

2075 Creston Ave. Realty LLC v Colon

2025 NY Slip Op 35141(U)

December 23, 2025

Civil Court of the City of New York, Bronx County

Docket Number: LT-337355-24/BX

Judge: Agata E. Rumprecht-Behrens

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This opinion is uncorrected and not selected for official publication.

Civil Court of the City of New York
County of Bronx

Index # **LT-337355-24/BX**



2075 CRESTON AVENUE REALTY LLC

Petitioner(s)

-against-

ELSA COLON; LUIS CASTILLO

Respondent(s)

Decision / Order

Mot Seq 1

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

Papers	Numbered
Order to show Cause/ Notice of Motion and Affidavits /Affirmations annexed	NYSCEF 6-13
Answering Affidavits/ Affirmations	NYSCEF 17-20
Reply Affidavits/ Affirmations	NSYCEF 21

Factual and Procedural History:

This is a summary nonpayment proceeding where petitioner seeks possession of the premises known as Apt 6B at 2075 Creston Avenue, Bronx, NY 10453.

Castillo and his family moved into the subject premises pursuant to a lease that commenced on September 1, 2025 with a monthly rent of \$1,650.00. Castillo then renewed the lease for 2 years with a monthly rent of \$1,732.50. Castillo alleges that starting in July 2024, he began withholding his rent due to the conditions in the apartment which included, but were not limited to, the ceiling falling down.

Petitioner then commenced this proceeding with a Petition/Notice of Petition dated October 22, 2025. Castillo filed a pro-se answer wherein he listed a general denial and a warranty of habitability defense. Castillo retained Urban Justice Center (UJC) as counsel and the matter was adjourned for motion practice.

Castillo now moves, by notice of motion, to amend the pro-se answer and for limited discovery.

Motion to Amend Answer:

The court will address the motion to amend the answer as the proposed defenses/counterclaims relate directly to the discovery request.

Leave to amend pleadings is generally “freely granted absent prejudice or surprise resulting from the proposed amendment, unless the proposed amendment is palpably insufficient or patently devoid of merit.” *Badesch v. Fort 710 Assoc., LP*, 233 AD3d 604 (1st Dept 2024).

Castillo states that when he filed the pro-se answer he was not aware of various defenses and now seeks to assert those newly discovered defenses. The proposed amended answer seeks to interpose the following: a defense/counterclaim of a rent overcharge, a defense/counterclaim of a warranty of habitability, a counterclaim for an order to correct, a counterclaim for attorney fees, and features a jury demand.

Castillo focuses on a DHCR history which shows that Sewavi S. Lassey had a lease from October 1, 2016 – September 30, 2017 with a monthly legal regulated rent of \$1,079.78. The next tenant Yuberquis A. Mateo De Leon with a monthly legal regulated rent of \$2,022.08 and that the lease was in effect from September 1, 2017 – August 31, 2018. Castillo points out that even after taking a vacancy

increase and the allowed Rent Board Guidelines increase, the increase in the monthly rent between these two tenants is higher than allowed and therefore the rent registration history is not reliable.

Petitioner does not allege any prejudice if the amendment is granted. Rather, petitioner argues that the party seeking amendment must make an evidentiary showing that the proposed amendment has merit. Petitioner states that all of the proposed defenses/counterclaims are based on the alleged rent overcharge and that petitioner sufficiently explained the increase in the opposition papers which means that the proposed defenses/counterclaims should not be allowed. Petitioner's assertion is supported only by an affidavit of Heid Pinzon. Petitioner makes no evidentiary showing of such improvements and only briefly mentions that the IAI increases were \$696.11 which is how the rent was increased. The explanation is bare bones and conclusory. Petitioner also alleges that the increase is no longer subject to review as it is beyond the status of limitations and therefore "no possible overcharge exists". Petitioner only opposes the proposed overcharge defense and does not address the other proposed defenses or counterclaims.

On a *CPLR §3025(b)* motion, the court does not need to reach a conclusion about the merits of the proposed amendment. The standard merely requires that the court determine whether the defense is "not palpably insufficient or devoid of merit". The final determination is made at trial. The proposed amended answer lists several defenses and counterclaims, not just those related to an alleged overcharge. After review of the proposed defenses and counterclaims, the court finds that they are not palpably insufficient or patently devoid of merit.

Accordingly, as discussed above, the branch of the motion to amend the pro-se answer is granted and the amended answer is deemed served and filed.

Motion for Discovery:

Respondent moves for discovery pursuant to *CPLR §408* in pursuit of its overcharge claim. Discovery in a summary proceeding is only available with leave of Court and the movant must meet several of the factors set out by the *Farkas* test. See *New York University v. Farkas*, 121 Misc2d 643 (Civ Ct NY Co 1983). Discovery should be granted where the movant asserted facts to establish a demonstrated need for discovery, no prejudice was likely to result to the non-moving party, and discovery was carefully tailored to obtain information necessary to establish movant's claim or defense. See *Lonray, Inc. v Newhouse*, 229 AD2d 440 (2d Dept 1996). Notably, a movant does not need to show all of the factors for a court to grant discovery. See *Mautner-Glick Corp. v. Higgins* 2019 NY Slip Op 29123 (App Term 1st Dept 2019).

