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**APPELLATE TERM OF THE SUPREME COURT
OF THE STATE OF NEW YORK FOR THE 2ND, 11TH & 13TH JUDICIAL DISTRICTS**

Submitted - January 5, 2022 Term

THOMAS P. ALIOTTA, P.J.
MICHELLE WESTON
DONNA-MARIE E. GOLIA, JJ.

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603 New Jersey Avenue, LLC, Appellant, v Samuel C. Hall, Respondent, and Charlotte Burke-Hall, Tenant.

DECISION & ORDER

Appellate Term Docket No.
2021-47 K C

Lower Court # 94789/2018

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Wenig Saltiel, LLP (Meryl L. Wenig of counsel), for appellant.

The Legal Aid Society (Alicia Mason of counsel), for respondent.

Appeal from an order of the Civil Court of the City of New York, Kings County (Marc Finkelstein, J.), dated January 14, 2020. The order, insofar as appealed from as limited by the brief, granted tenant's motion for leave to conduct discovery in a nonpayment summary proceeding.

ORDERED that the order, insofar as appealed from, is affirmed, without costs.

In this nonpayment proceeding, insofar as is relevant to this appeal, tenant Samuel C. Hall* moved for leave to conduct discovery relating to overcharge affirmative defenses and counterclaims. As limited by its brief, landlord appeals from so much of an order dated January 14, 2020 as granted tenant leave to conduct discovery.

Since this proceeding was commenced in 2018, before the enactment of the Housing Stability and Tenant Protection Act of 2019 (L 2019, ch 36, § 1, part F), tenant's overcharge claim is generally limited to the four-year look-back period in examining the rental history of the apartment (*see* Rent Stabilization Law of 1969 [Administrative Code of City of NY] § 26 516 [a] [2]; *Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal*, 35 NY3d 332 [2020]; *Rossmann v Windermere Owners LLC*, 187 AD3d 527 [2020]). An exception to the foregoing rule

* Tenant Charlotte Burke-Hall has neither appeared nor answered the petition.

exists, however, where “a landlord has engaged in fraud in initially setting the rent or removing an apartment from rent regulation,” in which case a court may review the rental history for an apartment beyond the four-year statutory period (*Kreisler v B-U Realty Corp.*, 164 AD3d 1117, 1117 [2018]; *see Matter of Grimm v State of N.Y. Div. of Hous. & Community Renewal Off. of Rent Admin.*, 15 NY3d 358 [2010]; *40-40-40-38 78th St., LLC v Murillo*, 72 Misc 3d 127[A], 2021 NY Slip Op 50578[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2021]).

Since a summary proceeding is a special proceeding (*see* RPAPL 701 [1]), disclosure is permitted by “[l]eave of court” (CPLR 408) upon a showing of ample need (*see Mautner-Glick Corp. v Higgins*, 64 Misc 3d 16, 18 [App Term, 1st Dept 2019]; *Neighborhood Partnership Housing Development Fund Corp. v Okolie*, 2003 NY Slip Op 50707[U] [App Term, 2d Dept, 2d & 11th Jud Dists 2003]; *New York Univ. v Farkas*, 121 Misc 2d 643, 647 [Civ Ct, NY County 1983]). Here, by demonstrating a 47.9% unexplained increase in rent from the immediately preceding tenant to tenant herein, a failure to file any registrations for several years, and what the Civil Court characterized as “multiple and unclear registrations,” tenant has alleged a colorable claim of fraud in the initial setting of the rent so as to warrant the Civil Court’s finding that there was ample need for discovery relevant to that defense. Landlord’s allegation that the proposed discovery is overly burdensome was raised for the first time in its reply brief and, therefore, that contention is not properly before this court (*see Boddie-Willis v Marziliano*, 78 AD3d 978, 979 [2010]).

Accordingly, the order, insofar as appealed from, is affirmed.

ALIOTTA, P.J., WESTON and GOLIA, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Paul Kenny". The signature is written in a cursive, flowing style.

Paul Kenny
Chief Clerk