Fordham Law School

FLASH: The Fordham Law Archive of Scholarship and History

All Decisions | Housing Court Decisions Project

2019-08-23

1068 Winthrop St. LLC v. Zimmerman

Follow this and additional works at: https://ir.lawnet.fordham.edu/housing_court_all

Recommended Citation
"1068 Winthrop St. LLC v. Zimmerman" (2019). *All Decisions*. 66.
https://ir.lawnet.fordham.edu/housing_court_all/66

This Housing Court Decision is brought to you for free and open access by the Housing Court Decisions Project at FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in All Decisions by an authorized administrator of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

1068 Winthrop St. LLC v Zimmerman

2019 NY Slip Op 29288 [65 Misc 3d 1107]

August 23, 2019

Barany, J.

Civil Court of the City of New York, Kings County

Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.

As corrected through Wednesday, January 8, 2020

[*1]

1068 Winthrop Street LLC, Petitioner,
v
Elijah T. Zimmerman, Respondent.

Civil Court of the City of New York, Kings County, August 23, 2019

APPEARANCES OF COUNSEL

Brooklyn Legal Services, Brooklyn (*Michael Bailey* of counsel), for respondent.

Rosenberg & Estis, P.C., New York City (*Joshua Kopelowitz* of counsel), for petitioner.

{**65 Misc 3d at 1109} OPINION OF THE COURT

Kenneth T. Barany, J.

The decision and order is as follows:

In this nonpayment proceeding tenant moves initially to file a "late answer" and deeming that answer served and filed.[FN1] The original pro se answer filed on tenant's behalf alleged rent overcharge, partial payment, breach of the warranty of habitability, the apartment is "illegal" and a general denial.

The proposed "late answer" realleges rent overcharge and breach of warranty. It asserts for the first time that the rent demand is not proper as it failed to contain an approximation of the amount due and the particular period for which the rent claim is made. It also asserts that the petition fails to allege the proper amount due from respondent, and therefore fails to state a cause of action. Underpinning these allegations, as well as the claim of overcharge, is the added defense that

petitioner failed to properly and timely register the subject premises annually with the Division of Housing and Community Renewal{**65 Misc 3d at 1110} (DHCR). Respondent also asserts harassment on the part of petitioner and requests an order to correct any outstanding violations.

Assuming the court's allowance of the "late answer," respondent next moves for summary judgment dismissing the proceeding based upon the alleged defective rent demand and petition. Alternatively, respondent seeks to limit any rent arrears based upon the rents as registered with the DHCR. Should summary judgment be denied, respondent seeks discovery on the issue of individual apartment improvement (IAI) increases which were part of the calculations leading to respondent's initial rent. Petitioner cross-moves for summary judgment granting a judgment of possession in favor of petitioner and a money judgment against respondent in the amount of $24,549.80 through July 2019.

Initially the court addresses the respondent's request to file a late answer. It has consistently been held that leave to amend pleadings should be freely given, unless the proposed amendment is palpably insufficient or devoid of merit, or would unfairly prejudice or surprise the opposing party (*see Matter of Rhoda v Avery*, 155 AD3d 737 [2d Dept 2017]; *McCaskey, Davies & Assoc. v New York City Health & Hosps. Corp.*, 59 NY2d 755 [1983]; *Favia v Harley-Davidson Motor Co., Inc.*, 119 AD3d 836 [2d Dept 2014]).

Whether delineated as a "late answer" or amended answer, this court grants respondent's motion to file a "late answer" subject to the limitations set forth below (*see 153rd St. Apt. LLC v Alveranga*, 30 Misc 3d 129[A], 2010 NY Slip Op 52290[U], *1 [App Term, [*2]1st Dept 2010] ["The trial court's discretionary grant of tenant's motion to amend her initial, pro se answer to include a defense and counterclaim based upon rent overcharge, and a counterclaim for breach of the warranty of habitability, was consistent with the general rule favoring amendment of pleadings in the absence of prejudice or surprise"]). In fact, the right of a pro se individual to file an amended answer has been upheld even after the tenant has entered into a post-eviction stipulation (*see Chauncey Equities, LLC v Murphy*, 62 Misc 3d 141[A], 2019 NY Slip Op 50067[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2019]).

[1] In ruling on the acceptability of the late answer the court notes that petitioner was on notice of the rent overcharge and warranty of habitability claims from the pro se answer. Moreover, the proceeding was adjourned several times with the{**65 Misc 3d at 1111} intent that an attorney would be appearing for respondent and any delay of the proceeding was equally caused by petitioner's seeking new counsel and late response to the motion in chief. This court flatly rejects

petitioner's claim of prejudice as a result of the delay in respondent asserting a late answer. Furthermore, the Court of Appeals has stated that delay alone is not sufficient to establish prejudice, and has granted amendment even midtrial (*see Shine v Duncan Petroleum Transp.*, 60 NY2d 22, 27 [1983]).

In order to understand the balance of this court's ruling below, attention must first be focused on the tenant's claim of rent overcharge. This claim concerns the rent increase from the legal rent of $1,576.34 (filed in 2016 with the DHCR for the prior tenant Telma Sandiford) to the legal rent of $2,380.79 listed in the initial lease provided to respondent Elijah Zimmerman in 2017.[FN2]

In the last two months many tenants, as respondent herein, have pointed to the sweeping changes contained in the recently enacted Housing Stability and Tenant Protection Act of 2019 (HSTPA). That act lightened the burden required to establish an issue of rent overcharge.[FN3] No longer is a tenant mandated to establish fraud in order for a court to look back more than four years. Moreover, a court is empowered to look at all factors it deems necessary to achieve a determination on the issue. However, this new standard of inquiry does not alleviate a tenant from [*3]meeting its burden to establish that an issue actually exists. It cannot be established, as is the case at bar, through the presentation of half evidence, a mis-applicability of the facts and the failure of presenting an affidavit from a person{**65 Misc 3d at 1112} with personal knowledge sufficient to raise any issue of rent overcharge.

[2] In claiming rent overcharge and seeking discovery in connection with that claim, respondent relies on allegations of (a) missing annual registrations; (b) the failure of petitioner to register his rent in 2017 the first year he took occupancy; (c) an incorrect application of the longevity increase; and (d) no proof as to how the IAI increases and the resulting rent were calculated. As to the missing registrations, respondent completely ignores the fact that he has presented only half of the DHCR registration records as the DHCR has the subject premises registered under "1-A" and "A-1."[FN4] When these two records are presented together, as petitioner has done (exhibits E and F to cross mot) their totality demonstrates clearly proper registrations and rent increases every year from 1984 through 2017, except one year, 1994 from 25 years ago, when a two-year renewal from the prior year was still in effect.

Moreover, while respondent claims that petitioner should have registered his initial lease in 2017 rather than listing it as vacant, that is incorrect. Respondent's original lease commenced May 1, 2017. DHCR annual registrations reflect the tenant in occupancy and the rent being charged as of

April 1st of each year. This is reflected in respondent's own partial DHCR printout (exhibit E to the mot) which states at the bottom in pertinent part, "Advisory Note: This document merely reports the statements made by the owner in the registration(s) filed by such owner and does not reflect changes in rent occurring after April 1, of each year." As noted in the Falkowitz affidavit, unrebutted, the prior tenant Telma Sandiford vacated the subject premises in February 2017. Therefore, as of April 1, 2017, the premises were "vacant" and the registration for that year is correct.

With respect to the 6% increase portion of the rent due to a longevity increase respondent wrongfully claims it is an overcharge. Respondent incorrectly asserts that petitioner miscalculated the longevity increase at 6% rather than .6%. Petitioner was clearly entitled to the longevity increase based upon 10 years of occupancy by the last tenant Telma Sandiford (*see* Rent Stabilization Code [9 NYCRR] § 2522.8 [a] [2]). In fact, {**65 Misc 3d at 1113}petitioner calculated the increase at .6% per year which for a 10-year period resulted in a total longevity increase of 6%.[FN5]

As to the IAIs which also compromised part of the rent increase from $1,576.34 to $2,155.80 petitioner's proof (exhibits I through S), coupled with the three affidavits of petitioner's managing agent Joseph Falkowitz, petitioner's member Moses Mizrahi and contractor Edward Cooper, clearly demonstrate petitioner's entitlement to the rent increased based upon IAIs in the subject premises. Those renovations, unrebutted by respondent, show detailed purchase invoices, detailed scope of work invoices and contemporaneous checks issued during the work and subsequent to completion.[FN6]

Calculating the rent increase from the prior legal rent of $1,576.34 results in an initial legal rent for respondent's first lease of $2,155.80 as follows: (a) 18% vacancy increase raises the rent from $1,576.34 to $1,860.08; (b) 6% longevity increase (10 times .6%) raises the rent from $1,860.08 to $1,954.66; (c) IAI increase from $1,954.66 to $2,155.80. Furthermore, an increase from $2,155.80 to $2,182.75 would have been permissible for the one-year renewal executed by respondent.[FN7]

Summary judgment may be granted in cases where there is clearly no material issue of fact presented for trial. (*Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395 [1957].) A movant must establish entitlement to summary judgment by proof in admissible form, to warrant the court directing judgment as a matter of law. If such proof has been offered, the opposing party must show facts sufficient to require a trial of any issue of fact. (*Zuckerman v City of New York*, 49 NY2d 557 [1980]; *Friends of Animals v Associated Fur Mfrs.*, 46 NY2d 1065 [1979]; *Spearmon v Times Sq. Stores Corp.*, 96 AD2d 552 [2d Dept 1983].)

Accordingly, this court grants petitioner partial summary judgment holding that $2,155.80 was the legal rent when respondent commenced occupancy and that the legal rent under the renewal was $2,182.75. The court therefore strikes the{**65 Misc 3d at 1114} third affirmative defense and first counterclaim contained in the late answer, as all of the above demonstrates there is no overcharge with respect to the rent increases and the only prohibition against petitioner collecting the full preferential rent is petitioner's own negligence in filing a late registration with the wrong legal rent. Therefore, there can be no finding of "willfulness" on the part of petitioner.

In light of the foregoing ruling, this court also denies that portion of respondent's motion which seeks discovery. The court notes that even if summary judgment had been denied to petitioner on the issue of rent overcharge discovery would still have been denied as no foundation for that request has been established. [*4]Nowhere is this lack of foundation more evident than in respondent's request, without explanation, for discovery back to 2005 (*see* para 34 of respondent's attorney's affirmation in reply). Furthermore, the court additionally notes that even if discovery were warranted, respondent has failed to annex any discovery devices for review by the court (*see Kips River Assoc. v Phalen*, 1995 NY Misc LEXIS 793, 23 HCR 646 [Civ Ct, NY County, May 29, 1995, index No. 113945/94]; *Trojan v Wisniewska*, 8 Misc 3d 382, 392 [Civ Ct, Kings County 2005]).

[3] This holding, however, does not resolve the remaining issues, including that portion of respondent's motion seeking summary judgment limiting calculation of the rent arrears to the rents filed with the DHCR. As noted above petitioner was under no obligation to register respondent's initial rent of $2,155.80 (and the $2,100 preferential rent) in the year 2017 when respondent took occupancy. That obligation arose effective April 1, 2018, while the respondent remained in occupancy. Therefore, this court holds that at least through March 2018 petitioner was entitled to collect the $2,000 per month preferential rent. That entitlement ceased, however, in April 2018 when petitioner failed to properly register the $2,155.80 legal rent still in effect. That prohibition continues until petitioner presents proof that it has properly registered the subject premises. In fact, petitioner's own evidence (exhibit E to the cross motion) shows an incorrect registration of $2,380.79 as the legal rent; a rent which petitioner acknowledges is incorrect.[FN8] Rent Stabilization Law (Administrative Code of City of NY) § 26-517 (e) states in part:

{**65 Misc 3d at 1115}

> "The failure to file a proper and timely initial or annual rent registration statement shall, until such time as such registration is filed, bar an owner from applying for or collecting any rent in excess of the legal regulated rent in effect on the date of the last preceding

> registration statement or if no such statements have been filed, the legal regulated rent in effect on the date that the housing accommodation became subject to the registration requirements of this section."

