

Fordham Law School

FLASH: The Fordham Law Archive of Scholarship and History

All Decisions

Housing Court Decisions Project

2020-01-14

603 NEW JERSEY AVENUE LLC v. HALL

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

Recommended Citation

"603 NEW JERSEY AVENUE LLC v. HALL" (2020). *All Decisions*. 101.
https://ir.lawnet.fordham.edu/housing_court_all/101

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.

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

-----X
603 NEW JERSEY AVENUE LLC

Petitioners-Landlords,
-against-

SAMUEL C HALL
CHARLOTTE BURKE-HALL

Index No.
L&T 094789/18

Respondents,

DECISION AND ORDER

-----X
MARC FINKELSTEIN, J.:

Recitation, as required by CPLR 2219(a), of the papers considered in review of respondent's motion to file an amended answer and for discovery:

	Papers Numbered
Respondent's motion.....	<u>1</u>
Petitioner's opposition	<u>2</u>
Respondent's reply.....	<u>3</u>

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

-----X
603 NEW JERSEY AVENUE LLC

Petitioners-Landlords,
-against-

SAMUEL C HALL
CHARLOTTE BURKE-HALL

Index No.
L&T 094789/18

Respondents,

DECISION AND ORDER

-----X
MARC FINKELSTEIN, J.:

This is a nonpayment proceeding in which petitioner alleges respondent's monthly rent is \$1346.11 and sues for September 2018 through December 2018. Respondent Samuel Hall filed a *pro se* answer and the proceeding was adjourned three times with counsel for respondent Samuel Hall appearing on the fourth appearance. Respondent now moves to for leave to file an amended answer and for discovery.

Respondent alleges that the monthly rent sued for is improper and claims there is an overcharge based on what is listed on the rent registration from the Division of Housing and Community Renewal (DHCR) which they attach to their motion. Respondent argues that discovery is warranted to adequately pursue an overcharge defense and counterclaim. Petitioner opposes and alleges that as the apartment has been designated differently over the years with the DHCR there are additional rent registration histories to be considered in conjunction with the one attached by respondent. Petitioner asserts that respondents have been charged only the legal rent during their 11 year tenancy and any overcharge complaint raised at this juncture is time barred.

~~That portion of respondent's motion seeking leave to file an amended answer is~~

granted. CPLR §3025 provides that “[l]eave [to amend pleadings] shall be freely given upon such terms as may be just...” It is well settled that New York courts freely grant such leave to amend provided there is no prejudice to the non-moving party and that the amendment is not wholly devoid of merit, neither of which factors exist with respect to the instant motion. *See, Fahey v County of Ontario, et al.*, 44 NY2d 934, 935 (1978) (“leave to amend pleadings shall be freely given absent prejudice or surprise resulting directly from delay”); *Heller v Louis Provenzano, Inc.*, 303 AD2d 20, 25 (1st Dept 2003) (“leave to amend should be denied only where proposed amendment is ‘totally devoid of merit’”); *USA Nutritionals, Inc. v Pharmalife, Inc.*, 293 AD2d 526 (2d Dept 2002) (“leave to serve an amended complaint is to be liberally granted unless the proposed amendment creates prejudice or surprise resulting from the delay in interposing the new claims”).

Respondent annexes as Exhibit F to the motion a rent registration history for “APT 3F.” For the years 1984 through 1999 the only information listed for each year is “REG NOT FOUND FOR SUBJECT PREMISES.” In 2000, “KELLI NITON” is registered as the tenant at a legal rent of \$675.90. From 2001-2010 the information listed is “REG NOT FOUND FOR SUBJECT PREMISES,” with respondents being listed as the tenants in 2011 at a legal regulated rent of \$1200. Respondent argues that this rent registration history represents a jump of 75% and constitutes an overcharge and an improper rent amount.

In it's opposition, petitioner annexes as Exhibit B a different DHCR printout that characterizes the apartment as “APT 5.” For the year 1998 the tenant registered was “KELLIE NIXON” at a rent of \$650.36, with every registration after that through 2018 “*REG NOT

FOUND FOR SUBJECT PREMISES.*” Petitioner’s Exhibit C is a DHCR printout for “APT 3FRONT” which lists for the year 2000 “*REG NOT FOUND FOR SUBJECT PREMISES.*” and 2001-2006 registers “KELLI NIXON” as the tenant with a rent amount of \$811 for 2006 and “*REG NOT FOUND FOR SUBJECT PREMISES*” listed for the years 2007-2018. Petitioner’s Exhibit D is a DHCR printout for “APT 3FT” where for all but one year “*REG NOT FOUND FOR SUBJECT PREMISES” is listed. Exhibit E is for “APT 3F,” and is the same registration that respondent appends as Exhibit F to it’s motion. With the various rent registration histories attached to it’s opposition, it appears that petitioner attempts to piece together a puzzle of the rent history of the subject apartment.

