

Fordham Law School

FLASH: The Fordham Law Archive of Scholarship and History

[All Decisions](#)

[Housing Court Decisions Project](#)

2024-04-30

Fieldbridge Assoc. LLC v. Rivers

Follow this and additional works at: https://ir.lawnet.fordham.edu/housing_court_all

Recommended Citation

"Fieldbridge Assoc. LLC v. Rivers" (2024). *All Decisions*. 1530.
https://ir.lawnet.fordham.edu/housing_court_all/1530

This Housing Court Decision is brought to you for free and open access by the Housing Court Decisions Project at FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in All Decisions by an authorized administrator of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

[*1]

Fieldbridge Assoc. LLC v Rivers
2024 NY Slip Op 50517(U) [82 Misc 3d 1241(A)]
Decided on April 30, 2024
Civil Court Of The City Of New York, Kings County
Bacdayan, J.
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on April 30, 2024

Civil Court of the City of New York, Kings County

<p>Fieldbridge Associates LLC, Petitioner,</p> <p>against</p> <p>Mecca Rivers, Respondent.</p>

LT-321034-23/KI

Stern & Sterns Esq (David Lyle Stern, Esq.), for the petitioner

Brooklyn Legal Services (Ali Mohammed Hassan, Esq.), for the respondent

Karen May Bacdayan, J.

Recitation, as required by CPLR 2219 (a) of the papers considered in review of this motion by NYSCEF Doc No: 9-17.

This is a nonpayment proceeding commenced against respondent Mecca Rivers ("respondent"), whereby petitioner alleges respondent's monthly rent under a written lease agreement is \$1,271.84,

and that respondent owes \$3,735.45 in rent arrears: a \$1,191.77 balance for May 2023, and \$1,271.84 for both June 2023 and July 2023. (NYSCEF Doc No. 1, petition ¶¶ 2, 4.) The petition alleges the subject premises are rent-stabilized, that the premises are registered with the DHCR, and that the rent demanded does not exceed the "lawful registered rent." (*Id.* ¶ 7.) The predicate rent demand, served personally on respondent on June 7, 2023, seeks \$1,231.80 for May 2023 and \$1,231.81 for June 2023. (NYSCEF Doc No 1 at 3-4, rent demand and affidavit of service.)

At the time petitioner served the rent demand, the most recent registration statement on file with the Division of Housing and Community Renewal ("DHCR"), filed on June 21, 2022, reflected a legal regulated rent for the subject premises of \$1,219.61, for a one (1) year lease term commencing July 1, 2021, and expiring June 30, 2022. (NYSCEF Doc No. 12 at 7, respondent's exhibit B, DHCR rent history.) At the time petitioner commenced this proceeding on July 11, 2023, the most recent registration filed with DHCR on July 6, 2023 reflected a legal regulated rent of \$1,231.81, for a two (2) year lease term commencing July 1, 2021 and expiring [*2] June 30, 2023. The lease memorializes a lawful rent of \$1,271.84. [\[FN1\]](#) [\[FN2\]](#)

Respondent filed an answer on July 21, 2023, asserting only a general denial. Respondent's counsel filed a notice of appearance on January 16, 2024. On January 17, 2024, the petition was amended to date to include rents due and owing from August 2023 through January 2024 at a monthly rate of \$1,271.84. (NYSCEF Doc No. 10, respondent's attorney's affirmation ¶ 12.) [\[FN3\]](#) On February 28, 2024, the court issued a decision/order, and adjourned the proceeding for the appointment of a guardian *ad litem* ("GAL"); a GAL was appointed by order dated March 4, 2024. (NYSCEF Doc No. 7, decision/order; NYSCEF Doc No. 8, GAL appointment order.)