It goes on to add as follows:

> "The filing of a late registration shall result in the *prospective* elimination of such sanctions and provided that increases in the legal regulated rent were lawful except for the failure to file a timely registration, the owner, upon the service and filing of a late registration, shall not be found to have collected an overcharge at any time prior to the filing of the late registration."[FN9] (Emphasis supplied.)

While this section does not invalidate the legal rent increase petitioner has established, it does prevent petitioner from collecting more than $1,576.34 from May 1, 2018, forward. Petitioner's rent history (exhibit W to the cross mot) shows only late fees owed at the end of January 2018. Late fees are not considered as part of a possessory judgment against a rent-stabilized tenant in a nonpayment proceeding. This is the starting point in determining what, if anything, is owed to date by respondent, subject to his remaining defenses by ignoring the late fees and assuming a zero balance in rent at the end of January 2018. Therefore, arrears for February 2018 and March 2018 should be calculated at the preferential rent of $2,000 per month and thereafter at $1,576.34 per month until a corrected registration for 2018 is filed.[FN10] Therefore, that portion of respondent's motion seeking partial summary judgment limiting rent arrears claims to the rents as registered with DHCR is granted to the extent noted.{**65 Misc 3d at 1116}

The court now turns its attention as to whether or not these rulings invalidate the rent demand and ultimately the petition. This court rules that they do not, and therefore denies that portion of respondent's motion seeking summary judgment dismissing the proceeding based upon a defective rent demand and petition. Furthermore, the first defense and second defense contained in the late answer are stricken.

A rent demand must inform the tenant of the particular period for which rent is owed and of the approximate "good faith" sum of rent due for such period (*see ShopRite Supermarkets, Inc. v Yonkers Plaza Shopping, LLC*, 29 AD3d 564 [2d Dept 2006]; *Dendy v McAlpine*, 27 Misc 3d 138[A], 2010 NY Slip Op 50890[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2010]). Moreover, a tenant's challenge to what is due does not invalidate the demand (*see 326 E. 35th St. LLC v Mission Assoc., Ltd.*, 36 Misc 3d 137[A], 2012 NY Slip Op 51379[U], *1 [App Term, 1st Dept 2012] ["The substantive dispute over the amount of rent arrears and other charges actually owed . . . is a matter

inappropriately addressed in the context of tenant's dismissal motion targeted to the sufficiency of the underlying rent demand"]).

Here a review of the rent demand shows that petitioner requested arrears in "good faith" at the current renewal preferential rate of $2,100. That "good faith" demand is only undermined by petitioner's failure to properly register for the year 2018 which only serves as a defense to what is actually collectable but does not undermine the legal rent or the demand. Even respondent in his affidavit acknowledges that he was unaware of the impropriety of the registrations until he obtained a copy of the DHCR records as part of this litigation. See *402 Nostrand Ave. Corp. v Smith* (19 Misc 3d 44 [App Term, 2d Dept, 2d & 11th Jud Dists 2008]), where the landlord incorrectly sued for the legal rent instead of the preferential rent, a difference of $439.43 per month. There the court upheld the validity of the proceeding (*id.* at 46-47 ["tenant's contentions that the rent demand and petition are defective because they demanded the higher amount, and that the proceeding must, as a consequence, be dismissed, is without merit. . . . The fact that landlord did not entirely prevail on its claim does not provide a basis for invalidating the petition and rent demand and dismissing the proceeding" (citations omitted)]).

