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ASAL REALTY LLC v. Kaune

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CIVIL COURT OF THE CITY OF NEW YORK
BRONX COUNTY: HOUSING PART T

-----X L&T Index # 68128/2018

ASAL REALTY LLC D/B/A LLOYDS REALTY,
Petitioner-Landlord,

-against-

DECISION & ORDER

ELIZABETH KAUNE,
2965 Briggs Avenue, Apt. #31B
Bronx, NY 10458

Respondent-Tenant.

-----X

Hon. Diane E. Lutwak, HCJ:

In this holdover proceeding, Petitioner seeks to evict Respondent Elizabeth Kaune on the ground that she is a Rent Stabilized tenant who failed to sign a renewal lease despite it being properly and timely offered to her. The case was originally on the calendar in a Resolution Part on January 14, 2019. Respondent thereafter retained counsel and served and filed an answer raising six defenses all in effect arising from her assertion that she refused to sign the proffered lease renewal because it was not upon the “same terms and conditions” as her original lease which, on its face, set forth only a monthly rent of \$899. Respondent asserts that no valid preferential rent rider preserving the legal regulated rent was attached to the lease or otherwise provided to her at the time of signing. Petitioner asserts that a revocable preferential rent rider did accompany that original lease, setting forth both a legal regulated rent of \$1524.54 and a preferential rent of \$899 limited to the term of that lease.

After a number of adjournments for various reasons the case proceeded to trial on December 12, 2019, January 10, 2020 and February 4, 2020. Each side submitted numerous documents into evidence, Petitioner presented the testimony of two witnesses and Respondent testified as her own sole witness. Post-trial briefs were submitted on February 18, 2020. For the reasons that follow the petition is dismissed.

TRIAL

Petitioner’s Case

To establish certain basic elements of its prima facie case Petitioner offered into evidence certified copies of:

- (1) Its deed for the subject building, dated August 8, 2003 (Petitioner’s Exhibit #1);
- (2) The building’s current Multiple Dwelling Registration (Petitioner’s Exhibit #2);

(3) A “Registration Apartment Information” statement from the New York State Division of Housing and Community Renewal (DHCR) for Apartment 31B in the subject building for the years 2012 through 2019 (Petitioner’s Exhibit #3) showing Respondent as the Rent Stabilized tenant of record in each year and the following registration information:

- For 2012, a one-year lease (06/15/2011-06/14/2012) with a “legal regulated rent” (LRR) of \$1524.54 and a “preferential rent” of \$899.00.
- For 2013, a one-year lease (05/01/2012-04/30/2013), with the same LRR and preferential rent amounts as in 2012.
- In each year from 2014 through 2018, gradually increasing LRRs and preferential rents for successive one-year leases with terms commencing May 1, except that in each of the three years of 2016 through 2018 the LRR is \$1633.40.
- For 2019, no lease term, no preferential rent and a LRR of \$1653.82.

Ms. Kotzen testified that she manages the building, that Arnold Kotzen is the owner and that she is familiar with the building’s books and records. Admitted into evidence as Petitioner’s Exhibit #4 was Respondent’s initial lease dated April 18, 2012 with a monthly rent of \$899 for the one-year term of May 1, 2012 through April 30, 2013. It is evident from the yellow highlighter markings and handwritten ink additions – including Respondent’s initials in several places and the parties’ signatures at the end – that it is the original lease, not a photocopy, prepared on a Bronx Board of Realtors, Inc. “Plain Language Standard Apartment Lease” form. The lease consists of two double-sided pages, with the date, address, term and monthly rent filled in on the first page prior to the numbered provisions which run from “1st” (“OCCUPANCY”) through “34th” (“PENDING RENT INCREASE (if applicable)”). Handwritten in the first provision (“OCCUPANCY”) is the name “Dan Satchwell”. The “6th” provision of the lease, entitled “MODIFICATION”, states that “None of the terms or conditions of this lease may be changed except in writing and signed by both Landlord and Tenant.”