Now before the court is respondent's motion seeking summary judgment to dismiss the proceeding. (NYSCEF Doc No. 9, notice of motion [sequence 1].) Respondent argues that pursuant to the Rent Stabilization Law of 1969 ("RSL") § 26-517 (e), because \$1,219.61 was the *last registered rent at the time the rent demand was served*, petitioner could not seek anything above that amount in the rent demand, and that despite "eventually register[ing] a legal rent of \$1,231.81 on July 6, 2023, [p]etitioner is not permitted . . . to retroactively seek any rent in excess of the lawful rent that was registered at the time." (NYSCEF Doc No. 10, respondent's attorney's affirmation ¶¶ 19-25; NYSCEF Doc No. 12, respondent's exhibit B, DHCR rent history.) Respondent further argues that because the *last registered rent is \$1,231.81*, the petition is fatally defective because petitioner has not complied with the Rent Stabilization Code ("RSC") in that it seeks rent in the petition exceeding that last registered rent. (*Id.* ¶¶ 26-27.) The proper remedy, respondent urges, is a "rent

freeze" pursuant to 9 NYCRR § 2528.4 (a) on the [*3]basis that petitioner "has fail[ed] to filed a proper and timely rent registration with DHCR[.]" (*Id.* ¶ 20.)

In opposition, petitioner states it is not required to file a 2024 rent registration statement until July 31, 2024, and argues respondent's lease renewal that commenced in July 2023 properly increased the rent to \$1,271.84. (NYSCEF Doc No. 15, petitioner's attorney's affirmation in opposition ¶ 4; NYSCEF Doc No. 15 at 5, lease renewal.)

In reply, respondent argues that, based on the leases provided by petitioner in opposition, the court should find that the last proper registered rent is the \$1,219.61 reflected in the registration statement filed on June 25, 2020, and that the court should freeze the rent at that amount until petitioner files a proper and timely registration statement. Respondent contends "[t]he last three registration statements filed by [p]etitioner are [] demonstrably false based on the leases provided by [p]etitioner, and therefore cannot be considered proper registration statements under RSL § 26-517 (e)." (NYSCEF Doc No. 16, respondent's reply affirmation ¶ 12.)^[FN4] Respondent contends petitioner has not raised material issues of fact warranting denial of summary judgment, that "[p]etitioner erroneously asserts that RSL § 26-517 (e) should not apply because '[t]he 2024 registration for the unit need not be filed until July 31, 2024[.]'" and that "[e]very registration statement that [p]etitioner has filed since [June 25, 2020] has either asserted a rent other than what was charged on the registration date, misrepresents the lease term, or both." (*Id.* ¶¶ 15-17.)

DISCUSSION

A court may employ the drastic remedy of summary judgment only where there is no doubt as to the absence of triable issues. (*Andre v Pomeroy*, 35 NY2d 361, 364 [1974].) On such a motion, a court's function is to find, rather than to decide, issues of fact. (*Southbridge Towers, Inc. v Renda*, 21 Misc 3d 1138 [A], 2008 NY Slip Op 52418 [U] [Civ Ct, NY County 2008], citing *Epstein v Scally*, 99 AD2d 713 [1st Dept 1984].) The facts must be considered "in the light most favorable to the non-moving party." (*Ortiz v Varsity Holdings, LLC*, 18 NY3d 335, 339 [2011].) Only upon a *prima facie* showing of entitlement to summary judgment, does the burden shift to the non-moving party to establish material issues of fact requiring a trial. (*Vega v Restani Const. Corp.*, 18 NY3d 499, 503 [2012] [internal citations and quotation marks omitted].) "The moving party's [f]ailure to make [a] *prima facie* showing [of entitlement to summary judgment] requires a denial of the motion, *regardless of the sufficiency of the opposing papers* (emphasis in original, internal citations and quotation marks omitted)." (*Id.* at 503.) "

Respondent's argument that petitioner may only collect the last registered rent in a nonpayment proceeding is superficially plausible, but erroneous nevertheless. RSL § 26-517 (e) states in relevant part:

"The failure to file a proper and timely initial or annual rent registration statement shall, until such time as such registration is filed, bar an owner from applying for or collecting any rent in excess of the *legal regulated rent in effect on the date of the last preceding registration statement* or if no such statements have been filed, the legal regulated rent in [*4]effect on the date that the housing accommodation became subject to the registration requirements of this section. The filing of a late registration shall result in the prospective elimination of such sanctions and provided that increases in the legal regulated rent were lawful except for the failure to file a *timely registration*, the owner, upon the service and filing of a late registration, *shall not be found to have collected an overcharge* at any time prior to the filing of the late registration."

