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1267 Rogers Avenue LLC v. Morgan

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Civil Court of the City of New York
County of Kings

Index # **LT-326793-22/KI**



1267 Rogers Avenue LLC

Petitioner(s)

Decision / Order

-against-

Tamisha Morgan

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 # 21-24 |
| Answering Affidavits/ Affirmations | | NSYCEF # 26-28 |
| Reply Affidavits/ Affirmations | | NYSCEF # 29 |

This is a summary nonpayment proceeding. The subject premises are known as 267 Rogers Avenue AKA 211 Crown Street, Apt 225, Brooklyn, NY 11225.

Respondent moves for leave to reargue this court's September 29, 2023 Decision/Order, and after reargument, summary judgment and dismissal of petitioner's case pursuant and a hearing on the counterclaims interposed by the respondent.

CPLR § 2221 (d) (2) contemplates a motion for leave to reargue a prior motion if the motion is "based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion. A motion to reargue may be granted when a party demonstrates that "the court overlooked or misapprehended the facts or the law or for some reason mistakenly arrived at its earlier decision." *Vaccariello v. Meineke Car Care Ctr., Inc.*, 26 N.Y.S.3d 139, 142 (App. Div. 2d Dep't. 2016). Here, the court did not address respondent's second argument for summary judgment. Based on that omission, leave to reargue is granted.

Respondent seeks summary judgment and dismissal of this proceeding. Petitioner claims that the petition fails to state a cause of action under RPAPL 711(2) due to a defective 14 Day Notice that seeks rent in excess of the rent registered with DHCR.

The 14 Day Notice seeks a monthly rent of \$1,162.95 per month. Respondents argue that the last legal regulated rent is \$1,151.08 which is the last rent registered with DHCR. Petitioner shows a lease signed by the respondent with the monthly rent of \$1,162.95. The difference is \$11.87/month.

Rent Stabilization Code §2528.3(a) requires that an annual registration be filed "containing the current rent for each housing accommodation not otherwise exempt..." 9 NYCRR §2528.3

Rent Stabilization Code § 2528.4(a) provides that: "The failure to properly and timely comply, on or after the base date, with the rent registration requirements of this Part shall, until such time as such registration is completed, bar an owner from applying for or collecting any rent in excess of: the base date rent, plus any lawful adjustments allowable prior to the failure to register. Such

a bar includes but is not limited to rent adjustments pursuant to section 2522.8 of this Title. The late filing of a registration shall result in the elimination, prospectively, of such penalty...."

It is clear that in order to prevail in a nonpayment proceeding and obtain a judgment against a rent-stabilized tenant, a landlord must comply with the *Rent Stabilization Code*. (554-558 W 181 Street LLC v Cochrane, 61 Misc 3d 1203[A](Civ Ct, NY County 2018); citing Villas of Forest Hills Co v Lumberger, 128 AD2d 701, 702 [2d Dept 1987]))

In an analogous case, Hon. Tovar dismissed the proceeding when the monthly rent on the petition did not match the last registered rent with DHCR by holding that the petitioner had to be dismissed as defective due to petitioner's failure to comply with the rent stabilization code.

See *Erik James LLC v Bruna*, 70 Misc 3d 1223(A) [Civ Ct, Bronx County 2021]


As in the *Bruna* case, petitioner here has failed to comply with the requirements of the *Rent Stabilization Code* by not registering the most recent rent as established by the renewal lease. This prevents petitioner from collecting any rent until the failure to register the premises is remedied. Petitioner does not provide any explanation as to why the last lease rent is not registered with DHCR and there is no indication that petitioner has moved to remedy this situation.

Based on the above, petitioner's motion seeking to reargue the September 29, 2023 Decision/Order is granted. After reargument, respondent's motion seeking summary judgment is granted to the extent of dismissing the petition for failure to comply with the *Rent Stabilization Code* and restoring the case to the calendar for January 26, 2024 at 9:30 for settlement or trial on respondent's counterclaims.

This Decision/Order shall be uploaded to NYSCEF.

This constitutes the Decision/Order of the Court.

Date: January 5, 2024
Brooklyn, NY



Hon. Agata E. Rumprecht-Behrens
Housing Court Judge