Near the end of the lease, after the last (34th) printed provision, are the printed words “ADDITIONAL CLAUSES”. Typed in and completely filling this space is a “Late Payment Lease Rider”, which provides for a 5% late fee. Near the end of the lease, immediately above the parties’ signatures, is a printed provision stating that attached to the lease “are the pertinent rules and regulations governing tenants’ and landlords’ rights under the Rent Stabilization Law.”

Ms. Kotzen identified Respondent’s signature on the lease and testified that Respondent was “at my desk in front of me when she signed it.” Ms. Kotzen testified that there were “quite a few” riders to the lease that Respondent signed at the same time, including a preferential rent rider. Stapled to the lease as part of Petitioner’s Exhibit #4 are twenty pages of documents, in the order that follows:

- Filling the top third of a single page, an undated “Preferential Rent Rider Due to Market Conditions” with yellow highlighter covering a hand-written signature line, an “X” to the left of that line and Respondent’s signature. This Rider states that Respondent would be charged a preferential rent of \$899 for a one-year lease, that the “Rent Stabilized legal rent” is \$1524.59 and that “Upon renewal of this lease which began 05-01-2012 and ended 04-30-2013 the renewal amount may be based on the legal Rent Stabilized registered rent.” The form was not signed by the owner.
- On a single double-sided page, an undated “Owner’s Application for a Rent Increase Based on Increased Services, Furnishings or Equipment”, DHCR Form RA 79-b (6/90); the only information filled in is the rent of \$899 on line 2(c) and Respondent’s undated signature next to a yellow-highlighted “X” on the “Tenant’s Signature” line. The form was not signed by the owner.
- Six single-page forms pertaining to lead-based paint, bedbug infestation history, mold, fire safety and window guards, all with Respondent’s signature and the handwritten date of 4/18/12.
- A single-page “Carbon Monoxide Detector Installation Acknowledgement” form signed by Respondent with the handwritten date of 5/1/2012.
- Eleven pages of a “Credit View Inc.” credit check application and report for Respondent with supporting documents.

It is evident from the face of Petitioner’s Exhibit #4 that this packet of 22 pages has been stapled, unstapled and re-stapled more than once in the upper left corner.

Copies of four renewal leases for the terms beginning May 1, 2013 through May 1, 2016 with attached Preferential Rent Riders in a form similar to that attached to the original lease were admitted into evidence on consent (Petitioner’s Exhibits #5 through #8). Each of these lease renewals is dated at the top in January of the year the lease commenced and is signed by Respondent at the bottom of the page, with a hand-written date in May or June of the same year. All recite both legal regulated rents and lower preferential rents with rent increases to be charged for one- or two-year renewal lease options. The tenant executed all of these offers at the applicable preferential lower rent for a one-year term.

Respondent also consented to admission into evidence of a fifth renewal lease for the one-year term of May 1, 2017 through April 30, 2018 (Petitioner’s Exhibit #9), which is similar to the others in that it states both a legal regulated rent and a preferential rent and differs in that it includes the phrase “revised 6/18/2017” at the top in addition to an original date of 1/10/2017. Respondent again chose the one-year lease option – which had a “0%” increase - at the applicable preferential lower rent and signed it on July 17, 2017. Respondent did not consent to admission into evidence of the Preferential Rent Rider (Petitioner’s Exhibit #10) attached to this renewal lease.

Ms. Kotzen testified that there was nothing different about the fifth Renewal Lease and Preferential Rent Rider, that they were signed and mailed back to Petitioner by Respondent in one packet, in the same manner that the other four had been signed and returned. The court admitted this fifth Preferential Rent Rider into evidence over Respondent's objection.

