, LLC*, 200 AD3d 607, 609 [1st Dept 2021]). Defendant contends these precedents remain controlling even after the HSTPA, asserting that the HSTPA did not change the preexisting definition of preferential rent or disturb the distinction between preferential rents and concessions. Defendant also maintains that reliance on the pre-HSTPA DHCR Fact Sheet #40 is completely sanctioned by the cited caselaw.

This issue presents complex and evolving legal questions that are not ripe for summary judgment. The core of this dispute lies in how preferential rent is defined and applied after the HSTPA and whether the six-month rent abatement granted to Plaintiff constitutes a preferential rent or a one-time concession. DHCR Fact Sheet #40, cited by both parties, historically distinguished between concessions for specific months (not preferential rent) and prorated concessions (preferable rent). However, the Plaintiff raises a critical point about the DHCR's subsequent revisions of Fact Sheet #40, which notably removed any discussion of concessions, presumably in response to court holdings. This recent change introduces ambiguity regarding the current agency interpretation that warrants further inquiry.

While Defendant relies on cases like *Burrows* and *Flynn*, which upheld the distinction from the former Fact Sheet #40, other courts have questioned this very distinction. In *Chernett*, the First Department explicitly questioned the utility of distinguishing between prorated and month-specific concessions, agreeing with Supreme Court that "simply calling it a concession does not transform it into a permissible activity." (*Chernett*, 200 AD3d at 596). Although the defendant contended that DHCR's fact sheet 40 distinguished between a permissible one-time concession for a specific month and a preferential rent and that it properly deferred to DHCR, the Court found that discovery was needed to determine whether that was so. (*id.*). The same result should hold here. Furthermore, in *Bascom v. 1875 Atlantic Ave Development LLC*, the Court found that allegations of improper manipulation of rent were sufficient to survive a motion to dismiss when there was evidence that apartments were advertised at prorated, "net effective" rates, despite a month-specific concession in the lease. (see *Bascom*, 227 AD3d at 427). Plaintiff here has similarly alleged that Defendant advertised a "net effective rent" for the Apartment. This raises a factual question about the actual intent and effect of the concession, regardless of how it was formally structured in the lease rider. The lease rider must be read "in light of the circumstances existing at its making." (*Matter of Century Operating Corp. v Popolizio*, 60 NY2d 483, 488 [1983]).

The Civil Court in *123 On the Park LLC v Decicco-Ting* held that a prorated concession that was the legal equivalent of preferential rent when the tenant paid the net effective rent throughout the term, even if credited in entries, falls squarely into the category of preferential rent. (see *123 On the Park LLC v Decicco-Ting*, 85 Misc3d 680, 683-684 [Civil Court Kings County 2024]). This court explicitly noted the revised Fact Sheet #40's removal of concessions (*Id.* at 684). Similarly, in *Tomlex Realty LLC v Moore*, the Civil Court found a promotional rent credit to be a preferential rent, not a one-time concession, noting that the *Burrows* court's interpretation of Fact Sheet #40 "has lost some of its persuasiveness" as it was amended by DHCR. (*Tomlex Realty LLC v Moore*, 85 Misc3d 270, 272-273 [Civil Court Kings County 2024]).

The differing interpretations across various courts, particularly the Civil Court's recent decisions directly addressing the revised DHCR Fact Sheet, indicate a lack of settled law or undisputed facts regarding how these types of concessions should be treated post-HSTPA. Whether

Defendant's specific rent abatement aligns with a valid concession or is functionally a preferential rent requires a more thorough factual investigation, including evidence of marketing practices and the economic realities of the agreement.

Finally, the Plaintiff argues that Article 18 of the Original Lease, which allows Defendant to recover legal fees relating to Plaintiff's actions, is unconscionable because it does not distinguish between prevailing parties and could dissuade tenants from pursuing legitimate claims. Plaintiff cites *Krodel v. Amalgamated Dwellings Inc.* in support. (see *Krodel v Amalgamated Dwellings Inc.*, 166 AD3d 412 [1st Dept 2018]). Defendant counters that *Krodel* is distinguishable, as it applied to a breach of contract action where the landlord was in default, which Defendant argues is not the case here. However, Plaintiff asserts that an allegation of illegal rent overcharges constitutes an allegation of landlord default. This creates a factual and legal dispute over the applicability and enforceability of the attorneys' fees provision, warranting further examination.

Given the conflicting factual allegations and the unsettled legal interpretations surrounding rent concessions, the "net effective rent" argument, the willfulness of the legal charges, and the unconscionability of the attorneys' fees clause, the Court finds that neither party has conclusively established their entitlement to judgment as a matter of law. Further discovery and/or a trial is necessary to explore the underlying circumstances, the parties' intent, and the practical application of the lease provisions and relevant rent stabilization laws.

Therefore, it is hereby:

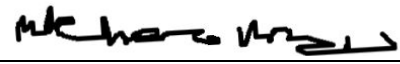
ORDERED that Plaintiff's motion for summary judgment is DENIED; and it is further

ORDERED that Defendant's motion for summary judgment is DENIED; and it is further

ORDERED that the matter is set down for a preliminary conference on September 18, 2025 at 2:15 PM in Part 41, room 327 of the courthouse located at 80 Centre Street, New York, New York.

This constitutes the decision and order of the Court.

8/5/2025  
DATE



NICHOLAS W. MOYNE, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: