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880 St. Nicholas, LLC v. Shiferaw

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK, HOUSING PART C

-----X
880 ST. NICHOLAS, LLC

Petitioner, Landlord,

-against-

Index No. L&T 067261/19

DECISION AND ORDER

TENBIT SHIFERAW

Respondent – Tenant

“JOHN AND JANE DOE”

Respondent - Undertenants
-----X

FRANCES A. ORTIZ, JUDGE

Recitation as required by CPLR 2219(a), of the papers considered in the review of Petitioner’s motion to restore and Respondent’s cross motion to compel.

| Papers | Numbered |
|--|-------------------|
| Notice of Motion, Affirmation, Affidavit & Exhibits..... | 1/NYSCEF 86 |
| Notice of Cross Motion and Opposition, Affirmation & Exhibits..... | 2/NYSCEF 87 - 101 |
| Affirmation in Opposition to Cross Motion & Exhibits..... | 3/NYSCEF 103- 108 |
| Respondent’s Reply Affirmation..... | 4/NYSCEF 109 |

MOTION SEQ. # 6 & 7

Upon the foregoing cited papers, the Decision/Order on this Motion(s) is as follows:

This is a non-payment proceeding with a long history dating back to 2019. However, most recently on October 3, 2023, the parties settled the matter pursuant to a two-attorney stipulation where the parties agreed to grant Respondent’s motion to amend the answer and for discovery. Petitioner was to comply with Respondent’s discovery request attached to the

“...discovery motion on the before October 31, 2023, and or dispute any of the discovery request.” Additionally, the Respondent agreed to pay \$14,942.54 which is the amount Respondent believed to be owed through October 2023 and the payment would have to be made by November 17, 2023 without prejudice to either parties claims and defenses. The stipulation indicated that the matter may be restored for appropriate relief, if Respondent failed to pay the \$14, 942.54 on time or pay monthly rent ongoing by the 10th of each month.

Now, Petitioner moves to restore the matter to the calendar and seeks entry of a monetary and possessory judgment for all rent due and owing and a warrant of eviction. Petitioner in the affidavit of Segal Gamil indicates that Respondent failed to pay the \$14,942.54 due by November 17, 2023.

Respondent opposes Petitioner’s motion and cross moves pursuant to *CPLR §3124* to compel Petitioner to respond to her Demand for Discovery. *CPLR §3124* states the following: “[i]f a person fails to respond to or comply with any request, notice, interrogatory, demand, question or order under this article, except a notice to admit under section 3123, the party seeking disclosure may move to compel compliance or a response.”

Upon a review of Petitioner’s Responses to Request for Document Production, it appears that Petitioner did not provide the following: 2021, 2022, and the 2023 leases, copies of leases for all prior tenants at the subject premises from 2009 to the present (Petitioner objected to production of these documents as irrelevant and beyond the statute of limitations), any and all documents related to major capital improvements at the subject premises from 2009 through the present except for MCI Order issued on October 4, 2018 (Petitioner objected to this request on the grounds that the request seeks documents that are not relevant and beyond the statute of limitations), any and all documents related to Individual Apartment Improvement (“IAI”)

increases at the subject premises from 2009 to present, including but not limited to contracts, invoices (Petitioner objected to production of these documents as irrelevant and beyond the statute of limitations), the building wide rent rolls from 2009 to the present (Petitioner only provided 2015 rent roll and agreed to provide building-wide rent roll from 2016 to the present when it obtains it but otherwise objected to the documents as irrelevant and beyond the statute of limitations), and any documents which Petitioner intends to offer at trial to justify any rent increase from 2009 to present.

This Court has considered Petitioner's arguments in opposition to the motion to compel and finds them unavailing. Specifically, the Court has considered recent changes in the law in *9 NYCRR §2526.7*, *9 NYCRR §2526.1*, *NYC Admin. Code §26-511*, *Section 2-a of Section 4 of Chapter 95 of the Laws of 2024*. Petitioner may be correct that the base date for calculating a rent overcharge under *9 NYCRR §2526.7* may not be prior to June 14, 2015. However, *9 NYCRR §2526.1(a) (2) (iv)* provides an exception on the examination of the rental history pre-dating that base date to be utilized in the rental examination for the limited purpose of determining whether there was a fraudulent scheme to destabilize the housing accommodation. Further, NY State Assembly Bill 2023-A8506, Section 2-a – indicates that when a colorable claim that an owner has engaged in fraudulent scheme to deregulate a unit is raised in a court of competent jurisdiction, a court should issue a determination as to whether the owner knowingly engaged in a fraudulent scheme after a consideration of the totality of the circumstances. In making such a determination, the court shall consider relevant facts and applicable facts, provided that there need not be a finding that all elements of common law fraud, including evidence of a misrepresentation of material fact, falsity, scienter, reliance and injury were satisfied in order to make a determination that a fraudulent scheme to deregulate a unit was committed, if the totality

of the circumstances nonetheless indicate that such a fraudulent scheme to deregulate a unit was committed.