Ms. Kotzen testified that on or about January 26, 2018 she mailed Respondent a renewal lease with a Preferential Rent Rider to commence May 1, 2018 (Petitioner's Exhibit #11), but Respondent did not accept the offer. This renewal lease and rider were admitted into evidence without objection. Ms. Kotzen testified that she mailed Respondent two additional copies on April 5 and May 1, 2018, with cover letters (Petitioner's Exhibit #12) explaining the basis for the rent increase; she also had a copy hand-delivered. In response, Ms. Kotzen received a letter from Respondent (Petitioner's Exhibit #13) rejecting the renewal lease offer, discussing the Rent Guidelines Board increases and requesting "a more manageable increase".

A rent ledger was also admitted into evidence without objection, showing arrears of \$8902.32, comprised of \$6691 in unpaid rent through November 2019 at the monthly rate of \$955.86, plus legal and late fees. Upon request of Petitioner's counsel, the Court took judicial notice of the Notice of Petition, Petition, predicate notices to cure and to terminate and the affidavits of service of those documents in the court file.

On cross-examination, regarding the renewal lease commencing May 1, 2017, Ms. Kotzen recalled having negotiated a lower rent with Respondent which led to the "revised" renewal lease dated in June 2017 and the accompanying Preferential Rent Rider. Ms. Kotzen acknowledged that Respondent had filed complaints at the DHCR about that lease renewal and testified that she revised it not because of those complaints but to accommodate Respondent's request for a lower, more affordable rent increase. The documents were mailed to Respondent together and were returned to Ms. Kotzen with signatures on them; she acknowledged that they were not signed in her presence and the only lease Respondent ever signed in front of her was the initial one, in 2012. Ms. Kotzen's recollection as to when she mailed the renewal lease offers to Respondent was based on the dates on the leases and letters she sent.

Petitioner also called as a witness its superintendent at the building, Alioune Ciss. Mr. Ciss testified that sometimes he hand-delivers papers to tenants for Petitioner and that he had hand-delivered a lease renewal to Respondent in February of either 2018 or 2019.

Respondent's Case

Respondent testified that she had signed the initial lease that was in evidence as Petitioner's Exhibit #4 in Petitioner's office in 2012 but that the copy she was given, which was admitted into evidence as Respondent's Exhibit A, was different. Respondent's Exhibit A consists of just two double-sided pages, held together with a staple in the upper left corner which looks like it has never been removed or re-stapled. Respondent testified that she recalled signing other documents at the time she signed the original lease but could not recall if

she signed a Preferential Rent Rider. What she was given to take with her after signing was just the two pages of her lease, stapled together, without any riders or other attachments.

Another difference between each party's version of the initial lease is that while Petitioner's Exhibit #4 has the name "Dan Satchwell" written in, Respondent's Exhibit A does not. Respondent testified that Dan Satchwell was not on the original lease in 2012; he was added in 2014 after she sent Petitioner a letter asking to add him to the lease. Copies of correspondence between the parties about the 2014 lease renewal and how to add Dan Satchwell were admitted into evidence as Respondent's Exhibits B1-B6.

Respondent testified that the renewal leases she signed after 2012 all did come with Preferential Rent Riders which she signed without any issue until 2017. That year she recalled receiving the renewal lease by mail on May 1, 2017, in an envelope postmarked April 27, 2017. While it was dated January 10, 2017 and stamped "Second Notice", this was the first time she received it, which was typical. She did not sign this lease renewal offer because it sought a \$245 increase for a one-year lease. Respondent sent letters to Petitioner asking for a lease renewal "with the same terms and conditions as my original lease" (Respondent's Exhibits D1 and D2). Upon the advice of another tenant Respondent went to the DHCR to find out "if this is a Rent Stabilized apartment, if there are guidelines, how I should respond". Respondent then filed two complaints with the DHCR (Respondent's Exhibits E1-E2), one "to question the original lease" and one complaining of rent overcharge regarding the proposed \$245 rent increase. Respondent received copies of Petitioner's responses to these complaints (Respondent's Exhibits F1-F2), and Respondent eventually withdrew her complaints (Respondent's Exhibits O and P) after Petitioner agreed to renew her lease without an increase for a one-year term. Respondent testified that she did not sign and return the revised Preferential Rent Rider Petitioner sent in connection with the revised 2017 renewal lease. All of the 2017 lease renewal correspondence, including Respondent's unsigned and unreturned copy of the revised Preferential Rent Rider (Respondent's Exhibit I3) with Petitioner's yellow highlighter markings on it, was admitted into evidence without objection.

