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### MRD Equities, LLC v. St. Remcj

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

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MRD Equities, LLC

Petitioner

against

**DECISION/ORDER**  
Index No. 50870/18

Emmanuel St. Remej

Respondent

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Petitioner commenced this non-payment proceeding on January 8, 2018 seeking rent arrears in the amount of \$10,645.00 for the period of July 2017 to January 2018 at a monthly rent of \$1,500.00. Respondent, Emmanuel St. Remej, appearing pro se, interposed an answer, dated February 9, 2018, asserting several affirmative defenses and a counterclaim. Respondent later retained counsel and interposed an amended answer dated May 22, 2018 asserting the following defenses: defective rent demand; rent overcharge; rent impairing violations and breach of the warranty of habitability. Respondent also counterclaimed for rent overcharge; breach of the warranty of habitability; housing maintenance code violations and breach of contract.

After a conference in the trial part, the parties agreed to submit memoranda of law on the issue of whether respondent had been charged a legal rent for the subject apartment.

The parties submitted a joint Stipulation of Facts in which they agreed that the former owner, Santiago Dargenson, owned the subject building from approximately January 2, 1975 until July 2, 2015. On July 2, 2015, Mr. Dargenson sold the building to Bedford Avenue Holding LLC. At the time of the sale, Mr. Dargenson included a rent roll with the mortgage documents which indicated that the rents charged for the apartments in the building were as follows<sup>1</sup>:

Apartment #1R	Santiago Dargenson	\$1,400.00
Apartment #1F	Jean Marie Geanman	\$760.00
Apartment #2R	Emmanuel Beneche	\$1,200.00
Apartment #2F	Kenol Celesar	\$710.00
Apartment #3R	Ramon Cardine	\$1,150.00
Apartment #3F	Marlene Caesar	\$0.00 [owner's daughter]
Basement Room #1	Rosemary	\$600.00
Basement Room #2	Wisne	\$500.00

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<sup>1</sup>It is noted that petitioner acknowledges the existence of the rent roll, but the parties agree that petitioner does not have personal knowledge regarding its accuracy.

On June 24, 2016, Bedford Avenue Holding LLC transferred title to the subject building to petitioner. The parties agree that Mr. Dargenson never registered the building with DHCR, and the building was initially registered on June 23, 2016 for the registration year of 2015. In 2016 and 2017, the subject apartment was registered with a rent of \$1,500.00 per month. The subject building has six (6) apartments, and the other five (5) apartments were also registered for the first time on June 23, 2016.

The parties further agreed that in approximately September 2009, respondent was hired to work as the superintendent for the subject building, and he began residing in the subject apartment with Mr. Dargenson. Mr. Dargenson moved out of the subject apartment, and on March 14, 2016, respondent executed an initial lease for the term of March 14, 2016 to March 13, 2018 at a monthly rent of \$1,500.00.

The parties acknowledge that respondent has made payments totaling \$36,700.00 for the period of March 2016 through June 27, 2019. In addition, respondent paid \$700.00 in approximately March 2019. Pursuant to an Order by Judge Fitzpatrick on March 30, 2018, the post-petition use and occupancy has been set at \$700.00 per month.

Petitioner argues that respondent executed a legal rent stabilized lease for the subject apartment in which his rent was properly set at \$1,500.00 per month. Petitioner reasons that since respondent only became the tenant in March 2016, any formulation of rent must be based upon the rents registered for apartments in the building at that time. As such, based upon the rents registered by petitioner, the average rent for the five other apartments is \$1,428.00, and a vacancy allowance would have allowed for a legal rent of \$1,713.60 for the subject apartment, which is less than the amount respondent was charged in rent. Petitioner argues, however, that should the court determine that the monthly rent is inaccurate, and a method is necessary to properly calculate the legal rent charged to respondent, the default method should not be used. Petitioner asserts that there is no allegation of, nor did petitioner engage in, any fraud, deceit or fail to provide rental records pursuant to respondent's rent overcharge claim, which makes using the default method inappropriate.

Respondent contends that the rent specified in respondent's rent stabilized lease is in violation of the Rent Stabilization Code because there was no explanation given as to how the monthly rent of \$1,500.00 was calculated. Instead, respondent asserts that the court should find that the legal regulated rent for the subject apartment should be calculated by averaging the rents of the comparable apartments in the building. By using this method, respondent contends that the legal regulated rent should be set at \$1,020.00 per month beginning March 2016, thus proving that respondent was overcharged.

