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2024-01-11

### 1819 Beverly LLC v. Berisha

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Civil Court of the City of New York  
County of Kings

Index # **LT-329725-22/KI**



1819 BEVERLY LLC

Petitioner(s)

**Decision / Order**

-against-

Mirsad Berisha; "John" "Doe"; "Jane" "Doe"

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	NYSCEF 10-18
Answering Affidavits/ Affirmations	NYSCEF 21
Reply Affidavits/ Affirmations	NYSCEF 22
Memoranda of Law	_____
Other	_____

Respondent's motion for summary judgment is granted as the rent demand does not contain a good faith approximation of the amount that is due and owing as it is based on an impermissibly raised preferential rent. The arrears denoted in the rent demand are predicated on a rental amount of \$1900.00 per month. Petitioner contends that it is entitled to this rental amount because of a fully executed lease raising respondent's preferential rent from \$1500.00 per month to \$1,900.00 per month, but a increase of this amount is foreclosed by the Housing Stability and Tenant Protection Act of 2019 ("HSTPA").

Prior to the enactment of the HSTPA, landlords were permitted to revoke preferential rents in any subsequent renewal or vacancy lease offered. Rosenshein v. Heyman, 18 Misc.3d 109, 110 (AT 2d Dept, 2d and 11th Jud Dists 2007); citing L. 2003, ch. 82 § 6. The HSTPA disallowed this practice, amending the Rent Stabilization Code to provide that preferential rents adhere for the life of the tenancy, and a preferential rent can only be raised in accordance with the most recent guideline increases. Coster 1 LLC v. Zeida, 67 Misc.3d 687, 692 (Civ. Ct. Bronx County 2020); New York City Code § 26-511(14). This provision of the HSTPA took effect on June 14, 2019. HCR Fact Sheet #40

Petitioner annexes a lease to its opposition papers that purportedly raised respondent's rent from \$1,500 to \$1,900 per month. Though the lease indicates that the lease term was to commence on March 1, 2019, the lease itself is dated February 17, 2022. (Unlabeled exhibit, Pet. Opp., NYSCEF 21). Respondent opted for a one-year lease term and signed and dated the lease on February 26, 2022. Petitioner countersigned and dated the lease on March 9, 2022. *Id.*

The affidavit of the property manager asserts that respondent was offered this lease in November 2018, but this claim is roundly debunked by its own papers in three ways: (1) the face of the lease offered in support of the statement is dated February 17, 2022, (2) the rent registrations filed with DHCR (showing that the rent was raised to \$1,900 in 2022) (Ex. A to the Motion, NYSCEF 13) and (3) the rent ledger annexed to the opposition papers (showing \$1,500 rent charged to respondent through March 2022.) As such, there is no issue of fact precluding the granting of summary judgment in this matter.

The HSTPA clearly states that it applies to any tenant who was entitled to receive a renewal lease after June 14, 2019, upon the renewal of that lease. New York City Code § 26-511(14). Because petitioner attempted to renew the lease after June 14, 2019, the lease is subject to the HSTPA. Coster 1 LLC v. Zeida, *supra*. As such, assuming the respondent opted to have the lease commence on the date the renewal lease would have commenced had a timely offer been made (9 NYCRR 2503.5[b][1]), HCR Fact Sheet 50 would apply and petitioner would be limited to a 1.5% increase in rent, or \$1,522.5 (not the \$1,900 monthly rent assigned in the lease or sought in the rent demand).

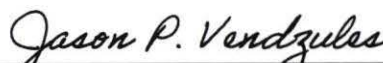
Petitioner's rent demand therefore impermissibly seeks a rent in excess of the amount allowed under the Rent Stabilization Code. The sum demanded in the predicate notice needs to be, at the very least, a good faith approximation of the rent that a tenant would have to pay to prevent litigation. 542 Holding Corp. v. Prince Fashions, Inc., 46 A.D.3d 309, 310 (1st Dept. 2007). Failure to demand such a good faith approximation in the predicate notice renders such

notice defective and the proceeding must be dismissed. Dendy v McAlpine, 27 Misc.3d 138(A)(AT 2d Dept, 2d, 11th & 13th Jud Dists. 2010).

ORDERED: respondent's summary judgment motion is GRANTED. The petition is DISMISSED.

This is the decision and order of the court, which will be distributed to the parties by posting on NYSCEF.

Dated: Brooklyn, NY  
January 11, 2024

  
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Jason P. Vendzules, JHC