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Rifka Realty, LLC v. Shapiro

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Civil Court of the City of New York
County of Kings

Index # **LT-326593-22/KI**



Rifka Realty, LLC

Petitioner(s)

Decision / Order

-against-

Alexsandra Kheyfits; Shapiro; New York City
Housing
Authority

Respondent(s)

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

Papers	Numbered
Order to show Cause/ Notice of Motion and Affidavits /Affirmations annexed	<u>9</u>
Answering Affidavits/ Affirmations	<u>10</u>
Reply Affidavits/ Affirmations	<u> </u>
Memoranda of Law	<u> </u>
Other	<u>11</u>

Upon the foregoing cited papers, the Decision/ Order on the motion is as follows:

In this nonpayment proceeding, petitioner, Rifka Realty, LLC, sought rental arrears from respondent, Alexsandra Kheyfits Shapiro. The New York City Housing Authority ("NYCHA") was also named as a respondent as Petitioner alleges that Respondent is a Section 8 recipient. By Stipulation of Discontinuance dated April 25, 2023, the parties consented to discontinue the instant proceeding on the basis that Respondent Shapiro had paid \$59.00 in excess of her share of the rent for the period April 2021 through April 2023.

Petitioner now moves to vacate or modify the stipulation of discontinuance pursuant to CPLR § 5015 and restore the instant proceeding to the court's calendar on the basis of mutual mistake. Petitioner argues that there was a miscalculation of rent for the period April 2019 through March 2021 as result of a change to Respondent's tenant share which Petitioner was not given notice of and "retroactively billed the difference upon learning of the increase". Respondent opposes and avers that the mistake in the stipulation was unilateral and based upon "sloppy accounting practices".

The court recognizes the long-established principle that “[s]tipulations of settlement are favored by the courts and are not lightly cast aside.” *Hallock v. State*, 64 N.Y.2d 224, 230 (1984); *Davis v. Davis*, 292 A.D.2d 452, 452-3 (2d Dep’t 2002). The Court of Appeals has stated that good cause to set aside a stipulation usually requires proof of fraud, collusion, mistake, accident, or some other ground of the same nature. *Matter of Frutiger*, 29 N.Y.2d 143, 149-150 (1971). An agreement, even one where both parties are represented by counsel, may be vacated if a party can show that there existed a mutual mistake at the time of the stipulation that is so substantial it does not represent a true meeting of the minds. *See generally Gould v. Board of Education*, 81 N.Y.2d 446, 453 (1993); *see e.g. Bridgeview II LLC v. Mars*, 51 Misc.3d 29, (App. Term 2d Dep’t 2015). Further, an agreement may also be vacated on the grounds of unilateral mistake where: (1) enforcement would be unconscionable; (2) the mistake is material and made despite the exercise of ordinary care by the party in error; (3) the innocent party had no knowledge of the error; and (4) it is possible to place the parties in *status quo*. *Mazzola v. CNA Ins. Co.*, 145 Misc.2d 896, 900 (Civ. Co. Queen Cty, 1989).

Here, Petitioner has not demonstrated any of the factors required for vacatur of the stipulation of discontinuance or restoration of the instant proceeding to the court’s calendar. Here, the stipulation specifically discusses the period of time for which there is an alleged overpayment and there is no dispute as to the amounts charged or collected during that period. The discrepancy at issue is a result of the rent demand and petition herein. The rent demand and petition both seek alleged rental arrears for the period of December 2021 through August 2022. Petitioner admits that the period for which Respondent allegedly has outstanding rental arrears is April 2019 through March 2021. It appears petitioner took the amount due, applied the “first in, first out” accounting method to arrive at the amounts alleged outstanding in the rent demand and petition. This practice would render the rent demand defective as it does not apprise a tenant of the specific period for which a claim is made. *See 3463 Third Ave. Realty, LLC v. Vasquez*, 59

Misc.3d 1224 (A) *3 (Civ. Ct. Bx. Co., 2018); *see e.g. Schwartz v. Weiss-Newell*, 87 Misc2d

558, 561 (Civ. Ct. N.Y. Co., 1976). The court notes that though Petitioner alleges Respondent owes rent for the period April 2019 through March 2021 based on an alleged underpayment of Respondent's tenant share, the ledger submitted in support of the instant motion starts in April 2021.

Accordingly, Petitioner's motion is denied in its entirety without prejudice.

This constitutes the decision and order of this court.

Date: August 3, 2023

Civ-GP-85



Hon. Shantonu J. Basu
Housing Court Judge