Mr. Dargenson, the former owner, purchased the subject building on January 2, 1975<sup>2</sup>, and all units in the building are subject to rent stabilization. Pursuant to RSC § 2520.11 (i) (2), a unit occupied by the owner or the owner's immediate family renders the unit exempt from rent stabilization (see *West 88A LLC v Doe*, 64 Misc. 3d 73, 75, 105 N.Y.S.3d 780, 781; see also RSC § 2520.6 (i)). The subject apartment was occupied by the owner, Santiago Dargenson, and thus, was exempt from rent stabilization during his occupancy. However, upon his vacatur, the

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<sup>2</sup> Exhibit A in the Stipulation of Facts

apartment became subject to rent regulation. 9 NYCRR § 2528.1 requires that all rent regulated units, which are not exempt, be registered with DHCR.

The Rent Stabilization Code provides that the legal regulated rent for purposes of determining an overcharge shall be deemed to be the rent charged on the base date, plus any subsequent lawful increases and adjustments (9 NYCRR § 2526.1 (a) (3) (i)). Further, where the rent charged on the base date cannot be established, the rent shall be determined by the DHCR in accordance with RSC § 2522.6. Under RSC 26-516 (A) (2), as was in effect in February 2018 when the overcharge claim was made, the base date is determined by calculating the date four year prior to the complaint, *Grimm v State Division of Housing and Community Renewal*, 15 NY 3d 358 (2010). In addition, the Housing Stability and Tenant Protection Act granted Housing Court the authority to determine the legal rent when the rent charged on the base date cannot be established (Housing Stability and Tenant Protection Act of 2019, L 2019, Ch. 36, Part F).

Prior to Mr. Dargenson's purchase of the building, there was no registration on file with DHCR for any of the six (6) apartments in the subject building. In addition, Mr. Dargenson did not register any of the apartments in the building, including the subject apartment which remained exempt from rent stabilization until his vacatur in approximately 2016. There was no legal regulated rent for the subject apartment on the date that the apartment became subject to the registration requirements, and the former owner never registered any of the rents after purchasing the building. Prior to 2016, there were no registration records for the subject apartment. As such, there is no known rent amount which would have been charged on the base date which would be February 2014 while the apartment was still exempt from rent stabilization.

Petitioner argues that any formulation of rent must be based upon the rents registered for apartments in the building, and a vacancy allowance adjustment as prescribed by the Rent Stabilization Code. RSC § 2526.1 (a) (3) (iii) provides that when a housing accommodation is temporarily exempt from regulation pursuant to RSC § 2520.11 on the base date, the legal regulated rent shall be the prior legal regulated rent for the housing accommodation, the appropriate increase under RSC § 2522.8, and if temporarily exempt for more than one year, as further increased by successive two year guideline increases that could have otherwise been offered during the period of such vacancy or exemption and such other rental adjustments that would have been allowed under the code (*see* RSC § 2526.1 (a) (3) (iii)). However, the instant matter involves an apartment which was owner-occupied for more than twenty years and was never registered until petitioner purchased the building in 2016. RSC § 2526.1 (a) (3) (iii) does not address this specific situation, where there was no legal regulated rent immediately prior to the base date for an overcharge complaint. As such, this Court has authority under RSC § 2522.6 (a) to fix the prior legal regulated rent.

Rent Stabilization Code § 2522.6 (a) states that when the legal regulated rent, or any fact necessary to the determination of the legal regulated rent, is in dispute between the owner and the tenant, or is not known, the DHCR [and/or court] may issue an order in accordance with the applicable provisions of the Rent Stabilization Code. Further, RSC § 2522.6 (b) (2) provides that when the rent charged on the base date cannot be determined, or a full rental history from the base date is not provided, the rent shall be established at the lowest of the following amounts:

- (1) The lowest rent registered pursuant to section 2528.3 for a comparable apartment in the building in effect on the date the complaining tenant first occupied the apartment;
- (2) The complaining tenant's initial rent reduced by the percentage adjustment authorized by section 2522.8 of the Code;
- (3) The last registered rent paid by the prior tenant (if within the four-year period of review); or
- (4) If documentation is not available or is inappropriate, an amount based on data compiled by the DHCR, using sampling methods determined by the DHCR, for regulated housing accommodations.