Here, Respondent in her amended answer has properly and facially articulated a rent overcharge defense and counterclaim for fraudulent scheme to deregulate. (*NYSCEF Doc. 76*). Specifically, the rent overcharge defense indicates that Petitioner willfully charged Respondent rent in excess of the legal rent, that Petitioner engaged in a pattern of fraud which was a part of Petitioner's fraudulent scheme to avert the rent stabilization, that Petitioner's pattern includes but is not limited to an unreasonable and unlawful increase in rent between 2009 and 2013 from \$937.75 to \$1,800, that Petitioner failed to register Respondent – Tenbit Shiferaw – as a tenant of record in 2013 and 2014, and that an unreasonable and unlawful rent increase occurred between 2013 and 2023 from \$1,800 to \$2,447.46.

Further, upon a review of the DHCR apartment registration for the subject premises (*NYSCEF Doc. 90*), the 2009 through 2011 registrations do not have a listed tenant and the 2010 rent is registered at \$1,800 with no reason for change provided from the prior \$937.75 rent in 2009 which is an increase almost double to the 2009 rent. Also, Respondent- Tenbit Shiferaw- is not listed as a tenant in the 2013 and 2014 registrations, although he moved into the subject premises in February 2013. (*Affirmation Ngono Ambasssa, ¶57/NYSCEF Doc. 88*).

Based on these defenses and counterclaims in the answer, Respondent has facially presented a claim for rent overcharge warranting the examination of the rental history before June 14, 2015 and as far back as the registration year 2009 for the limited purpose of determining whether there was a fraudulent scheme to destabilize the housing accommodation. 9 NYCRR §2526.1(a) (2) (iv). Further, under *NY State Assembly Bill 2023-A8506, Section 2-a*, this Court is authorized to issue a determination as to whether an owner knowingly engaged in a fraudulent

scheme to avert the rent stabilization law, after a consideration of the totality of the circumstances.

Accordingly, Respondent's motion to compel discovery pursuant to *CPLR §3124* is granted. Petitioner is ordered to produce to Respondent's counsel the following documents in the Request for Document Production: copies of leases between Respondent and Petitioner for years 2021, 2022, 2023 and 2024, copies of all leases for all prior tenants at the subject premises from 2009 to the present, any and all documents related to major capital improvements¹ at the subject premises from 2009 through the present, any and all documents related to Individual Apartment Improvement ("IAI") increases at the subject premises from 2009 to present, and the building wide rent rolls from 2009 to the present within 60 days of the date of this decision and order, and after forthwith service of this decision and order with notice of entry on Petitioner.

Petitioner's motion to restore is denied as premature. Discovery has not been completed. Any restoration for non-compliance of the October 3, 2023 stipulation on the grounds that Respondent failed to pay the \$14,942.54 due by November 17, 2023 is denied without prejudice to seek such claim, after the completion of discovery and at potential trial, if the matter is not ultimately resolved. It is worth re-emphasizing that Respondent in the stipulation agreed to pay the \$14, 942,54 "which is the amount Respondent believes to be owed through October 2023" but the stipulation also indicated that the payment was without prejudice to either party's claims and defenses. Lastly, counsel for Petitioner in his Affirmation in Opposition to Respondent's Cross Motion concedes that the proceeding should be restored to the trial calendar and makes no

¹ The DHCR apartment registration for the subject premises shows MCI increases in 2017 and 2019. (*NYSCEF Doc. 90*).

reference to the initial claim for a monetary and possessory judgment and warrant. (*Troupp Affirmation ¶42/NYSCEF Doc. 103*).

ORDERED: that Petitioner’s motion to restore is denied;

And further

ORDERED: that the Respondent’s cross motion to compel discovery is granted:

And further

ORDERED: that the matter is marked off calendar pending completion of discovery.

This is the decision and order of the Court which will be uploaded to NYSCEF.

Dated: June 7, 2024

New York, NY



Frances A. Ortiz, J.H.C.

**HON. FRANCES A. ORTIZ
JUDGE, HOUSING COURT**