2019-07-01

SF 878 E. 176th LLC v. Grullon

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2019 NY Slip Op 29201 [65 Misc 3d 171]

July 1, 2019

Garland, J.

Civil Court of the City of New York, Bronx County

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SF 878 E. 176th LLC, Petitioner,
v
Jennifer Grullon, Respondent.

Civil Court of the City of New York, Bronx County, July 1, 2019

APPEARANCES OF COUNSEL

Bronx Legal Services, Bronx (*Norey Lee Navarro* of counsel), for respondent.

Boris Lepikh and *Todd Rothenberg*, New Rochelle, for petitioner.

{**65 Misc 3d at 172} OPINION OF THE COURT

Christel F. Garland, J.

The decision/order in this motion is as follows:

Petitioner commenced this nonpayment proceeding on or about March 16, 2018, seeking rent it alleged became due for apartment No. 4A, located at 878 East 176th Street, Bronx, New York. Specifically, the petition seeks rent for November [*2]2017 through March 2018 at the rate of $227.40 per month.

Respondent, who was unrepresented at the time, answered the petition and the clerk set the first court appearance for April 11, 2018. The proceeding was then adjourned twice, and on June 11, 2018, it was settled pursuant to a so-ordered stipulation. In the stipulation, respondent agreed to pay $1,819.20, the rent due through the date of the stipulation, along with July 2018 rent by July 11, 2018. The stipulation also provided access dates for repairs.

Subsequently, by notice of motion, petitioner sought to restore the proceeding to the court's calendar seeking an order awarding it a final judgment of possession based on its claim{**65 Misc 3d at 173} that respondent had failed to comply with the terms of the June 11, 2018 stipulation. Petitioner's motion was adjourned, and on September 5, 2018, petitioner was granted a final judgment of possession in the amount of $1,819.20 on default as a result of respondent's failure to appear. Respondent later moved to vacate the default judgment. Although the default judgment was not vacated, the parties entered into stipulations of settlement pursuant to which the execution of the warrant of eviction was stayed for respondent to pay the arrears then owed. These stipulations were followed by orders issued by the court further staying execution of the warrant of eviction to afford respondent the opportunity to pay the arrears due.

Respondent, now represented by counsel, moves by order to show cause (OSC) for an order vacating the parties' initial stipulation, as well as the stipulations and orders that followed. In addition, respondent seeks leave to interpose an amended answer. In the alternative, respondent seeks an order further staying execution of the warrant of eviction so that she can obtain assistance to pay the arrears.

Respondent has been an active recipient of the Living in Communities (LINC) subsidy, a rental assistance supplement program administered by the City of New York, since August 2015. Respondent's initial lease was for a term that commenced on August 1, 2015, and ended on July 31, 2016. The legal regulated rent recorded on the lease was $2,388.27, with a preferential rent of $1,515. When this lease expired, petitioner offered to renew respondent's lease at a proposed monthly preferential rent of $1,700. Respondent did not accept petitioner's offer to renew the lease.

Respondent's main contention now is that she was overcharged. In support of her claim, respondent asserts that upon reviewing the rent registration history from the Division of Housing and Community Renewal (DHCR), she discovered that petitioner registered a legal regulated monthly rent of $1,345.52 in 2014, but the following year registered a legal regulated rent of $2,364.62. Respondent contends that this 75% increase is an overcharge as the apartment was not significantly renovated when she first moved in, and argues that because she was charged a preferential rent she can review the rent charged immediately preceding such preferential rent for the purpose of determining whether an overcharge occurred. Respondent further asserts that petitioner breached{**65 Misc 3d at 174} the warranty of habitability because numerous violations have been issued by the Department of Housing Preservation and Development. Moreover, respondent argues that petitioner failed to notify the LINC program prior to commencing this proceeding in violation of

the landlord statement of understanding which landlords are required to sign to participate in the program and which affects its ability to proceed herein.

In opposition, petitioner argues that although respondent initially appeared pro se, she voluntarily entered into the stipulations of settlement and received the benefit of seven months to pay her rental arrears. In addition, petitioner asserts that respondent has been in housing court before and was savvy enough to interpose an answer to the proceeding and raise defenses, including breach of the warranty of habitability, but failed to raise her claim that an overcharge occurred. Petitioner also challenges respondent's request for leave to file an amended answer based on its contention that the late request only serves to prejudice petitioner and the proposed answer is devoid of merit. Moreover, petitioner contends that respondent failed to demonstrate fraud on the part of petitioner which would permit her to review the rent history beyond the four-year statute of limitations, and contends that it was not required to serve LINC upon commencing the proceeding.