The landscape of discovery motions having to do with potential rent overcharge has changed recently. After the Housing Stability and Tenant Protection Act (HSTPA) of 2019, retroactivity of overcharge claims was hotly litigated. The Court of Appeals ruled in *Matter of Regina Metro, Co. LLC v. New York State Div. of Hous & Community Renewal*, 35 NY3d 332 (2020), that overcharge calculation amendments cannot be applied to overcharges that occurred prior to the enactment of the HSTPA. Petitioner's opposition relies mostly on cases from the 1990's and does not address the most recent decision made by the Appellate Division 1st Department in *West Pierre Assoc. LLC v. Harvey*, 2025 NY SLIP OP 04611 [1st Dept 2025]. The *Harvey* court held that overcharge claims that involved tenants whose tenancies commenced after the passage of the HSTPA are subject to HSTPA amendments and "no potentially problematic retroactive effect is implicated." In other words, the ruling in *Regina Metro* is not on point here as the Castillo's tenancy, and thus the potential overcharge, commenced after the passage of the HSTPA. Other courts have also followed the *Harvey* decision and awarded discovery

on alleged overcharge claims where tenancies started after the HSTPA. *See Dunbar Apt. Holdings LLC v. Johnson*, 86 Misc 3d 1273(A) (Civ Ct New York Co 2025).

The Appellate Division in *Harvey* reversed the denial of a discovery motion where “[t]aken together, the tenant raised an issue of fact as to whether the rent history was unreliable, thus ... establishing a need for discovery.” *West Pierre Associates LLC v. Harvey*, 241 AD3d at 414. *Harvey* combined with the effects of the Rent Stabilization Code amendments reduced the burden on the respondent seeking discovery. The court “shall consider all available rent history which is reasonably necessary to make... a determination... 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 Admin Code §26-516(h)*). Pursuant to the Rent Stabilization Code amendments and recent case law, respondent has to only show that the rental history is unreliable to obtain discovery.

Here, the tenancy commenced after the passage of the HSTPA and therefore there is no implication of a “potentially problematic retroactive effect.” Castillo sufficiently called into question an unexplained and thus potentially unreliable rent increase that may give rise to an overcharge claim. Petitioner’s opposition does not address the most recent case law. Further, petitioner states in their opposition that it appears that the discovery is sought “to obtain information about the propriety of the legal rent.” NYSCEF Doc No 17, Para 13. That is exactly why this motion was brought – to determine the propriety of the legal rent and to see whether an overcharge took place. The information is held by petitioner and without discovery, Castillo would have a difficult time proving his claim.

Petitioner also opposes discovery because it claims that respondents did not show a “fraudulent scheme sufficient to pierce the relevant statute of limitations” but that is not the standard that is required under the Rent Stabilization Code and the recent case law. Petitioner’s reliance on older cases is misplaced as there has been a change in how these types of discovery requests are addressed.

Furthermore, petitioner alleges that respondent is using discovery as a “fishing expedition” and cite to cases denying discovery when “respondent merely made a conclusory allegation that discovery was needed.” *Id*, Para 30. Respondent has provided a certified DHCR rent registration history showing the large increase, documentation from DOB indicating that there was no permitted work activity during the time in question and argues that it would be implausible for over \$40,000.00 of work to be completed from the end of the previous tenant’s lease to the commencement of the subsequent tenant’s tenancy. Petitioner has failed to provide anything in opposition other than a self-serving affidavit from petitioner’s managing agent. Petitioner has not provided any supporting documentation regarding their IAI work or any documentation explaining the increase in question. *See Cox v. 36 S Oxford St, LLC*, 237 AD3d 604233 (1st Dept 2025)

The court finds that Castillo sufficiently met the *Farkas* test and should be allowed to proceed on the discovery request. Castillo demonstrated that there is an ample need for discovery and the annexed discovery demands are narrowly tailored except for demand #9 where Castillo seeks rent records and ledgers for all units at the premises from 2016 – 2018. This demand is overly burdensome and there was no explanation for seeking such information. The court in its supervisory role will narrow the scope of discovery and not allow demand #9.

Accordingly, it is

ORDERED that the branch of respondent's motion is granted and that the proposed amended answer is deemed served and filed. And it is further

ORDERED that the branch of respondent's motion for discovery is granted subject to the limitations above. Petitioner is directed to provide respondents the discover requests 1-8 within 45 days of this Decision/Order being uploaded to NYSCEF. And it is further

ORDERED that the matter shall appear on the Part G/Room 560 calendar on February 26, 2026 at 9:30 for all purposes including a status conference. And it is further

ORDERED that respondent serve a copy of this Decision/Order with a Notice of Entry by NYSCEF within 10 days of this Decision/Order being uploaded to NYSCEF.

This constitutes the Decision/Order of the court.

Date: December 23, 2025



Hon. Agata E. Rumprecht-Behrens
Housing Court Judge