As respondent’s motion was made prior to the passing of the Housing Stability and Tenant Protection Act (“HSTPA”), respondent relied on the Rent Stabilization Law of 1969 § 26-516 (a)[2] which stated: “...a complaint under this subdivision shall be filed...within four years of the first overcharge alleged and no determination of an overcharge and no award or calculation of an award of the amount of an overcharge may be based upon an overcharge having occurred more than four years before the complaint is filed...this paragraph shall preclude examination of the rental history of the housing accommodation prior to the four year period preceding the filing of a complaint pursuant to this subdivision.” However, with the passage of the HSTPA, the statute of limitations for overcharge claims is expanded from four years to six years (*See* Part F §4 of HSTPA, which amends RSL§ 26-516 and Part F §6 of HSTPA which amends CPLR 213-a).

Petitioner counters that the passage of the HSTPA does not have an impact on the instant matter, as the respondents have been tenants for 11 years so the change from a four year to a six year look back period is not relevant in this case. Prior to the passage of the HSTPA, a tenant was required to raise a colorable claim of a fraudulent scheme in order to warrant discovery beyond the statute of limitations. (Grimm v. State Division of Housing and Community Renewal Office of Rent Administration 15 N.Y.3d 358 (2010); Thornton v Baron, 5 NY3d 175 [2005]). HSTPA § 5(h) states “...the courts, in investigating complaints of overcharge and in determining legal regulated rents, shall consider all available rent history which is reasonably necessary to make such determinations.” The HSTPA “...profoundly alters the scope of what tenants may seek from a landlord through discovery to prove overcharge claims and to set legal regulated rents.” 699 Venture Corp v Zuniga, 64 Misc3d 847 (Bronx Civ Ct 2019).

Part F §7 of the HSTPA states “[t]his act shall take effect immediately and shall apply to any claims pending or filed on and after such date.” With the passage of the HSTPA the intention appears to be to broaden the courts discretion when considering an overcharge defense and counterclaim. The court in 699 Venture Corp v Zuniga, *supra*, offered the following analysis:

Gone is the temporal limitation on the rental history that can be examined to determine whether an overcharge based on a registered rent made unreliable by an unexplained increase has occurred. Now, a court must search the entire rent history, ‘regardless of the date to which the information on such registration refers,’ for the ‘most reliable annual registrations statement filed and served upon the tenant six or more years prior to the most recent registration statement’ [*quoting* 2019 Mc Kinney’s Session Law News of NY, Ch. 36 at Part F, § 5 (June 2019)].

~~In summary proceedings discovery is not available as a matter of right. Pursuant to~~
CPLR 408 disclosure may be granted by permission of the court. To determine whether there is “ample need” for pretrial discovery there are six factors to be considered. New York University v Farkas 121 Misc.2d 643 (Civ Ct NY Cty, 1983). These factors include whether petitioner has asserted facts to establish a cause of action; whether there is a need to determine the information directly related to the cause of action; whether the requested disclosure is carefully tailored and is likely to clarify the disputed facts; whether prejudice will result from the granting of an application for disclosure; whether prejudice will be diminished by a court order; and whether the court in its supervisory role can structure discovery. Farkas, supra. Ample need is apparent where the information needed to prosecute or defend the case is in possession of only one of the parties Miller v. Vosooghi, 2001 N.Y. Misc LEXIS 1383*, Smilow v. Ulrich, 11 Misc 3d 179 (Civ Ct, NY Co, 2005).

Respondent has demonstrated ample need for discovery. The multiple and unclear registrations raise questions of reliability and the court finds that discovery is warranted. For respondent to adequately pursue an affirmative defense and counterclaim of rent overcharge the information requested in the document demand is necessary. The document demand notice is specific and carefully tailored to respondent’s defense. Respondent’s motion for discovery in this nonpayment proceeding is granted as follows: as to 1 -7 , in respondent’s request for production of documents: granted to the extent that the petitioner shall provide any documents relating to the request within their possession and if not in their possession they shall attempt to obtain such documents; if unable to obtain, petitioner shall submit in writing that they are unable to obtain said documents, with the time-frame being limited to 2001 - present and limited solely to the

subject apartment. Request 8 is denied as overly broad. Petitioner shall provide all documents to respondent within six weeks. Proceeding is marked off calendar pending completion of discovery.

This constitutes the decision and order of the Court.

Dated: Brooklyn, New York
January 14, 2020



MARC FINKELSTEIN

JHC

**MARC FINKELSTEIN
JUDGE, HOUSING COURT**