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2022-08-31

### RSR & RZ Lefferts LLC v. Davis

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

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RSR & RZ Lefferts LLC; Dutchman & Wolverines LLC;  
RR RE Investors LLC

Petitioner

against

**DECISION/ORDER**  
Index No. 81839/19

Angela Davis; John Doe; Jane Doe

Respondent

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Petitioner commenced this holdover proceeding on October 22, 2019 after serving respondent with a 10-Day Notice to Vacate dated September 10, 2019 which alleged that her license to occupy the subject apartment was terminated. Respondent, Angela Davis, appeared by counsel and interposed an answer with affirmative defenses.

This matter was transferred to the trial part on December 7, 2020. After several conferences, the parties agreed to resolve the holdover proceeding wherein petitioner agrees to recognize respondent as a successor tenant to the deceased tenant of record's tenancy. However, the amount of the legal rent was not resolved and remained at issue.

In lieu of trial, the parties agreed to submit memoranda of law on the issue of whether petitioner was entitled to charge respondent the legal rent (\$1,070.33) as opposed to the preferential rent (\$320.81) that the deceased tenant of record pursuant to the deceased tenant's last lease renewal.

Petitioner argues that the Regulatory Agreement sets forth a legal rent for each unit and this is the rent registered with DHCR. Petitioner states that the Regulatory Agreement provides that the current rent can be adjusted pursuant to the Rent Stabilization Code, and petitioner should be allowed to charge respondent the legal rent of \$1,070.33. Petitioner argues that as the former tenant of record passed away prior to the enactment of the Housing Stability Tenant Protection Act (hereinafter, "HSTPA") and respondent does not fit the definition of a current tenant pursuant to the Regulatory Agreement. Therefore, respondent should be responsible for paying the legal rent, plus any allowable increases.

Respondent contends that the HSTPA went into effect prior to the commencement of this proceeding and it provides that a landlord cannot revoke a preferential rent in a renewal lease and respondent is entitled to a renewal lease. Moreover, respondent argues that the Regulatory Agreement does not provide that petitioner can revert back to the legal rent in this specific instance, and respondent is entitled to a renewal lease which charges her the preferential rent.

On June 14, 2019, New York State enacted the Housing Stability and Tenant Protection Act of 2019 ("HSTPA") and RSC § 26-511(c)(14) was amended to reflect the following:

*"any tenant who is subject to a lease on or after the effective date of a chapter of the laws of two thousand nineteen which amended the subdivision or is or was entitled to receive a renewal or vacancy lease on or after such date, upon renewal of such lease, the amount of rent for such housing accommodation that may be charged and paid shall be no more than the rent charged to and paid by the tenant prior to that renewal, as adjusted by the most recent applicable guidelines increases and any other increases authorized by law."*

Moreover, the provisions of the HSTPA are applicable to "any tenant who is subject to a lease on or after the effective date of [this Act] or is or was entitled to receive a renewal or vacancy lease on or after such date" (see *Greater Allan Affordable HSC v. Reddick*, NYLJ, Mar. 17, 2021 at p.17, col.2 (2021)).

The former tenant of record executed the most recent lease renewal on December 5, 2018, and that lease indicates the legal rent is \$1,070.33 but charges the tenant a preferential rent of 320.81<sup>1</sup> for a two-year renewal period. The former tenant of record passed away on December 7, 2018, and thus is deemed to have vacated the subject apartment on that date.

Petitioner commenced this action on October 22, 2019, after the effective date of the HSTPA. Petitioner has also agreed that respondent, Angela Davis, has succeeded to the former tenant of record's tenancy, acknowledging that she has resided with the former tenant of record for the statutory required period (see 9 NYCRR §2204.6(d)(1)). The determination that respondent was a successor tenant was made subsequent to the enactment of the HSTPA, and that is operative date which determines that the preferential rent continues to the successor tenant since respondent's lease term commences after the HSTPA became effective.

Respondent is entitled to a renewal lease as a succeeding tenant (see 9 NYCRR § 2523.5) and is entitled to be named as a tenant on the renewal lease. Pursuant to RSC § 26-511(c)(14), as amended by the HSTPA, respondent is entitled to receive a renewal lease and the amount of rent that is allowable is "no more than the rent charged to and paid by the tenant prior to that renewal", plus any allowable increases (see RSC § 26-511(c)(14)).

Based on the foregoing, this Court finds that petitioner can offer respondent a renewal lease and is bound by the preferential rent of \$320.81, plus any allowable increases under law.

This constitutes the decision and order of the court.

Dated: Brooklyn, New York  
August 31, 2022

  
**HON. CHERYL J. GONZALES**  
Cheryl J. Gonzales, JHC

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<sup>1</sup> Respondent's Exhibit B