In 2018, Respondent's lease renewal offer came with a cover letter from Ms. Kotzen about increased costs in the building (Respondent's Exhibits J1-J2). Respondent did not sign this renewal lease offer because the proposed increases did not follow the Rent Stabilization guidelines. She wrote to Ms. Kotzen about this (Respondent's Exhibits K1-K2) and received letters back from Arnold Kotzen "explaining the difference between legal rent and preferential rent" and advising her that her lease had expired (Respondent's Exhibits L and M). There was further correspondence between the parties (Respondent's Exhibits N1-N4) and Respondent also filed new complaints at the DHCR (Respondent's Exhibits Q and R), which she later withdrew (Respondent's Exhibits AA and BB).

After receiving the predicate notices in this proceeding Respondent sent additional letters to Petitioner (Respondent's Exhibits V1-V2, X1-X2) and continued to pay her rent through December 2018 (Respondent's Exhibits Y1-Y3).

On cross-examination, Respondent reiterated that in 2017 she signed the revised renewal lease and refused to sign the Preferential Rent Rider after going to the DHCR for advice and showing them her original lease. Respondent testified that she “made that clear in my letters” and denied that the signature on Petitioner’s copy of that rider (Petitioner’s Exhibit 10) was hers. Regarding the signature on the Preferential Rent Rider attached to Petitioner’s copy of the 2012 initial lease, Respondent testified that it could be hers, but she did not get a copy of that Rider until 2017. As to the other Preferential Rent Riders that she acknowledged having signed in 2013 through 2016, Respondent testified that she did not understand what they meant until she went to the DHCR in 2017 after Petitioner tried to raise her rent by \$245. It was not of concern to her for the first five years when the increases were reasonable.

On redirect, Respondent testified that Exhibit A was her original copy of her initial lease, that she had never removed the staple and that there was never anything else attached to those two double-sided pages.

Regarding Petitioner’s rent ledger, Respondent testified that she acknowledged owing rent for July 2019 through January 2020. While the parties disagreed as to whether anything had been paid for the month of June 2019, other than that they stipulated that there was \$7646.88 due in unpaid use and occupancy at the rate of \$955.86.

DISCUSSION

Under Section 2524.3(f) of the Rent Stabilization Code an owner may seek to evict a tenant who has refused to sign a renewal lease offered on the same terms and conditions as the expiring lease and with an increase at the rate authorized by the Rent Guidelines Board. To determine whether Respondent was justified in refusing to sign the lease renewal Petitioner offered her in 2018, the court must determine the validity of the revocable preferential rent rider which Petitioner asserts accompanied Respondent’s original lease effective May 1, 2012. *See, e.g., Hillside Park 168 LLC v Khan* (59 Misc3d 736, 70 NYS3d 767 [Civ Ct Qns Co 2017])(dismissing holdover proceeding brought under RSC § 2524.3[f] after trial).

The starting point is basic contract law, as it is well established that “the interpretation of the provisions of a lease is governed by the same rules of construction applicable to other agreements”. *Missionary Sisters of the Sacred Heart, Ill v NY State Div of Hous & Cmty Renewal* (283 AD2d 284, 288, 724 NYS2d 742, 745 [1st Dep’t 2001]); *and see Stern v Equitable Trust Co of New York* (238 NY 267, 269, 144 NE 578 [1924])(“[t]he relation of landlord and tenant is always created by contract, express or implied”). A lease is a contract which, “achieves two ends, to wit: the conveyance of an estate in real property from lessor to lessee, and the delineation of the parties’ rights and obligations pursuant thereto.” *219 Broadway Corp v Alexander’s, Inc* (46 NY2d 506, 509, 387 NE2d 1205, 414 NYS2d 889 [1979]). The central distinguishing characteristic of a lease is, “the transfer of absolute control and possession of property at an agreed rental”, *Feder v Caliguira* (8 NY2d 400, 404, 171 NE2d 316, 208 NYS2d 970 [1960]), and all the essential terms must be agreed upon, including “the area to be leased, the duration of

the lease, and the price to be paid." *Davis v Dinkins* (206 AD2d 365, 366-67, 613 NYS2d 933 [2nd Dep't 1994]).