{**65 Misc 3d at 1117}Nor does inclusion of a few hundred dollars of undesignated late fees uncollectable in this proceeding as part of a possessory judgment invalidate that demand (*see MPlaza, LP v Corto*, 35 Misc 3d 139[A], 2012 NY Slip Op 50860[U] [App Term, 1st Dept 2012] [finding that the lower court erred in entering a judgment against tenant for a sum which included the section 8 share. Instead of dismissing, the court reduced the amount of the judgment to an amount that represented the tenant's share of arrears]; *see also 402 Nostrand Ave. Corp. v Smith*, 19 Misc 3d 44, 46-47 [App Term, 2d Dept, 2d & 11th Jud Dists 2008]).

While recognizing that late fees are not considered rent where an apartment is rent-stabilized, even in the face of a provision in the lease deeming them additional rent (*see Related Tiffany v Faust*, 191 Misc 2d 528 [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2002]), the courts have avoided invalidating proceedings where only a small amount of the arrears sought is predicated upon additional charges. (*See, however, 270 E. 95 Props., LLC v Kent*, 49 Misc 3d 33, 35 [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2015] ["Since *the bulk* of the arrears sought in landlord's petition were for such non-rent items and were not identified as such in the petition, the petition fails to properly set forth the facts upon which the proceeding is based" (emphasis supplied)].)[FN11] Even with an oral demand (now eradicated under the HSTPA) it was held decades ago that the actual words in the oral demand need not demand the precise sum of rent due (*see Sheldon v Testera*, 21

Misc 477 [App Term 1897]).

The court also grants petitioner partial summary judgment striking respondent's second affirmative defense alleging an improper vacancy lease. The court initially notes that in opposition to petitioner's cross motion, the respondent presents no affidavit from respondent asserting the failure on the part of petitioner to provide the DHCR supplement as part of his original lease. Respondent also fails to present any statutory or case authority that such a failure to include the rent calculations invalidates rent which is otherwise demonstrated to be a legal rent.

[4] Respondent, however, has raised a legitimate issue of breach of warranty of habitability, both as a defense and a counterclaim. The mere issuance of a violation does not by{**65 Misc 3d at 1118} itself lead to an abatement (*see Suarez v Rivercross Tenants' Corp.*, [*5]107 Misc 2d 135 [App Term, 1st Dept 1981]). As noted in *Suarez*, however,

> " 'Each case must, of course, turn on its own peculiar facts' . . . . A decision as to a breach of the warranty will turn on the extensiveness of the breach, the manner in which it impacted on the health of the tenant and even the measures taken by the landlord to alleviate the violation." (107 Misc 2d at 139-140, citing *Park W. Mgt. Corp. v Mitchell*, 47 NY2d 316, 327-328 [1979].)

Even if petitioner timely addressed the issued violations, that does not resolve the issue regarding how long the conditions existed and what impact, if any, the existence of those conditions had on respondent's occupancy. In light of the failure of respondent, however, to refute petitioner's claim that all violations are corrected subject to reinspection, the court denies respondent's request for an order to correct as moot. Should the trial court determine at trial that such an order is then needed, it has the inherent power under section 110 of the New York City Civil Court Act to issue such an order.

Respondent's fourth counterclaim alleges harassment by petitioner. Respondent's late answer in the fourth counterclaim sets forth three allegations of conduct by petitioner which he asserts support a claim of harassment to wit: (a) charging more than the legally registered rent; (b) refusal to abate lead; and (c) a general allegation of "repeated acts or omissions."[**FN12**] There is no common-law cause of action for harassment in New York, and any remedy for harassment derives from statute (*see Edelstein v Farber*, 27 AD3d 202, 202 [1st Dept 2006]; *Jerulee Co. v Sanchez*, 43 AD3d 328, 329 [1st Dept 2007]).

Administrative Code of the City of New York § 27-2005 (d) provides that "[t]he owner of a

dwelling shall not harass any tenants or persons lawfully entitled to occupancy of such dwelling." Section 27-2004 (a) (48) of the Administrative Code defines "harassment" as "any act or omission by or on behalf of an owner that . . . causes or is intended to cause any person lawfully entitled to occupancy of a dwelling unit to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy."

The New York City Civil Court is specifically authorized to grant injunctive relief, "for proceedings for the enforcement of {**65 Misc 3d at 1119}housing standards (CCA 110 [a] [4]; 203 [*o*]) and applications for certain provisional remedies (CCA 209 [b])" (*Broome Realty Assoc. v Sek Wing Eng*, 182 Misc 2d 917, 918 [App Term, 1st Dept 1999]). Each Housing Part of the Civil Court was created to hear "actions and proceedings involving the enforcement of state and local laws for the establishment and maintenance of housing standards, including, but not limited to, the multiple dwelling law and the housing maintenance code, building code and health code of the administrative code of the city of New York" (CCA 110 [a]; *see also Prometheus Realty Corp. v City of New York*, 80 AD3d 206, 209-210 [1st Dept 2010]).

New York City Civil Court Act § 110 (a) (4) specifically "authorizes the Housing Part to issue equitable relief such as restraining orders and *injunctions* in order to enforce 'housing standards.' " (*Prometheus Realty Corp*. at 212 [emphasis supplied].) In *Prometheus*, the Court held that "housing standards" include remedies for harassment of tenants by landlords (*id.* at 210). Moreover, the courts have held that "Local Law [No.] 7 [(2008) of City of New York], in addition to containing a monetary penalty provision . . . , now gives the Housing Court certain injunctive powers." (*Aguaiza v Vantage Props., LLC*, 2009 NY Slip Op 31144[U], *29 [Sup Ct, NY County 2009]; *see also* Administrative Code of City of NY § 27-2120 [b]; *see e.g. Martinez v Pinnacle Group*, 34 Misc 3d 131[A], 2011 NY Slip Op 52340[U] [App Term, 1st Dept 2011]; *ABJ Milano LLC v Howell*, 61 Misc 3d 1037 [Civ Ct, NY County 2018].) However, any such determination must be made after a full evidentiary hearing at trial and cannot be determined summarily.

To the extent that any of the allegations of harassment are based on "physical conditions of a dwelling or dwelling unit, such allegation[s] must be based at least in part on one or more violations of record issued by the [Department of Housing Preservation and Development] or any other agency." (Administrative Code § 27-2115 [h] [2] [i].) Such is the case in this proceeding. Section 27-2115 (m), however, provides, in relevant part:

> "(2) . . . It shall be an affirmative defense to an allegation by a tenant . . . that (i) such condition or service interruption was not intended to cause any lawful occupant to vacate a

dwelling unit or waive or surrender any rights in relation to such occupancy, and (ii) the owner acted in good faith in a reasonable manner to promptly correct such condition{**65 Misc 3d at 1120} or service interruption."

Section 27-2115 (m) (2) of the Administrative Code of the City of New York also authorizes a court of competent jurisdiction, upon a finding that harassment has occurred, to "impose a civil penalty in an amount not less than two thousand dollars and not more than ten thousand dollars." (*See e.g. Tivoli Bi LLC v Lee*, NYLJ 1202793938377 [Civ Ct, Kings County, June 30, 2017, Scheckowitz, J., index No. 51168/17] [awarding civil penalties for harassment in the amount of $1,500 and admonishing the petitioner, where the petitioner previously filed repeated baseless proceedings against a mentally disabled respondent and refused to provide him with a valid renewal lease despite never disputing that the respondent was entitled to succession].) However, "Local Law 7 does not provide for assessment of damages which are personal in nature" (*226-228 E. 26th St. LLC v Rhodes*, 241 NYLJ 10, 2008 NY Misc LEXIS 7516, *9-10 [Civ Ct, NY County 2008] [holding that Local Law 7 is penal in nature and striking respondents' counterclaim for a monetary award in their favor]; *see also 374 E. Parkway Common Owners Corp. v Albernio*, 32 Misc 3d 1240[A], 2011 NY Slip Op 51654[U], *4 [Civ Ct, Kings County 2011] [finding that New York State does not recognize a civil cause of action for harassment, where respondents sought to recover $10,000 in monetary damages]).