Here, respondent argues that pursuant to RSL § 26-517 (e), petitioner is precluded from suing respondent for the lawful amount reflected in respondent's leases, because a lower amount was registered at the commencement of the proceeding. Respondent does not deny the existence of leases that, but for one forgivable error in the petition, [EN5] correctly reflect the amount that respondent and petitioner contracted to pay for the periods of time set forth in the petition. Given DHCR's direction that annual registration statements must reflect *the rent as of April 1st* of the registration year, and that annual registrations must be filed *between April 1 and July 31 reflecting same*, the rental amounts sought in a nonpayment proceeding will often be different from the rent reflected in the most recent registration statement on file with DHCR. (See DHCR, *Fact Sheet No. 1*, https://ar.hcr.ny.gov/system/files/documents/2024/01/fact-sheet-01-01-2024_0.pdf [last accessed Apr. 29, 2024 ["[o]wners must file an annual registration statement giving the April 1st rent for each unit). . . ."]; DHCR, *Owners and Managers*, "Data Upload Instructions Annual Rent Registration 2020 and Later," rev Mar. 2024, <https://hcr.ny.gov/owners-and-managers> [last visited Apr. 29, 2024] ["Between April 1 and July 31 of every year, owners of Rent Stabilized buildings must submit an Annual Registration . . . with HCR's Office of Rent Administration (ORA).") The "Legal Regulated Rent" which must be registered is defined on the website as "the authorized rent as of April 1." (*Id.* at 30.)

Pursuant to RPAPL 711 (2), a nonpayment proceeding may be maintained where "[t]he tenant has defaulted in the payment of rent, *pursuant to the agreement under which the premises are held* (emphasis added)[.]" The statute which creates the cause of action for nonpayment of rent, *id.*, does not say, "the tenant has defaulted in the payment of the rent reflected in the *last annual DHCR rent*

registration." RPAPL 711 (2) reflects the requirement that in a nonpayment proceeding — which is, at its core, premised on breach of contract — there must be an "agreement" existing between the parties to pay the rent due for the periods claimed at the time the proceeding is commenced. (*Fairfield Beach 9th, LLC v Shepard-Neely*, 77 Misc 3d 146 [A], 2022 NY Slip Op 51351 [U] [App Term, 2d Dept 2022].) RSL 26-517 (e), which requires annual registrations with DHCR is not itself an agreement "under which the premises are held." (RPAPL 711 [2].)

Here, the relevant rent registrations, all filed between April 1 and July 31 of the relevant registration year, are timely and in compliance with DHCR directives. The relevant leases also reflect the amounts of rent arrears claimed in the rent demand and the petition. As stated above, the court will overlook that the petitioner prematurely claims that \$1,271.84 is owed for the month of June 2023 when, in fact, the rent did not increase until July 1, 2023. (NYSCEF Doc No. 1, petition ¶ 4; CPLR 2001.) The undisputed ledger, which both respondent and petitioner have submitted, indicates petitioner did not, *in fact*, charge \$1,271.84 until July 1, 2023. (NYSCEF Doc No. 14 at 17, respondent's exhibit D, ledger; NYSCEF Doc No. 15 at 3, ledger, [*5]petitioner's affirmation in opposition.) As respondent signed the leases, this can come as no surprise and is a non-prejudicial defect in the petition which does not affect her substantive rights; it is a mistake which the court disregards. (CPLR 2001; *Nardeo v Diaz*, — NYS3d &mdash, 2024 NY Slip Op 24028, *7 [Civ Ct, Bronx County 2024] ["[a] statute like CPLR 2001 is essential in an enlightened system of civil procedure that eschews the elevation of form over substance (internal citations and quotation marks omitted.)"]^[EN6])