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It is well-settled that stipulations of settlement are favored by the courts (*Hallock v State of New York*, 64 NY2d 224, 230 [1984]). However, upon a showing of good cause such as fraud, collusion, mistake, accident, or some other ground of the same nature, the court may vacate a stipulation (*Matter of Frutiger*, 29 NY2d 143, 150 [1971]). The discretion of the court to vacate a stipulation is not confined to instances of collusion, mistake, accident, fraud and surprise (*see Solack Estates v Goodman*, 102 Misc 2d 504 [1979], *affd* 78 AD2d 512 [1980]). Moreover, "the court has [the] power to relieve a party from a stipulation in a situation which is unjust or harsh even when fully understood and authorized" (*Bond v Bond*, 260 App Div 781, 782 [1940]). In fact, the court should vacate the stipulation when the parties can be restored to their former status (2 Carmody-Wait 2d § 7:63).

Claims for rent overcharge were "generally subject to a four-year statute of limitations" and were to be "filed with [DHCR] within four years of the first overcharge alleged" (*see Matter of Grimm v State of N.Y. Div. of Hous. & Community Renewal Off. of Rent Admin.*, 15 NY3d 358, 364 [2010] [internal quotation{**65 Misc 3d at 175} marks and citation omitted]; *see also* Rent Stabilization Law of 1969 [Administrative Code of City of NY] § 26-516). Where there was evidence of fraud, the examination of the rent records was permitted to extend beyond the four-year period, but "an increase in the rent alone [would] not be sufficient to establish a 'colorable claim of fraud,' and a mere allegation of fraud alone, without more, [was insufficient] to require DHCR to inquire further" (*Grimm* at 367). Notwithstanding the above, following the Rent Code Amendments of 2014,

when an owner claimed that the rent being charged was "preferential," DHCR was permitted to examine the lease and rent history immediately preceding such preferential rent even if it extended beyond four years to assure that the higher "legal" rent was correctly calculated and lawful (*see* DHCR Fact Sheet No. 40). Then, on June 14, 2019, the Housing Stability and Tenant Protection Act of 2019 (HSTPA) was enacted while this OSC was under consideration. The HSTPA now requires the court "in investigating complaints of overcharge and in determining [the] legal regulated rents" to "consider all available rent history which is reasonably necessary to make such determinations" (Emergency Tenant Protection Act of 1974 [L 1974, ch 576, § 4] § 12 [a] [9] [McKinney's Uncons Laws of NY § 8632 (a) (9)], as added by HSTPA, L 2019, ch 36, § 1, part F, § 2). The HSTPA outlines what the court may take into consideration during its investigation which includes, but is not limited to, the following: any rent registration or other records filed with the State Division of Housing and Community Renewal, or any other state, municipal or federal agency, regardless of the date to which the information on such registration refers; any order issued by any state, municipal or federal agency; any records maintained by the owner or tenants; and any public record kept in the regular course of business by any state, municipal or federal agency. Especially relevant to the issues raised in respondent's OSC, the HSTPA also provides that nothing in that section of the HSTPA shall limit the examination of the rent history relevant to a determination as to the existence or terms and conditions of a preferential rent or the propriety of a legal registered rent during a period when the tenants were charged a preferential rent, and the legality of a rent charged or registered immediately prior to the registration of a preferential rent. Part F of the HSTPA took effect immediately and applies to any claims pending or filed on and after the date it became law. Both sides were given an opportunity to provide{**65 Misc 3d at 176} further argument on the effect of the new law on the issues raised in this OSC.

For the reasons stated below, respondent's OSC is granted in its entirety. The stipulations and orders entered in this proceeding as well as the final judgment of possession and the subsequent warrant of eviction that ensued are hereby vacated. The proposed amended answer annexed to respondent's OSC as "Exhibit A" is deemed served and filed. Under the law as it stood before June 14, 2019, although the charging of a preferential rent may have permitted respondent to look back beyond the four years preceding her complaint of an overcharge, this court had questions about whether respondent had met her burden of showing a fraudulent scheme to deregulate the apartment which would then allow further inquiry. The law has changed. Courts are now being given greater latitude in investigating claims of overcharge such that a showing of fraud is not necessary so long as, all factors considered, a party claiming a rent overcharge can show the unreliability of the rent records. Here, petitioner has charged a [*4]preferential rent at various times. In addition, there was a

significant increase in the rent between 2014 and 2015, which may or may not amount to an overcharge. However, a review of the DHCR information contained in the apartment registration information shows that the increases taken by petitioner over the years do not correspond to the percentage of rent increases permitted during those periods which calls into question the reliability of the registered rents. For all these reasons, this court finds that the relief sought herein is warranted. Respondent's argument as it relates to service on the LINC program prior to the commencement of this proceeding has been waived.