2020-04-15

517 W. 161 Realty LLC v. Vega

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK, HOUSING PART F

----------X

517 W 161 REALTY LLC,

Petitioner, Landlord,

-against-

Index No. L&T 52851/19
DECISION AND ORDER

ARQUELIA VEGA

Respondent-Tenant

----------X

FRANCES A. ORTIZ, JUDGE

Recitation as required by CPLR 2219(a), of the papers considered in the review of the respondent's motion for leave to conduct discovery and permitting respondent to serve a subpoena upon the Division of Housing and Community Renewal.

Papers	**Numbered**
Notice of Motion, Affirmation & Affidavit in Support	1
Affirmation in Opposition to Respondent's Motion	2
Affirmation in Further Support	3

Upon the foregoing cited papers, the Decision/Order of this Court on respondent's motion is as follows:

This is a non-payment proceeding for a rent-stabilized apartment seeking $7,781.67 in arrears through February 2019 at monthly rent in the amount of $981.29. Respondent appears by counsel with a written answer asserting numerous affirmative defenses and counterclaims including that petitioner has charged respondent a monthly rent in excess of that allowed under the *Rent Stabilization Law*. Respondent now moves pursuant to *CPLR § 408* for leave to conduct discovery related to its overcharge defense, permitting respondent to depose the

managing agent of the subject premises, and to be allowed to subpoena the Division of Housing and Community Renewal ("DHCR") for documents related to its overcharge claim.

Respondent asks the court for discovery related to an alleged overcharge that was charged to her in 1991, the year she moved into the apartment. According to the DHCR registration, there was a 61.14% increase in the rental amount in 1991, the year respondent took possession of the subject premises. Per the registration, the reason for this increase is "VAC/LEAS," meaning that petitioner demanded the increase based on a vacancy lease. (*Resp. Ex. C.)* Respondent annexes documents from the Rent Guidelines Board showing that under its Order #22, the owner was only permitted a 5% vacancy increase at that time. *(Resp. Ex. D.)*[1]

Respondent made her motion after the enactment of the Housing Stability and Tenant Protection Act of 2019 ("HSTPA") by the legislature in June 2019. Courts had interpreted Part F of the HSTPA as "not only extend[ing] the statutory lookback period for overcharge proceedings from four to six years, but permit[ting] review of rent history beyond the lookback period in a determination of the legal regulated rent." *Widsam Realty Corp. v. Joyner, 66 Misc.3d 132[A] (AT 1st Dep't December 26, 2019) (citing Part F of the HSTPA, now codified as RSL § 26–516(h).*) Part F of the HSTPA extended the four-year limitations period for overcharge claims to six years, provided that an overcharge complaint "may be filed . . . at any time" and eliminated the provision that "no determination of an overcharge and no award or calculation of an award of

[1] Respondent initially argued that there was a second impermissible rental increase from 2008 to 2009, but concedes in her reply that this increase now appears permissible pursuant to the applicable Rent Guidelines Board Order, and the Court therefore will not consider respondent's argument related to this increase.

the amount of an overcharge may be based upon an overcharge having occurred more than four years before the complaint is filed" (RSL § 26-516[a][2]; see CPLR 213-a).

Since respondent filed her motion for discovery, the Court of Appeals has decided *Regina Metropolitan v. DHCR, 2020 WL 1557900 (April 2, 2020)*, finding that the overcharge provisions contained in Part F of the HSTPA cannot be applied retroactively. In other words, the expanded lookback provisions for overcharge claims in the HSTPA now only apply to overcharges that arose after the statute was enacted. For any overcharge claims that arose before June 2019, the court may only grant discovery pursuant to the statutory and legal framework that was in place prior to the enactment of the HSPTA. Respondent is seeking discovery for an overcharge that allegedly occurred in 1991. In line with *Regina*, the lookback period for respondent's overcharge claim would be four years, unless respondent were able to show that the overcharge was a result of fraudulent conduct. Respondent, acting under the law as it was understood at the time she made the motion, did not address possible fraudulent conduct that would allow the court to look past the four-year period and the court is therefore unable to grant respondent leave to conduct discovery.

As such, respondent's motion for leave to conduct discovery is denied without prejudice. If respondent believes that she would be entitled to discovery under the pre-HSTPA legal framework, respondent is entitled to make her motion with arguments addressing any possible fraudulent behavior on behalf of petitioner or the prior owner. Likewise, the court declines to sign the annexed subpoena. Since the subpoena seeks documents from DHCR going back to 1984, it is not narrowly tailored to obtain documents necessary to decide the matter before the court under the schema created by *Regina*.

This matter is marked off calendar, to be restored by either party when normal court operations resume.

ORDEDED respondent's motion for discovery is denied without prejudice.

This is the decision and order of the Court, copies of which are being emailed and mailed to those indicated below.

Dated: New York, NY
April 15, 2020

Frances Ortiz

Frances A. Ortiz, JHC

Ava Ferenci
Housing Conservation Coordinators, Inc.
777 10th Ave.
New York, NY 10019
aferenci@hcc-nyc.org

Ouzy Azoulay
Azoulay Weiss, LLP
864 Willis Avenue, Ste 6
Albertson, NY 11507
oazoulay@azoulayweiss.com