In the instant matter, the parties acknowledge that there was no rent registered for the subject apartment, or any apartment in the building, prior to 2016. In addition, respondent's initial registered rent was the rent charged by petitioner. The prior occupant of the subject apartment was the previous owner, and as discussed above, the owner's occupancy rendered the subject apartment exempt from rent stabilization. As documentation is not available, the Rent Stabilization Code provides that sampling methods can be used to determine the legal regulated rent (*see* RSC § 2522.6 (b) (2)).

The default formula should be used to calculate any resulting overcharge if review of the rental history revealed a fraudulent scheme, *Thornton v. Baron* (5 N.Y.3d 175, 800 N.Y.S.2d 118 *see Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal*, 2020 NY Slip Op 02127, 5 [2020]). [2005]). Further, this procedure was confirmed in *Conason v. Megan Holding, LLC*. (25 N.Y.3d 1, 6 N.Y.S.3d 206 [2015]), in which the owner created a fictitious tenant and fictitious renovation to justify a rent increase (*see Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal*, 2020 NY Slip Op 02127, 5 [2020]). Respondent has not made a colorable claim of fraud nor has there been claim that petitioner used fraudulent means to set the rent charged to respondent. Therefore, use of the default method to determine the rent for the subject apartment is not appropriate (*see also Matter of Administrative Appeals of West 122 LLC*, Administrative Review Docket No.: DR410057RO).

In upholding the Rent Administrator's Order dated April 11, 2017 Deputy Commissioner Woody Pascal determined that given the specific facts of that case, the Rent Administrator properly used the average rents of comparable apartments as opposed to the lowest of the default formula rents (*In the matter of Administrative Appeal of Siegfried Zelt*, Administrative Review Docket No.: FR410031RT.) Moreover, in the *Matter of the Administrative Appeal of Donna L. Bradbury* (Administrative Review Docket Nos: DV410037RT & DU410039RO), Deputy Commissioner Pascal concluded that the Rent Administrator properly determined that, since the apartment had been temporarily exempt on the base date, the tenant's legal regulated rent was determined by averaging the monthly rents of all comparable apartments in the same building and adding to that average rent, the vacancy increase applicable to the tenant's vacancy lease. However, in this case, no such rent registrations exist.

The Housing Stability and Tenant Protection Act of 2019 provides that in investigating complaints of overcharge and in determining legal regulated rent, a court of competent jurisdiction shall consider all available rent history which is reasonably necessary to make such determinations (*see* (Housing Stability and Tenant Protection Act of 2019, L 2019, Ch. 36, Part F). However, there is no definitive accounting of the rent history of the comparable apartments

in the building. Respondent argues that the handwritten rents included as part of the mortgage documents is reliable rent history to be used for the purpose of determining the rents for comparable apartments in the subject building. However, as conceded by respondent, these rent records do not provide pertinent information regarding the amount of rent charged and relevant arrears, and this makes it hard to determine if the statements of rents are accurate. Further, respondent's understanding of comparable apartments in the buildings is based solely upon his information and belief, and the accuracy of respondent's claim cannot be determined on motion papers.

It is evident that petitioner's setting the rent for the subject apartment at \$1,500.00 was arbitrary as the Rent Stabilization Code provides methods to be used to determine the legal rent for an apartment after its exemption is terminated. While the facts of this case are uncommon, the guidelines under the Rent Stabilization Code, and their applicability, do not change. However, respondent's claim that the handwritten notes included as part of the Contract of Sale should be deemed reliable rent history is without merit. This court cannot determine the accuracy of these figures solely based on respondent's belief that they were accurate at the time the building was transferred to petitioner.

Respondent seeks dismissal of petitioner's petition based upon rent overcharge. However, there is no reliable rent history to make the determination of what the average rents should be to determine an accurate calculation of respondent's rent and whether there was an overcharge. Accordingly, this matter is set down for a hearing on June 24, 2020 at 9:30am for the purposes of determining the rents of the comparable apartments in the building as of March 2016.

This constitutes the decision and order of the court.

Dated: Brooklyn, New York  
April 15, 2020

  
Cheryl J. Gonzales, JHC