2020-09-25

615 W. 176th St. LLC v. Gately

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

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615 W. 176TH ST. LLC,

Petitioner,

-against- DECISION/ORDER

JAMIE GATELY,

Respondent.

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SCHNEIDER, J.

This holdover proceeding was commenced in January 2018. The petition alleged that the respondent was an unregulated tenant whose tenancy had been terminated by a 30 day notice that expired on November 30, 2017. Ms. Gately, who has mental and physical disabilities, did not appear. A judgment of possession was entered after inquest, and she was evicted in October 2018.

Ms. Gately retained counsel after her eviction. With counsel's assistance, she was restored to possession of the apartment and the default judgment and warrant were vacated. A guardian ad litem was appointed to protect Ms. Gately's interests, and the court ordered discovery on Ms. Gately's claim that her apartment was rent stabilized and that she had been overcharged. In December 2019, petitioner conceded that the apartment was rent stabilized, and the holdover proceeding was dismissed. The matter was sent to this court for trial on the respondent's counterclaim for rent overcharge.

In lieu of trial, the parties stipulated to certain facts and then submitted legal memoranda. The stipulation of facts, dated February 3, 2020, provided that a DHCR Rent Reduction Order dated July 15, 1999, had rolled back the rent on the subject apartment to $397.46 per month, that the legal rent for the apartment was $397.46 per month from February 2012 to February 2018, that petitioner had owned

the subject building since 1984, that Ms. Gately had been the tenant of record in the apartment starting in 2010, and that Ms. Gately had made certain specified payments to petitioner as set forth in petitioner's rent ledger. The stipulation also said that Ms. Gately had established a prima facie case for rent overcharge, and that petitioner conceded that the overcharge damages from February 2012 through February 2016 were $40,364.70, as set forth in a chart prepared by respondent's counsel.

Petitioner's counsel conceded on the record that petitioner had no evidence to rebut the presumption that the overcharge was willful. After the Court of Appeals determination in *Regina Metropolitan Co. LLC v. DHCR*, 2020 NY Slip Op. 02127, this court invited counsel to submit additional briefing on the applicability of that decision to the present case.

Respondent's answer in this case raises a counterclaim for rent overcharge but does not specify the period for which damages were sought. At the time when the answer was filed, before the passage of the HSTPA in June 2019, the Rent Stabilization Law provided that a tenant could recover damages for a rent overcharge for four years before the claim was made, and could recover treble damages for a willful overcharge for two years before the claim was made. NYC Admin. Code Section 26-516 (2)(b). HSTPA expanded the recovery period to 6 years, both for single and treble damages. The Court of Appeals in *Regina* held, in general, that the expanded recovery period was not available on claims that were already time-barred under the old law when HSTPA became law.

Regina does not bar the respondent from pursuing an overcharge claim based upon the rent reduction order issued in 1999 and still in effect today. In *Cintron v. Calogero*, 15 NY 3d 347 (2010) held that the pre-HSTPA rule barring the examination of an apartment's rent history more than four years before the claim does not apply to claims based on an older rent reduction order. The Court reasoned that so long as the rent reduction order remained in effect during the four year limitation period, it was part of the rental history that could properly be considered. The *Regina* court specifically noted that it was not setting aside this rule. 2020 NY Slip Op. 02127 at fn 6.

Respondent's rent overcharge claim is deemed to have been made in February 2018 when the holdover proceeding was commenced, under the relation-back rule, CPLR §203(d). The HSTPA became effective when passed on June 14, 2019. Under pre-HSTPA law, respondent was entitled to recover damages for an overcharge incurred between February 2014 and January 2016, and treble damaged for damages incurred between February 2016 and February 2018. Because claims for periods prior to February 2014 were time-barred by the old law prior to June 2019, they were not, under the holding in *Regina*, revived by the passage of the HSTPA.

The court disagrees with respondent about the import of the petitioner's stipulations in lieu of trial. Petitioner did not stipulate that respondent was entitled to a specific amount of damages, or to damages for a specific period. If petitioner had done so, there would have been no need for a determination by the court. Rather, petitioner stipulated to certain facts and left it to the court to apply the law to the facts.

Applying these principles, the court finds that respondent is entitled to damages of $18,535.00 for the period from February 2014 through January 2016 ($28,075.00 was paid for this period, and only $9539.04 was due, calculated at $397.46 per month for 24 months.) Respondent paid no rent from September 2016 onward. From February 2016 to August 2016 she paid $4050.00. The legal rent for that period was 2782.22. The overcharge for this period was $1267.78, and respondent is entitled to treble damages for this period in the amount of $3803.34.

The clerk is therefore directed to enter a judgment for money only in favor of the respondent and against the petitioner for $22,338.34 on her counterclaim for rent overcharge.

Dated:

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J. H. C.