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Upper Broadway LLC v. Iverson

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

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Index No. 80175/17

UPPER BROADWAY J LLC,

Petitioner,

-against-

DECISION/ORDER

JANICE IVERSON,

Respondent.

-----X

SCHNEIDER, J.

This is a long-running dispute about a rent overcharge in a rent stabilized apartment. By Decision/Order dated November 1, 2018, Hon. Timmie Erin Elsner of this court granted respondent's motion for summary judgment dismissing the petitioner's claims for rent, determining that petitioner had engaged in a fraudulent scheme to deregulate the apartment, that there had been a rent overcharge, and that the overcharge was willful. Judge Elsner's order directed the parties to settle an order on notice calculating the amount of respondent's damages, including treble damages based upon petitioner's willfulness.

Both parties filed notices of appeal. Petitioner's motion to reargue and/or renew was denied by Judge Elsner by Decision/Order dated July 2, 2019. Judge Elsner again directed the parties to settle an order. Respondent moved to settle an order. That motion was still pending when the covid-19 pandemic caused the court to recess. Petitioner moved again to reargue in May 2020 based upon a claim that the Court of Appeals decision in *Regina Metropolitan v. DHCR*, 2020 NY Slip Op. 02127, required a modification of Judge Elsner's order. After papers in opposition and reply had been filed with the court, petitioner withdrew that motion in August 2020.

Next, respondent moved to renew, based upon *Regina*, and for calculation of the legal regulated rent based upon the default formula. Judge Elsner granted this motion by Decision/Order October 14, 2020, and referred the matter to this court for a determination of the amount of the regulated rent, and the amount of the overcharge, based upon the default formula. At a virtual conference on December 9, 2020, counsel for the parties agreed that the rent could probably be determined on papers, and the court set a schedule for written submissions. Respondent submitted her papers a day early, on December 30, 2020. Petitioner's papers were due January 19, 2021, but petitioner has, to date, submitted no papers and made no application for an extension of time to submit.

Based upon the respondent's papers alone, the court make the following determination.

The DHCR's default formula, 9 NYCRR §2522.6 (b) (2), provides that when, as here, the based date rent is affected by fraud, the rent shall be set at the lowest of four amounts: (1) the lowest registered rent for an apartment of comparable size to the subject apartment in the subject building on the date the tenant first occupied the apartment; or (2) the tenant's initial rent reduced by one vacancy allowance; or (3) the last rent paid by the prior tenant, if within four years of the claim being made; or (4) if none of the first three methods can be applied, the DHCR's data sampling method.

The tenant here first occupied the apartment on June 2, 2014. Her apartment has four rooms. The exhibits attached to respondent's moving papers establish that the lowest registered rent in the subject building for a four room apartment on June 2, 2014 was \$778.28. Petitioner has offered no opposition. This amount is lower than the amount that would be dictated by any of the other methods offered in the regulation.

Respondent's overcharge claim was made in January 2018. She is thus entitled to recover damages for rent overcharge from the beginning of her tenancy in June 2014, less than four years earlier. The total amount of her overcharge through April 29, 2017, when she stopped paying her rent, was \$79,818.72. Respondent is also entitled to treble damages for willful rent overcharge for the two years

before she made her claim. This adds \$73,328.64 to the total amount of the damages. The total amount of respondent's overcharge is therefore \$153,147.36.

It should be noted that in arriving at this amount, the court has not relied entirely on respondent's figures, which appear to claim four times the actual overcharge for the trebled period rather than three times as the law allows.

After a deduction for the respondent's underpayment of the rent from May 2017 through December 2020, an unrebutted total of \$33,068.32, respondent is entitled to a money judgment in her favor for \$120,079.04. The clerk is directed to enter judgment accordingly.

Because this case is no longer an eviction proceeding but only a claim by the respondent for money damages, the petitioner's claim having been dismissed some years ago, the case is not affected by the Emergency Eviction and Foreclosure Prevention Act of 2020, and the judgment may enter immediately.

Dated: 2/4/21



J. H. C.