Respondent's argument that RSL § 26-517 (e) should be exalted over RPAPL 711 (2), such that the rent demand and the petition herein are defective for claiming the amounts due under valid leases because the DHCR rent registration reflects a different lawful rent charged on April 1 of each registration year, would produce an untenable result. To adopt respondent's reasoning would require dismissal of every nonpayment proceeding commenced after April 1 of any given year, where the rent charged and registered on April 1 was different from that demanded because of an intervening lease renewal with a legitimate RGBO increase. The two statutes serve different purposes which are not incompatible, *i.e.* RSL § 26-517 (e) requires timely annual registration of rent stabilized apartments of the legal rent charged on April 1, and RPAPL 711 (2) requires that a rent demand and petition be premised upon an effective agreement with a rent stabilized tenant to pay the claimed rent arrears. Any conflict between the two statutes is ostensible at best. There is no *real* conflict which would require the court to harmonize the two statutes by finding that RSL § 26-517 (e) supersedes RPAPL 711 (2).

Respondent's contention in reply—that the rent should be frozen at \$1,219.61—is erroneous by the same analysis. [\[EN7\]](#) All registrations at issue herein were timely and in compliance with the RSL, RSC, and DHCR guidance. And the record reflects that petitioner properly sought the rent due under the leases in effect both when the demand was served, and when the proceeding was commenced. Significantly, petitioner's time to register the lawful rent in the current lease has not expired.

Unlike the appellate court cases cited by respondent—all, unlike herein, involving claims of overcharge—there is no claim here that the rent registered was patently "false," or was "vastly in excess of the highest legal rent at that time," or that the registered tenant was not the tenant in possession. ([Jazilek v Abart Holdings, LLC, 72 AD3d 529](#), 531 [1st Dept 2010].) Nor is there any claim that the registration statements were "the product of fraudulent leases or otherwise legal 'nullities.'" ([Enriquez v New York State Div. of Hous. & Cmty. Renewal, 166 AD3d 404](#) [1st Dept 2018].) Unlike the landlord in *125 Court Street, LLC v Sher*, 58 Misc 3d 150 (A), 2018 NY Slip Op 50092 (U), petitioner did not fail to properly register the *actual rent* in the leases in effect on April 1 for eight years. (*Id.*, *1.) [Bradbury v 342 W. 30th St. Corp., 84 AD3d 681](#) (1st [*6]Dept 2011) is distinguished by *Bel-Air Leasing, LP v Berezovska*, 146 NYS3d 467, 2021 NY Slip Op 50513 (U), also cited by respondent, as having found intentionality after *trial*, not summary judgment as was what was before the *Berezovska* court.

Turning to the trial court cases cited by respondent, *Berezovska, id.*, misleadingly cited by respondent for the implication that petitioner should suffer the consequence of dismissal for improper registration regardless of intent or neglect, was also a case involving allegations of overcharge implicating rent registration. *Berezovska* actually cited to *Enriquez, supra*, for a contrary deposition, to wit: "rent registrations that memorialize the actual amount of rent charged to the tenant and were not the product of fraudulent leases or otherwise legal nullities are not defective, as the applicable law requires landlords to register "the current rent" as distinct from the "*technically legally collectible rent*." (*Id.*, *2.) Regardless, the foregoing is immaterial given that petitioner, as set forth above is in compliance with the annual registration requirements pursuant to RSL 26-517 (e) and DHCR guidance, *supra*.

As for the trial level cases respondent cites in support of her motion, not only are they not controlling but, for example, [Erik James LLC v Bruna, 70 Misc 3d 1223](#) (A), 2020 NY Slip Op 51605 (U) (Civ Ct, Bronx County 2020), is distinguishable. In *Bruna*, the landlord registered a rent with DHCR that was higher than the rent reflected in the lease, and the landlord also demanded the same higher rent and commenced a nonpayment proceeding upon failure to pay the rent demanded.

The lease in effect for the period of time arrears were claimed memorialized a rent of \$1,897. The DHCR registration, however, and the amounts sought in the petition—both \$1,905.54—did not accurately reflect the actual lease rent. While the court found the \$8.54 discrepancy to be *de minimis* for the purposes of finding that the demand was not a good faith approximation of the rent due for each period claimed, the court held that petitioner was not in compliance with DHCR registration requirements and dismissed the petition. (*Bruna*, 2020 NY Slip Op 51605 [U], *2.) Here, petitioner's registrations registered actual rents, and the amount sued for are accurately reflected in respondent's leases.

