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Fieldbridge Assocs. LLC v. Ishibashi

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART F

-----X
FIELDBRIDGE ASSOCIATES LLC,

Petitioner

Index No. LT # 70528/19

- against -

DECISION/ORDER

CHRISTIAN L. ISHIBASHI AND VENICE EDWARDS
77 Sullivan Place
Apartment 3D
Brooklyn, NY 11225

Respondent.

-----X

HON. HANNAH COHEN:

Recitation, as required by CPLR 2219(a), of the papers considered in the review of respondents motion seeking discovery and petitioner's opposition and ensuing reply.

<u>Papers</u>	<u>Numbered</u>
Notice of Motion	1
Opposition	2
Reply	3

Upon the foregoing cited papers, the Decision and Order on the Motion is as follows:

Petitioner commenced this non payment proceeding against Christian L. Ishibashi and Venice Edwards seeking rental arrears at a monthly rent of \$1,875.00 per month. The premises are subject to rent stabilization. Respondent with counsel answered and interposed the following affirmative

defenses and counterclaims for (1) failure to serve a good faith rent demand and the rent charged is incorrect; (2) partial payment; (3) overcharge and counterclaim for (1) overcharge and triple damages; (2) harassment and (3) legal fees pursuant to RPL 234.

Respondent now by motion seeks discovery from January 1, 1999 through December 31, 2001, January 1, 2007 through December 31, 2007 and January 1, 2014 through December 31, 2014. Respondent argues that during this time period, there were unlawful increases beyond the regulated statutory increases. Respondent also submits an affirmation in support by Venice Ishibashi (named herein as Venice Edwards). Petitioner in opposition submits signed leases for the time period in question, copy of an invoice from Binyan AA LLC dated January 2013 indicating that the following work was completed in apartment #3F as follows: installed kitchen base cabinets and counter tops, supplied and installed kitchen sink with plumbing, installed range and connected gas supply, installed refrigerator, supplied and installed flooring throughout apartment, supplied and installed light fixtures, supplied and installed outlets and light switches, supplied and installed doors and paint and plastered total apartment. Petitioner also supplied a notice that petitioner's bank only keeps copies of bank checks for seven years and a copy of a cashed check from the petitioner to Binyan AA LLC dated January 24, 2013 for \$11,525. Respondent in reply reiterated that the premises have not been "freshly renovated."

Courts have held that pursuant to CLR 408 disclosure may be granted by permission of the court. To determine whether there is "ample need", courts have looked to whether a party has proven the following six considerations: (1) whether petitioner has asserted facts to establish a cause of action; (2) whether there is a need to determine the information directly related to the cause of action; (3) whether the requested disclosure is narrowly tailored and is likely to clarify the disputed facts;

(4) whether prejudice will result from granting the application for disclosure; (5) whether prejudice will be diminished by a court order; (6) whether the court can structure discovery (*New York University v Parkas*, 121 Misc.2d 643 [Civil Ct NY Co 1983]).

The court in reviewing the DHCR registration notes as follows. In 1999, the tenant of record were Joseph Tenturiel and the rent was \$675.92. In 2000, the same tenant was registered and the rent was increased to \$850.00 and then again to \$978.09 in 2001. In 2006 the legal rent was registered at \$1083.33 with Mr. Tenturiel. In 2007 the rent was registered to Rattique Khan at \$1428 per month with a preferential of \$1,100 per month that lasted through 2012 with legal rent of \$1685.55 and a preferential rent of \$1325. In 2013 the respondents moved in with a legal rent of \$2,173.80 per month with a preferential of \$1450 per month.

The court notes that the Housing Stability and Tenant Protection Act of 2019 enacted June 14, 2019 authorizes the court to examine “all available rent history which is reasonably necessary” to determine the legal regulated rent and investigate overcharges (NYC Administrative Code § 26-516[h]). The new regulations permit the court to consider “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.” (Id.). The regulation further provides that “nothing contained in this subdivision shall limit the examination of rent history relevant to a determination as to: (I) 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.”

Several courts have expanded this broader standard to award discovery whether or not it

would have been granted under the prior statutes and case law (See *SF 878 E. 176th LLC v Fulton*, 2019 NY Slip Op 29201 [Civ Ct. Bronx Co. 2019]; *699 Venture Corp v Zuniga* 2019 NY Slip Op 29200 [Civ Ct. Bronx Co 2019]; *2440 Broadway BCR LLC v Greenfield*, 2019 NYLJ August 21, 2019 at 28 [Civ Ct. NY Co.]). Accordingly this court finds that pursuant to the Housing Stability and Tenant Protection Act of 2019, respondent's scope is not limited by the statute of limitations in CPLR 213-a nor the prior case law requiring an indicia of fraud and may expand to the entire rent history if necessary.

Based upon the above, respondent's motion is granted to the extent of ordering petitioner to provide the documents requested in the document demand except for document demand #11 which is overly broad and not narrowly tailored, within 45 days and to submit to an EBT if necessary within 30 days thereafter.

The case is marked off calendar pending discovery and may be restored by motion or order show cause.

This constitutes the decision and order of this court.

Dated: December 13, 2019
Brooklyn, New York



Hannah Cohen, J.H.C.

HANNAH COHEN
JUDGE, HOUSING COURT