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879 LENOX LLC v. GIVENS

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

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879 LENOX LLC,

Index No. 50543/20

Petitioner,

DECISION/ORDER

-against-

Mot. seq. nos. 1 & 2

TAKIYAH GIVENS,

Respondent.

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The following e-filed documents, listed by NYSCEF document numbers 5-8; 20-31; 35-46 (motion no. 1; motion no. 2), were read on this motion for leave to execute the warrant of eviction and cross-motion to vacate the parties’ agreement and for other relief.

This nonpayment summary eviction proceeding was commenced in early-January 2020 and settled on March 9, 2020, at which time Respondent was acting pro se. At the time the proceeding was commenced, the apartment had not been registered with DHCR since March 27 2017, for registration year 2016. Between commencement and settlement, Petitioner filed late registrations for the years 2017 and 2018. Respondent seeks vacatur of the agreement she entered into as a pro se litigant, arguing that pursuant to RSL § 517(e) at the time she made the agreement, for the period prior to the late registrations, Petitioner could not collect more than the rent that was last registered.

RSL § 517(e) provides that failure to file “proper and timely” rent registration bars an owner from collecting the rent that would otherwise legally collectible and relegates it to collection of the rent in effect on the date of the last registration. Should a late registration be filed, the rent contained therein becomes collectible prospectively, and the owner “shall not be found to have collected an overcharge at any time prior to the filing of the late registration” (*id.*). But as particularly relevant here, late registrations have no retroactive effect (*see 125 Court Street, LLC v Sher*, 58 Misc 3d 150[A], 2018 NY Slip Op 50092[U] [App Term, 2d Dept, 2d, 11th, & 13th Jud Dists 2018]). Here, that means that, to the extent the amount of arrears contained in the parties’ March 2020 agreement is based on the rent contained in the lease, Petitioner did not have the right to collect the rent contained in the parties’ lease for any month

prior to January 2020. The agreement should therefore be vacated as one entered into by a pro se litigant inadvisedly.

The basis for vacating the agreement is compounded by Petitioner's admissions in its opposition to the motion. It turns out that the late registrations filed in 2020 were incorrect. Petitioner's filings notwithstanding, there never were tenants in the subject apartment by the names of Allison Rendon or Carol Dominguez. Instead, the tenant immediately prior to Respondent was Denise Bobb. Petitioner's characterizing these filing errors as an (unexplained) "honest mistake" and "typographical error" aside, they have yet to be corrected.

Accordingly, it is ORDERED that Respondent's motion is granted; and it is further ORDERED that the agreement of March 9, 2020 and the judgment entered pursuant thereto is vacated; and it is further

ORDERED that Respondent is granted leave to serve an amended answer and shall upload her amended answer to NYCEF within ten days of this decision/order being uploaded to NYSCEF; and it is further

ORDERED that Petitioner's motion is denied; and it is further

ORDERED that this proceeding having previously been heard in Part D, which no longer exists, the proceeding shall be transferred to a new part and calendared for all purposes.

This is the court's decision and order.

Dated: May 31, 2022

Michael L. Weisberg, JHC