Both respondent's assertion of breach of the warranty of habitability and harassment are "inextricably intertwined" with petitioner's case and should be entertained in the context of this nonpayment proceeding. (*See Haskell v Surita*, 109 Misc 2d 409 [Civ Ct, NY County 1981]; *Coronet Props. Co. v Lederer*, NYLJ, Feb. 21, 1986, at 12, col 2 [App Term, 1st Dept 1986].)

Therefore, this court denies the balance of respondent's motion and petitioner's cross motion. Three issues still exist for trial, i.e., the amount of arrears owed to date to be determined based upon this court's holding above; respondent's allegation of breach of the warranty of habitability; and respondent's allegation of harassment.

Footnotes

Footnote 1: The original pro se answer was filed by Keisha Willingham who at the time described herself as tenant's "fiancé." Tenant has confirmed in his affidavit that she filed the answer on his behalf. The court notes that it is common practice among pro se individuals to have friends or relatives file answers on their behalf rather than default in a proceeding.

Footnote 2: In his affidavit, petitioner's agent Joseph Falkowitz acknowledges that the legal rent of $2,380.79 listed in respondent's initial lease was incorrect, by setting forth the calculations of rent increases leading to a rent of $2,155.80 for respondent's original lease and $2,182.75 for respondent's one-year renewal. Notably, respondent was never charged in excess of $2,100 per month having been given a $2,000 preferential rent in his original lease and a $2,100 preferential rent in his renewal.

Footnote 3: The petitioner's counsel attempts to exclude the application of the HSTPA by quoting the general applicability provision. In so doing he ignores the applicability provision specifically contained in part F, § 7 of the section dealing with rent overcharge issues which states, "This act shall take effect immediately and shall apply to any claims pending or filed on and after such date" (L 2019, ch 36, § 1, part F, § 7). As noted, respondent's claim was pending at the time of enactment of the HSTPA as raised in the pro se answer. Alternatively, it is being "filed" subsequent to the enactment of the HSTPA through the court's allowance of the "late answer."

Footnote 4: The court over 35 years has seen this situation dozens of times, where the DHCR lists parts of the rental registration history under the apartment number and part of the registrations under an inversion of the apartment number.

Footnote 5: Separate from the longevity increase, the total rent increase also included an allowable vacancy increase of 18% and IAIs.

Footnote 6: The court notes that the violations which issued in the subject premises neither reflect upon, nor undermine in any way, the work constituting the IAIs.

Footnote 7: The listing of higher legal rents in the leases does not dignify those rents. Here, as noted above, petitioner is in agreement that the resulting legal rent for the first lease was $2,155.80, not $2,380.79 as listed.

Footnote 8: By failing to properly register respondent's initial rent in 2018, petitioner is estopped from collecting the renewal increase as well until an amended 2018 registration is filed, and at this point (now that July 31, 2019, has passed) a proper registration for 2019 setting forth the legal rent of $2,182.75 and the preferential rent of $2,100 in effect on April 1, 2019.

Footnote 9: The court is aware that under the HSTPA a landlord can no longer avoid liability for collecting an overcharge simply by filing the proper registration. That is irrelevant to this court's determination as this court has held above that no rent overcharge exists.

Footnote 10: While this ruling as to the rent for March and April 2018 may be inconsistent to the remaining months, this court bases that distinction on the clear wording of Rent Stabilization Law § 26-517 (e) as for those two months the registration of a vacant apartment in 2017, as noted above, was "proper" and "timely" filed (in Nov. 2017), for the collection of those two months at the initial

lease rate.

Footnote 11: It would appear that in the future this issue will be resolved under the HSTPA which has invalidated seeking any "fees" in those demands served as of the effective date of the act.

Footnote 12: The particulars of this allegation can easily be obtained through a demand for a bill of particulars.