2020-04-17

Spring Creek Housing, LP v. Holloman

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

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SPRING CREEK HOUSING, L.P.,

Petitioner-Landlord,

L&T Index No. 55555/19

-against-

DECISION/ORDER

ZAMIRA HOLLOMAN;
ZAQUAN OWENS,

Respondent-Tenant.

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Zhuo Wang, J.:

Recitation, as required by CPLR 2219(a), of the papers considered in the review of the petitioner's order to show cause to vacate prior stipulations and judgment and for leave to file an amended answer.

Papers	**Numbered**
Order to Show Cause and Affidavits Annexed	1
Affirmation in Opposition	2
Replying Affidavits	3
Exhibits	4

Upon the foregoing cited papers, the decision and order on Respondent's motion is as follows:

Background

Petitioner commenced the instant nonpayment proceeding against Respondents in February 2019 for alleged nonpayment of rent for the period of October 2018 through February 2019, seeking to recover $5,846 in rent arrears at the rate of $1,114 for October 2018 and $1,183 for each month for the period of November 2018 through February 2019, plus an additional $250 in legal fees. It is undisputed that the subject premises is rent-

stabilized pursuant to a regulatory agreement administered by HDC and pursuant to a tax exemption under Section 42 of the Internal Revenue Code.

On February 25, 2019, Respondent interposed a *pro se* form answer that contained a general denial but did not raise any other defenses or counterclaims. On March 4, 2019, the first appearance in this proceeding, Petitioner and Respondent Zamira Holloman settled the case with a stipulation granting a final judgement in favor of Petitioner in the amount of $6,713 through March 2019. Mr. Zaquan Owens, who is Respondent's son, did not appear, and Petitioner obtained a default judgment of possession against Mr. Owens on March 27, 2020. After several orders to show cause, resulting in two stipulations and an order of the court dated August 12, 2019, Respondent Zamira Holloman retained an attorney. Respondent through her attorney filed the instant order to show cause and submitted a notice of appearance on September 19, 2019.

Respondent now moves the Court, seeking an order 1) vacating all orders, the judgment, warrant of eviction, and pro se stipulations; and 2) granting leave to amend Respondent's pro se answer. Petitioner opposes the motion in its entirety.

Arguments

In her motion, Respondent argues that vacatur of the prior three stipulations is warranted because she improvidently and inadvertently waived meritorious defenses and counterclaims, including alleged overcharge claims of which she was unaware because she was not represented by counsel. Specifically, Respondent alleges that Petitioner increased her rent by percentages higher than those approved by the Rent Guidelines Board ("RGB"). Respondent asserts that Petitioner unlawfully raised her rent for at least two lease terms since she moved into the apartment in February 2013. She claims that for the lease term covering February 1, 2017 through January 31, 2019, Petitioner raised the rent from $1,109 to $1,183, amounting to a 6.67% increase, where the RGB only approved a 2% increase. She also asserts that for the most recent lease term, which began February 1, 2019 and ended January 31, 2020, Petitioner increased her rent by 14.12%, where the

RGB only permitted a 2% increase. In further support of an overcharge defense, Respondent cites to the HDC rider dated February 1, 2013 annexed to her order to show cause as Exhibit D. The rider states, in relevant part, that "[a]ny increases or adjustments in the rent shall be no greater than the lesser of the increases or adjustments permitted under either (i) Rent Stabilization or the DHCR/HDC Agreement, whichever is applicable or (ii) the applicable provisions of the Code and the HDC Regulatory Agreement." *See* Exhibit D, Paragraph 3(b). Lastly, Respondent contends that Petitioner's failure to provide her with a vacancy lease rider as required by RSC § 2522.5(c)(1) precludes Petitioner from collecting adjustments in excess of the rent set forth in the prior lease. *See* RSC § 2522.5(c)(3).

In opposition, Petitioner argues that Respondent was receiving a preferential rent; thus, at the time the leases were executed, Petitioner was permitted to raise Respondent's rent by amounts in excess of the RGB increases, so long as the increases did not exceed the legal rent. Petitioner also argues that pursuant to the regulatory agreement and the tax exemption, it sets the rents based on numerous factors, including HDC orders, particular family income limits, family makeup, and apartment size and attaches several HDC memoranda with income limits and rent charts. Petitioner does not rebut Respondent's argument that it provided Respondent with an incomplete vacancy lease rider but argues that the statute requires Respondent to first file a complaint with DHCR seeking a DHCR order directing Petitioner to provide such a lease rider, prior to subjecting Petitioner to any penalties.

