2022-03-17

495 Estates v. New York State Div. of Hous. & Community Renewal

495 Estates v New York State Div. of Hous. & Community Renewal
2022 NY Slip Op 30942(U)
March 17, 2022
Supreme Court, New York County
Docket Number: Index No. 150237/2021
Judge: Alexander Tisch
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ALEXANDER TISCH** **PART** **18**

Justice

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495 ESTATES,

Plaintiff,

- v -

NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL,

Defendant.

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INDEX NO. 150237/2021

MOTION DATE 10/18/2021

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER)

Upon the foregoing documents, petitioner 495 Estates brings this special proceeding pursuant to CPLR Article 78, requesting that the Court annul and vacate the New York State Division of Housing and Community Renewal's (DHCR) Order Denying Petition for Administrative Review dated November 12, 2020.

Background/Factual Allegations

Petitioner is the owner and landlord of the building located at 495 West End Avenue in the County, City, and State of New York (subject building). In or around January of 2017, new natural gas risers were installed for each gas line in the building.[1] The installation plan was submitted to and approved by the New York City Department of Buildings (DOB).

A new gas riser was installed in apartment 7M (the subject apartment), which is occupied by Jacqueline Weiss (tenant). After said installation, the tenant filed a complaint with DHCR

[1] It is unclear whether petitioner or Con Ed determined that new gas pipes were required (see NYSCEF Doc. No. 1, petition at ¶ 6; NSYCEF Doc. No. 19, Parpas aff at ¶ 65).

wherein she alleged: "New Gas Pipes were installed outside of the wall taking away square footage – pictures included" (NYSCEF Doc. No. 8, DHCR Complaint). On July 30, 2019, DHCR Rent Administrator Margaret Ramroop, determined a rent reduction was warranted, as a DHCR Inspector noted upon inspection of apartment 7M, that the gas pipe was installed in an "unworkmanlike manner on the wall in the livingroom [*sic*] (adjacent to kitchen) reducing the living room space approximately 2.0 x 5/12 square feet…[a]lso the pipe is obstructing the living area. Therefore, a reduction in rent is warranted for this issue" (NYSCEF Doc. No. 4, Rent Administrator Order). Thereafter, the petitioner filed a Petition for Administrative Review, contesting the rent reduction finding. On November 12, 2020, the DHCR Deputy Commissioner denied the Petition for Administrative Review, affirming the Rent Administrator's Order (NYSCEF Doc. No. 3, Deputy Commissioner Order).

Parties' Contentions

Petitioner argues the Deputy Commissioner's determination was arbitrary and capricious, as it was without sound basis in reason, and disregarded DHCR precedent. Furthermore, petitioner claims the inspector's report is hearsay and it was a violation of the petitioner's due process rights that the Deputy Commissioner relied on a report that was never exchanged with the petitioner. Petitioner asserts it should have had the opportunity to review and respond to any findings in the report.

In opposition, DHCR provides an attorney affirmation and DHCR's administrative record.[2] DHCR argues the new gas riser diminishes the tenant's use and enjoyment of the living room beyond a de minimus reduction of services, and petitioner reduced the living room space without

[2] Respondent's affirmation fails to comply with 22 NYCRR § 202.8-b (c) insofar as the affirmation is not accompanied by a certification by counsel setting forth the number of words in the document. The affirmation appears to contain over 8,000 words, which exceeds the limitations set forth in subdivision (a) of the rule.

approval from DHCR. Moreover, DHCR contends that petitioner did not explain why a new gas riser was required, or why the replacement occurred outside of the tenant's living room wall, as DOB did not require the gas pipes be placed outside of the wall. DHCR contends the Rent Administrator found the pipe to protrude and obstruct the living area and reiterates the Deputy Commissioner's decision that "the tenant experienced an actual, measurable reduction of living space, the finding of a rent reduction was based on a purely factual finding and is warranted for this issue" (NYSCEF Doc. No. 19, Parpas aff at ¶ 24). DHCR maintains that petitioner reduced the required services to the tenant, and their decision was not arbitrary or capricious.