Here, there is no question that a valid residential rental contract exists between the parties; the question is the amount and nature of the rent the parties agreed to under their original lease agreement. The original lease is necessarily the focus because the Rent Stabilization Code requires all subsequent renewals to be upon the same terms and conditions. 9 NYCRR § 2522.5(g)(2). See *Rosario v Diagonal Realty, LLC* (8 NY3d 755, 872 NE2d 860, 840 NYS2d 748 [2007]); *Century Operating Corp v Popolizio* (60 NY2d 483, 458 NE2d 805, 470 NYS2d 346 [1983]).

Under Section 2521.2 of the Rent Stabilization Code, a "preferential rent" is defined as a rent amount charged to and paid by a tenant that is less than the legal regulated rent. 9 NYCRR § 2521.2(a). Under the law in effect at the time Respondent's last executed lease came up for renewal, "where the amount of rent charged to and paid by the tenant is less than the legal regulated rent for the housing accommodation, the amount of rent for such housing accommodation which may be charged upon renewal ... may, at the option of the owner, be based upon such previously established legal regulated rent, as adjusted by the most recent applicable guidelines increases and any other increases authorized by law". Rent Stabilization Law of 1969 § 26-511(c)(14)¹; and see *Matter of Rania Mesiskli, LLC v New York State Div of Hous & Community Renewal* (166 AD3d 625, 88 NYS3 [2nd Dep't 2018]). The exception to this rule was where there had been a lease provision or rider stating that the preferential rent was for the duration of the tenancy. See, e.g., *Matter of Pastreich v New York State Div of Hous & Community Renewal* (50 AD3d 384, 386-387, 856 NYS2d 61, 63 [1st Dep't 2008]); *East Side Mgrs Assoc, Inc v Goodwin* (26 Misc3d 1233[A], 907 NYS2d 436 [Civ Ct NY Co 2010]); and compare *Matter of Missionary Sisters of Sacred Heart, Ill v New York State Div of Hous & Community Renewal* (283 AD2d 284, 287, 724 NYS2d 742 [2001]).

The Code requires that both the legal regulated rent and the preferential rent "be set forth in the vacancy lease or renewal lease pursuant to which the preferential rent is charged." 9 NYCRR § 2521.2(b). Examination of the rental history prior to the statutory rent overcharge period² is permitted to determine the existence or terms and conditions of a preferential rent.

¹ Had Respondent's lease come up for renewal on or after June 14, 2019, the effective date of the Housing Stability and Tenant Protection Act of 2019 (HSTPA), the amended version of Rent Stabilization Law § 26-511(c)(14) would apply. As amended, that section now requires that upon renewal of any lease with a preferential rent, "the amount of rent for such housing accommodation that may be charged and paid shall be no more than the rent charged to and paid by the tenant prior to that renewal, as adjusted by the most recent applicable guidelines increases and any other increases authorized by law." Here, however, where the court has found there to be no valid preferential rent rider, even if the HSTPA applied the analysis and outcome would be the same.

² The HSTPA enlarged this period from four years to six years effective June 14, 2019.

9 NYCRR § 2526.1(a)(2)(viii). *See, e.g., SF 878 E 176th LLC v Grullon* (65 Misc3d 171, 175, 106 NYS3d 561, 563 [Civ Ct Bx Co 2019]) (“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’s Fact Sheet #40]”).

