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2023-08-25

KAUR v. MATHURA

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS: HOUSING PART: SMALL PROPERTY PART

PARAMJEET KAUR

PETITIONER,

Index No. 319510-22

- against -

KAMELITA MATHURA, JOHN DOE, JANE DOE

RESPONDENTS.

SUBJECT PREMISES: 130-20 111TH AVENUE, SECOND FLOOR APARTMENT
SOUTH OZONE PARK, NY 11420

Present: Hon. David J. Bryan
Judge, Housing Court

-----X
Petitioner is represented by: Jaypreet Singh Sahni, Esq.

Respondent is represented by: Queens Legal Services

-----X
Recitation, as required by CPLR § 2219(a), of the papers considered in the review of this motion.

-----X
Papers

Respondent's Notice of Motion, Affirmations, Exhibits	1
Petitioner's Affirmation in Opposition, Exhibits	2
Respondent's Reply	3

-----X
After argument on the motion, the Court decides as follows:

The respondent moves for discovery, and the petitioner opposes. The underlying proceeding is a holdover based on the expiration of a lease in an unregulated apartment brought by Notice of Motion and Motion on or about September 24, 2022. The respondent answered the petition on or about April 28, 2023. The defenses raised by the tenant included but were not limited to *de facto* rent stabilization, *de facto* multiple dwelling retaliation, and violation of RPAPL § 741(3) and (4), as well as breaches of the warranty of habitability.

As to the allegation of a *de facto* multiple dwelling, the allegation by the tenant is that on the second floor, each of the three bedrooms was rented as single rooms, thereby creating three units. The respondent indicates various complaints to the New York City Department of Buildings (NYC DOB) that substantiate the tenants' allegations and suggest that other areas of the subject premises were subdivided. None of these allegations were proven due to a failure of the NYC DOB to gain access to the premises.

The petitioner contests that the premises are anything but what the certificate of occupancy indicates, an unregulated two-family house. The complaints to the NYC DOB are just unsubstantiated complaints. The petitioner also notes the lack of resident affidavits

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supporting the respondent's claims of an illegal multiple dwelling that will also result in a *de facto rent-stabilized* building.

APPLICABLE LAW

In summary proceedings, discovery may only be granted by the Court upon the showing of ample need by the movant. New York University v. Farkas, 121 Misc2d 643, 468 NYS2d 808. *Farkas* further expounds on the factors the Court considers in determining if discovery is justified; -whether the petitioner has stated a cause of action; -whether the information sought is relevant to the cause of action; -whether the requested disclosure is carefully tailored and likely to clarify the disputed facts; -whether prejudice will result from granting the request; - whether the prejudice can be diminished or alleviated by the Court; and, whether the Court should structure discovery to avoid overreaching. It is incumbent on the party seeking disclosure to show both the need for and the reasonableness of the proposed demands. Zada Associates v. Melucci, 49 Misc3d 140(A), 2015 WL 6633769; CPLR §408.

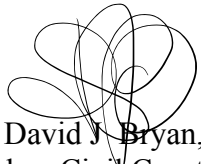
DISCUSSION AND CONCLUSION

In the case at bar, the interrogatories and document demands seek substantiation of their claim that the petitioner has converted this two-family house to a rooming house eligible for status as a multiple dwelling and rent-stabilized. While no violations of the Housing Maintenance Code or Building standards are in the record, the record reveals a consistent lack of access for inspection. The Court finds that ample need lies in discovering how the premises are currently constructed without lack of access impeding that inquiry.

The Notice to Produce seeks all documentary information about the rental records, alterations, and citations consistent with a possible *de facto* multiple dwelling and rent-stabilized dwelling. The interrogatories seek to compel information to reveal whether substantial alteration and rehabilitation have occurred in the building consistent with the respondent's defenses. They seek information and documents the respondent cannot gain access to otherwise without the cooperation and compliance of the petitioner and are necessary to accord the respondent the ability to formulate a defense to the allegations against him. They are not overbroad. Petitioner has failed to demonstrate that the requests are overburdensome or prejudicial. As such, ample need has been established. Smilow v. Ulrich, 11 Misc3d 179, 806 NYS2d 392, 2005 NY Slip Op 25515.

Accordingly, the respondent's motion is granted to the extent that the petitioner is ordered to comply with the deposition and discovery requests contained in the motion. Documentary evidence is to be provided by September 29, 2023. Depositions are to be arranged by the attorneys and completed before October 31, 2023. This matter is adjourned until November 15, 2023, at 10:30 a.m. for settlement or trial.

Date: August 25, 2023


David J. Bryan,
Housing Judge, Civil Court