In *1267 Rogers Avenue LLC v Morgan*, index No. 326793-22, Civ Ct, Kings County, Rumprecht-Behrens, J., Jan. 5, 2024, respondent's motion for summary judgment was originally denied, but then granted on reargument. The petitioner in that proceeding currently anticipates a motion to reargue the decision cited by respondent's attorney in which the tenant is also represented by Brooklyn Legal Services. (*Id.*, NYSCEF Doc No. 32, briefing order.) Because "[j]udges are prohibited from writing about pending or impending cases, whether about the merits, the facts, the litigants, or the attorneys[,]" the court will comment no further. (Gerald Lebovits, *Ethical Judicial Writing - Part III*, NY St BJ 64, 56 [Feb. 2007].)

CONCLUSION

Accordingly, it is

ORDERED that respondent's motion for summary judgment is DENIED as respondent has failed to demonstrate a *prima facie* entitlement to same.

The proceeding is adjourned for all purposes, including settlement or trial, to May 10, 2024 at 2:15, in Part G, Room 509 of the Kings County Housing Court.

This constitutes the decision and order of the court.

Dated: April 30, 2024

Brooklyn, NY

HON. KAREN MAY BACDAYAN

Footnotes

Footnote 1: The lease that commenced July 1, 2021 is a two (2) year lease renewal. NYSCEF Doc No. 15 at 6. The 2021 registration statement reflects a legal regulated rent of \$1,219.61 for a two (2) year lease term commencing July 1, 2019, and expiring June 30, 2021. NYSCEF Doc No. 12 at 6. Pursuant to Rent Guidelines Board Order ("RGO") #52, a two (2) year lease would have maintained the legal regulated rent at \$1,219.61 for the first year of the lease (July 1, 2021, through June 30, 2022), but would then increase the rent by 1.0 percent, to \$1,231.81 for the second year of the lease (July 1, 2022, through June 30, 2023.) That there is a minor discrepancy between the 2022 and 2023 registration statements — *i.e.* the June 2022 registration reflects a rent of \$1,219.61 for a one (1) year renewal lease from July 1, 2021 through June 30, 2022; but the July 2023 registration reflects a two (2) year renewal lease for a term of July 1, 2021 through June 30, 2023 — is an inconsequential error, given the structure of the RGO increases at the time and that the registered rents reflect the increases for a two (2) year lease renewal, notwithstanding that petitioner registered the first year of a two-year renewal lease as a one (1) year renewal lease.

Footnote 2: The parties signed a one (1) year lease renewal in 2023, reflecting a prior legal regulated rent of \$1,231.81, and which increased the legal regulated rent by 3.25 percent to \$1,271.84, for a lease term commencing July 1, 2023 and ending June 30, 2024. NYSCEF Doc No. 15 at 5, 2023 lease renewal. The prior legal regulated rent of \$1,231.81 reflected in said renewal is consistent with a prior two (2) year lease renewal, commencing July 1, 2021 and expiring June 30, 2023.

Footnote 3: The court does not have a record of a stipulation between the parties whereby the petition was amended to date; however, petitioner's attorney does not dispute this fact.

Footnote 4: Respondent claims the current lease agreement is a two (2) year term expiring June 30, 2025. NYSCEF Doc No. 16, respondent's reply affirmation ¶ 11. However, the lease submitted by petitioner reflects a one (1) year term expiring June 30, 2024, an error of no consequence. CPLR 2001; NYSCEF Doc No. 15 at 5.

Footnote 5: CPLR 2001, discussed *infra*.

Footnote 6: See also *People ex rel. Di Leo v Edwards*, 247 AD 331, 334 (2d Dept 1936) (opining on the prior iteration of CPLR 2001, to wit, Civil Practice Act § 105 which "has been viewed by the courts as remedial in its nature in respect to procedure, to the end that slight mistakes or irregularities not affecting the merits or the substantial right to a party shall not become fatal in their consequences. It does away with the purely technical or legalistic objections by which a party seeks to gain some advantage over his adversary.")

Footnote 7: Respondent's attorney's original affirmation sought a rent freeze at the \$1,231.81 registered rent.

[Return to Decision List](#)