Here, Respondent’s initial lease on its face simply states a monthly rent of \$899 and does not “set forth” that this was a revocable preferential rent or that there was a higher legal regulated rent, as required by Section 2521.2(b) of the Rent Stabilization Code. The lease does not even mention the preferential rent rider that Petitioner attempted to prove at trial accompanied that initial lease. While the lease includes an “Additional Clauses” section, it is filled in completely with a type-written “Late Payment Lease Rider” with no mention of an accompanying preferential rent rider. Moreover, even if the court were to find (which it does not; see below) that the preferential rent rider – which is undated - was signed at the same time as the initial lease and delivered to Respondent within thirty days of signing, the lease’s sixth provision prohibits any changes to the lease “except in writing and signed by both Landlord and Tenant.” The preferential rent rider was not signed by the landlord and therefore does not meet the lease’s own criteria for making a change to the lease.

In addition, Petitioner failed to meet its burden to prove by a preponderance of the evidence that the undated preferential rent rider was signed at the same time the lease was signed. While Ms. Kotzen testified that Respondent signed both the lease and rider in front of her at the same time, it was evident that her testimony was not based on her memory of that occasion but rather on her review of Respondent’s tenant file and Petitioner’s Exhibit #4, which consists of the initial lease dated April 18, 2012, the undated preferential rent rider and a hodge-podge of other documents. That packet of documents - which had been stapled, unstapled and re-stapled on more than one occasion - includes incongruous items that further undermine the reliability of Ms. Kotzen’s testimony. For example, the packet includes a carbon monoxide detector form signed and dated by Respondent on the later date of May 1, 2018. Another attachment is an undated and incomplete DHCR form entitled “Owner’s Application for a Rent Increase Based on Increased Services, Furnishings or Equipment with the Tenant’s Consent, Expressed or Implied” that references a rent of \$899 per month, is signed by Respondent but not signed by the landlord. Dollar amounts and specifications of the purported “Increased Services, Furnishings or Equipment” are not filled in and no explanation was provided as to the purpose of this form or why it was attached to the lease.

Adding to the unreliability of Ms. Kotzen’s testimony and documents are irregularities in the DHCR rent registration history for Respondent’s apartment. For the registration year 2012 the DHCR statement reflects a clearly erroneous registration of a lease with Respondent for the period of June 15, 2011 through June 14, 2012. It was undisputed that Respondent moved in to the apartment under a lease that began May 1, 2012, not June 15, 2011. For the year 2018, the

DHCR statement reflects registration of a higher rent than was registered in 2017; yet it is undisputed that no renewal lease was executed in 2018, leading to Petitioner's commencement of this proceeding.

On the other hand, Respondent credibly testified that, while she remembered signing other forms at the same time she signed her initial lease and recognized her signature on the preferential rent rider Petitioner claimed accompanied that initial lease, at that time she was given only the two double-sided, stapled-together pages comprising her Exhibit A, which she never unstapled.³ The condition of that document – with a pristine single staple holding the two pages together at the upper left corner – corroborates Respondent's testimony. Respondent further credibly testified that Petitioner did not give her a copy of the 2012 preferential rent rider until approximately five years later, after she filed complaints with the DHCR. The court credits Respondent's testimony over that of Petitioner's witness, which, as discussed above, was not reliable. As delivery is an essential element of a cause of action seeking enforcement of a lease, *see 219 Broadway Corp v Alexander's, Inc* (46 NY2d 506, 512, 387 NE2d 1205, 414 NYS2d 889 [1979])⁴, Petitioner's failure to provide Respondent with a copy of the preferential rent rider at the time she signed her initial lease, or within thirty days thereafter, 9 NYCRR § 2522.5(a), provides another reason why this court finds that rider to be invalid. *See Hillside Park 168 LLC v Khan, supra*.