In reply, petitioner asserts the gas riser installation does not constitute a defective and/or dangerous condition constituting a decrease in service. As such, the reduction in rent was unfounded as there has been no change in the apartment's configuration.

Discussion

Pursuant to CPLR 7803(3) and the Rent Stabilization Code (RSC) § 2530.1, the Court may review a final order of the DHCR, and its inquiry is "limited to whether the determination is arbitrary and capricious, or without a rational basis in the record and a reasonable basis in law" (Matter of Delillo v New York State Div. of Hous. and Community Renewal, 45 AD3d 682, 683 [2d Dept 2007] ["An agency's interpretation of the statutes and regulations that it administers is entitled to deference, and must be upheld if reasonable"]; see also Gilman v New York State Div. of Housing and Community Renewal, 99 NY2d 144, 149 [2002]). "An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts" (Matter of Duverney v City of New York, 57 Misc 3d 537, 539 [Sup Ct, NY County 2017]; see id. at 542 ["An agency's failure to follow its own procedure or rules in rendering a decision is arbitrary and capricious"]).

Here, petitioner proffered two prior Orders from a previous DHCR Deputy Commissioner in support of its contention that the DHCR's determination was arbitrary and capricious: West 49th Street Realty, DHCR Adm. Rev. Dckt. No. MH410032RO (March 25, 1999) and 40 Central Park South, Inc., DHCR Adm. Rev. Dckt. No. HL 410237-RO (October 8, 1996) (NYSCEF Doc Nos. 11-12). In these two Orders, DHCR found that rent reductions were inappropriate absent a finding that the exposed pipe is (1) illegal, dangerous, or a defective condition; or (2) affects the use or enjoyment of the premises by the tenant. However, unlike the matter presently before the Court, the two prior Orders pertain to cases in which exposed pipes were already present within the subject dwellings. In West 49th Street Realty, one exposed gas pipe was replaced with another and there was no alleged "defect with the installation or that it otherwise affected the use or enjoyment of the premises" (NYSCEF Doc No. 11). In the 40 Central Park South, Inc. matter, the gas pipe was already exposed, and the Deputy Commissioner held that it was error for the Administrator to order that it should be covered, absent a finding that the "condition is illegal, dangerous or that the pipe is somehow defective" (NYSCEF Doc No. 12). In this matter, an exposed pipe was installed within the tenant's living room for the first time, which affected the use of the living room space. Thus, contrary to petitioner's position, it cannot be said that the DHCR irrationally failed to follow its own precedent as the matters are readily distinguishable.

The Court finds that there was no due process violation with respect to the inspection report as it confirmed the tenant's allegations and there was no new information that the petitioner did not already know (see Matter of Terrace Ct., LLC v New York State Div. of Hous. and Community Renewal, 79 AD3d 630, 633 [1st Dept 2010], affd 18 NY3d 446 [2012]; Matter of Empress Manor Apts. v New York State Div. of Hous. & Community Renewal, 147 AD2d 642, 643 [2d Dept 1989]).

Finally, it is irrelevant that the DOB approved the gas riser installation plans as the DHCR is the entity charged with enforcing the Rent Stabilization Law (see Matter of Hyde Park Gardens v State, Div. of Hous. and Community Renewal, Off. of Rent Admin., 140 AD2d 351, 351-352 [2d Dept 1988], affd sub nom. Matter of Tenants of Hyde Park Gardens v State of N.Y., Div. of Hous. and Community Renewal, Off. of Rent Admin., 73 NY2d 998 [1989]).

For these reasons, the Court finds that DHCR's decision was not arbitrary and capricious, as there was a rational basis to support the DHCR's determination as to whether the change in required service is de minimus or worthy of a rent reduction order (see id. at 352 [the "factors considered by the agency establish that a rational basis existed for its determination which accordingly should not be disturbed"]).

Accordingly, it is ORDERED and ADJUDGED that the petition is denied.

This constitutes the decision and order of the Court.

3/17/2022
DATE

ALEXANDER TISCH, J.S.C.

CHECK ONE:	[X]	CASE DISPOSED		[ ]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[X] DENIED	[ ]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE