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PWV ACQUISITION OWNER LLC v. Fair

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

-----X

Index No. 67396/19

PWV ACQUISITION OWNER LLC,

Petitioner,

-against-

DECISION/ORDER

AVON FAIR,

Respondent.

-----X

SCHNEIDER, J.

This nonpayment proceeding, commenced by petitioner in September 2019, appears to be the result of a long running dispute between the parties about credit for the respondent's Disability Rent Increase Exemption (DRIE). Respondent has moved for summary judgment dismissing the proceeding with prejudice on the grounds that once petitioner gives respondent the appropriate DRIE credits, there is no remaining balance due.

There is no dispute about the relevant facts. Respondent is approved for DRIE. Her rent payment has been frozen at \$704.04 per month at least since May 2014, more than seven years ago. Furthermore, petitioner's own rent records, submitted to the court by both sides, reflect that respondent has paid petitioner \$704.04 for each month since May of 2014. The only month in which rent was not paid within the month was March 2019, and respondent made up the missed payment by paying twice in February of 2020.

A further examination of petitioner's rent records shows that petitioner has periodically stopped giving respondent the DRIE credit to which she is entitled each month. In June 2018, the parties resolved an earlier nonpayment proceeding under Index No. 75090/17 with a stipulation that stated that respondent claimed entitlement to DRIE credit of \$188.79 per month for the months of December

2015 through June 2016 and for the months of December 2016 through March 2017, a total credit of \$2076.69. The stipulation indicated that if petitioner disagreed, it had 90 days to restore the case to the calendar. Petitioner did not restore the case, but it also did not give the respondent the claimed credit.

After this case was commenced and counsel appeared for the respondent, in November 2019, petitioner finally gave the respondent a DRIE credit of \$2166.22, reflected in petitioner's rent ledger. However, the ledger also shows that petitioner once again stopped giving the DRIE credit again in April 2019, and did not start it up again until December 2019. The credit to which respondent was entitled for this period, pursuant to the DRIE document submitted by respondent, was \$229.42 per month, so respondent is entitled to an additional credit for this period of \$1835.36.

After respondent made the current motion, in March 2021, petitioner gave the respondent an additional DRIE credit of \$1812.59, which would appear to bring the required DRIE credits up to date through March 2021.

The petitioner's ledger shows a remaining balance through March 2021, after the appropriate credits, of \$359.33. Respondent disputes this balance, and claims entitlement to a rent credit of \$354.11 through November 2020. The court's examination of the ledger shows that this balance is smaller than the balance shown on the ledger through November 2015, just before the DRIE problem began. The balance shown then, almost six years ago, was \$513.52. The balance shown through March 2021 is also smaller than the balance shown on the ledger through May 2014, over seven years ago, when respondent began paying \$704.04 per month. The balance then was \$762.57.

While the court cannot determine, on this record, where the balance of \$359.33 claimed by the petitioner through March 2021 might have originated, it certainly originated more than seven years ago and is not an appropriate subject for a summary proceeding. Accordingly, the respondent's motion for summary judgment is granted, and the proceeding is dismissed with prejudice to petitioner's right to

seek any balance through March 2021 in a summary proceeding. The dismissal is without prejudice to petitioner's right to seek \$359.33 through March 2021 in a plenary action if so advised.

Dated: 8/30/21

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a cursive 'H' and 'C'.

J. H. C.