³ Accordingly, it is evident that Petitioner also failed to provide Respondent with the Rent Stabilization "Lease rider and notice of rights" required by RSC § 2522.5(c), "describing the rights and duties of owners and tenants as provided for under the RSL" and, for vacancy leases, including "a notice of the prior legal regulated rent, if any, which was in effect immediately prior to the vacancy, an explanation, and in a format prescribed by DHCR, how the rental amount provided for in the vacancy lease has been computed" *See Matter of Grimm v State of New York Div of Hous & Comm Renewal Off of Rent Admin* (15 NY3d 358, 366, 938 NE2d 924, 928, 912 NYS2d 491, 495 [2010]; *Fuentes v Kwik Realty LLC* (178 AD3d 451, 452-453, 114 NYS3d 324 [1st Dep't 2019]).

⁴ The consequences of an owner's failure to provide a tenant a copy of the fully executed lease "within 30 days from the owner's receipt of the vacancy lease signed by the tenant," 9 NYCRR § 2522.5(a), include "denial of any rent guideline increases ... until the fully executed copy of the vacancy lease or renewal lease form is furnished by the owner to the tenant." 9 NYCRR § 2522.5(b)(2). *See also* 9 NYCRR § 2523.5(a), which states that where an owner fails to provide a tenant with a fully executed copy of a renewal lease the tenant "shall not be deprived of any of his or her rights under the [Rent Stabilization Law and Code]"; *and see Steinmetz v Barnett* (155 Misc2d 98, 99-102, 586 NYS2d 877, 878 [Civ Ct NY Co 1992]).

That Respondent acknowledges signing preferential rent riders in connection with her renewal leases in the years 2012 through 2016⁵ is of no moment; each of those renewal leases was required to have been offered on the same “terms and conditions” as the initial lease. Rent Stabilization Code §§ 2522.5(g) and 2523.5(a). *See, e.g., Matter of Sugihara v State of New York Div of Hous & Community Renewal Off of Rent Admin* (13 Misc3d 1239[A], 831 NYS2d 356 [Sup Ct NY Co 2006]) *and cases cited therein; and see New York v Pennsylvania R Co* (37 NY2d 298, 300, 333 NE2d 361, 362, 372 NYS2d 56, 58 [1975]) (“pursuant to common law, there is implied a continuance of the tenancy on the same terms and subject to the same covenants as those contained in the original instrument”). Given the court’s finding that no valid preferential rent rider accompanied the parties’ initial lease, the subsequent preferential rent riders stating both a legal regulated rent and a preferential rent limited to the term of the lease are also invalid.

CONCLUSION

For the reasons stated above, the petition is dismissed with prejudice as Petitioner failed to meet its burden of proving that a valid, revocable preferential rent rider went into effect at the time Respondent signed her initial lease in April 2012. Respondent was justified in refusing to sign the renewal lease Petitioner offered her in 2018 and is entitled to a renewal lease based on the monthly rent of \$899 set forth in her initial lease, adjusted by the increases authorized by the applicable guidelines, laws and regulations.

This constitutes the Decision and Order of the Court, copies of which will be mailed to the parties’ attorneys unless picked up forthwith from the courthouse. Counsel may pick up their documents that were submitted into evidence as trial exhibits from the Part D Clerk in Room 550 at 1118 Grand Concourse within thirty days. If the exhibits are not picked up by April 10, 2020 they may be disposed of in accordance with Administrative Directives.

Dated: Bronx, New York
March 9, 2020

Diane Lutwak, HCJ

⁵ For 2017, which was the year in which Respondent rejected Petitioner’s initial lease renewal offer because it raised the rent by approximately \$245 per month for a one-year renewal and then accepted Petitioner’s revised renewal lease offer with a 0% increase over the 2016 renewal lease, Respondent credibly established that she did not sign and return the accompanying rider. Her testimony was corroborated by the correspondence between the parties which Respondent saved and entered into evidence, among which was the revised rider she received containing Ms. Kotzen’s typical yellow highlighter markings. While Petitioner’s records include what appears to be a signed copy of that 2017 preferential rent rider, the court finds that the signature on that rider is not Respondent’s, although there was insufficient evidence for the court to conclude who did actually sign it.

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