Discussion

It is well-settled that "stipulations of settlement are favored by the courts and not lightly cast aside," *Hallock v. State*, 64 N.Y.2d 224, 230 [1984]. But in *In re Estate of Frutiger*, 29 N.Y.2d 143, 149-50 [1971], the Court of Appeals also held that

> "[t]he court has control over stipulations and power to relieve from the terms thereof when the parties can be placed in status quo. But the stipulation will not

> be destroyed without a showing of good cause therefor, such as fraud, collusion, mistake, accident, or some other ground of the same nature. . . . It is sufficient if it appears that either party has inadvertently, unadviseably or improvidently entered into an agreement which will take the case out of the due and ordinary course of proceeding in the action, and in so doing may work to his prejudice. . ."

The Second Department has added to a showing of good cause a "demonstration of merit and a reasonable probability of success on the part of the party seeking the vacatur." *Cabbad v. Melendez*, 81 A.D.2d 626, 626 [2d Dep't 1981].

In that respect, RSC § 2522.5(c)(1)(i) requires that vacancy lease riders contain

> "[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 above the amount shown in the most recent annual registration statement, as well as the prior lease, and a statement that any increase above the amount set forth in such registration statement is in accordance with the adjustments permitted by the Rent Guidelines Board and this Code."

RSC § 2522.5(c)(3), as amended on January 8, 2014, also states that "the owner shall not be entitled to collect any adjustments in excess of the rent set forth in the prior lease unless the owner can establish that the rent collected was otherwise legal." RSC § 2522.5(c)(3) does not require Respondent to first file a complaint with DHCR as Petitioner claims. Petitioner relies on an earlier version of the code in support of its assertion. Petitioner's failure to provide Respondent with a vacancy lease rider as required by RSC § 2522.5(c)(1) precludes Petitioner from collecting adjustments in excess of the rent set forth in the prior lease. *Fuentes v. Kwik Realty LLC*, 174 A.D.3d 483, 485 [1st Dep't 2019]; *see e.g., 160 Eagle Street LLC v. Butler*, 58 Misc. 3d 398 [Civ. Ct. Kings Cty. 2017]).

Petitioner fails to provide an affidavit from any individual with personal knowledge explaining how Petitioner set the initial rent for Respondent's specific apartment when the apartment first became subject to the regulatory agreement and, more importantly, how Respondent's rent was calculated for the time periods at issue. Petitioner merely insists, without citing to any sources, that "[o]rdinary Rent Guidelines Board increases and

preferential rent rules are not applicable to HDC financed developments operating under a regulatory agreement." This appears to be in contravention of the HDC rider provided to Respondent.

For the foregoing reasons, Respondent has demonstrated that she inadvertently and unadvisedly entered into an agreement and waived meritorious defenses and counterclaims without the benefit of counsel. These defenses and counterclaims could have been raised had Respondent been represented. However, in view of the fact that Respondent waited seven months to retain counsel and signed at least three stipulations agreeing to pay the alleged arrears, and to preserve the status quo, this court will only vacate the prior stipulations and orders and judgments, provided Respondent deposits the $4,300 she is holding in escrow with the clerk of court by April 30, 2020, or as soon as practicable in view of the current court shutdown due to the COVID-19 virus.

As to Respondent's motion to interpose an amended answer, CPLR § 3025 provides in pertinent part that leave to amend pleadings "shall be freely given upon such terms as may be just." Because Petitioner fails to show prejudice or surprise by permitting Respondent to amend her answer (*see 36 Main Realty Corp. v Wang Law Off.,* PLLC, 49 Misc 3d 51, 53 [App Term, 2d Jud Dist 2015]), and the proposed amended answer containing new affirmative defenses, including, among others, a defense based on overcharge, is neither palpably insufficient nor patently devoid of merit on its face (*Confidential Lending, LLC v Nurse*, 120 A.D.3d 739, 741 [2d Dep't 2014]), the motion is granted. This Department adheres to the liberal policy that the "[respondent] should have the opportunity to assert the defense and the [petitioner] to make such motions against it as it may deem advisable" (*see e.g. Lucido v Mancuso*, 49 A.D.3d 220, 224 [2d Dep't 2008]). Accordingly, it is

Ordered that all prior pro se stipulations, judgements, and orders in this proceeding are vacated, provided Respondent deposit $4,300 with the clerk of the court as directed above; and it is further

Ordered that the proposed amended answer, annexed as Exhibit A to the moving papers, shall be deemed filed and served *nunc pro tunc* and a courtesy copy of said proposed answer shall be filed with the Clerk within 10 days hereof; and it is further

Ordered that this matter is adjourned for all purposes to May 7, 2020 at 9:30 AM.

Dated: April 17, 2020

E N T E R:

Zhuo Wang, JHC