2024-10-25

86-02 Forest Parkway, LLC v. Rojas

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS: HOUSING PART D
---------- X
86-02 FOREST PARKWAY, LLC

Petitioner,

Index No. LT-307641-23/QU

- against -

ANDINA ROJAS

Respondent,

"JOHN DOE" and "JANE DOE"

Respondent-Undertenants

86-02 Forest Parkway - Apt 3H
Jamaica, NY 11421
"Subject Premises"
---------- X

Present: Hon. Clifton A. Nembhard
Judge, Housing Court

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

Papers	**NYSCEF DOCS**
Notice of Petition	2
Amended Answer	8
Notice of Motion, Affidavit, Affirmation and Memorandum of Law In support and accompanying exhibits	10-23
Affirmation in Opposition to Motion	24
Affidavit and Affirmation in Reply and accompanying exhibits	25-33

FACTS AND PROCEDURAL HISTORY

Petitioner commenced this non-payment action with a petition filed with the Court on May 2, 2023, stating that Respondent owed $15,171.58 in rent arrears.

On May 15, 2023, Respondent submitted a *pro se* answer. The parties appeared on July 25, 2023, where the matter was adjourned to October 6, 2023.

Respondent retained counsel and on September 26, 2023, Respondent filed a motion to submit an amended answer. The amended answer alleged, as its first and only affirmative defense that Petitioner has engaged in a fraudulent scheme to charge Respondent illegal rents above the legal regulated amounts allowed.

On October 6, 2023, the parties stipulated to Respondent submitting an amended answer and the matter was adjourned to December 18, 2023, with a briefing schedule.

On November 3, 2023, Petitioner filed the instant motion requesting the following relief: (a) Pursuant to C.P.L.R. § 3211(b), dismissing the First Affirmative Defense pled by Respondent on the grounds that it does not state a defense, fails to meet the standards of CPLR §§3013 and 3018(b), and lacks merit; and (b) Upon dismissal of the First Affirmative Defense and pursuant to CPLR §3212, granting summary judgment in favor of Petitioner and awarding Petitioner a final judgment of possession for $30,770.51 against Respondent, Andina Rojas; and (c) Issuing a warrant of eviction forthwith and permitting the execution of said warrant of eviction forthwith; and (d) For such other and further relief as this Court may deem just and proper under the circumstances.

On December 1, 2023, Respondent filed their Affirmation in Opposition. On December 15, 2023, Petitioner filed their Affirmation in Reply.

For the foregoing reasons, Petitioner's motion is denied in its entirety.

DISCUSSION

I. RESPONDENT'S FIRST AFFIRMATIVE DEFENSE: PETITIONER HAS OVERCHARGED RESPONDENT

Respondent's amended answer alleges rent overcharge as an affirmative defense citing a fraudulent scheme to charge Respondent illegal rents above the legal regulated amounts allowed.

An action on residential rent overcharge is to be commenced within four years. See CPLR § 213-a[1]. See also; RSL § 26-516 [a](2).

However, where a tenant has made a "colorable claim of fraud by identifying substantial indicia, i.e., evidence, of a landlord's fraudulent deregulation scheme to remove an apartment from the protections of rent stabilization,' the DHCR is required to examine the apartment's rental history "for the limited purpose of determining whether a fraudulent scheme to destabilize the apartment tainted the reliability of the rent on the base date." *Fairley v. Div. of Hous. & Cmty. Renewal*, 214 A.D.3d 800, 802 (2nd Dept, 2023). See also; *Grimm v. State Div. of Hous. & Cmty. Renewal Off. of Rent Admin.*, 15 N.Y.3d 358, 366 (2010). See also *Thornton v. Baron*, 5 N.Y.3d 175, 181–82 (2005)("Although the subtenants who brought the overcharge complaint themselves had unclean hands, the principle we establish here will apply equally to innocent renters looking to succeed illusory tenancies. The dissent's contrary rule would bring about the rapid removal of many apartments from rent stabilization…undermining the statute's very purpose of preserving a stock of affordable housing. We cannot agree that the Legislature intended such a result. We reach this conclusion not so that one wrongdoer may benefit at the expense of another but so that no wrongdoer may benefit at the expense of the public") (Whereby the landlord and "illusory" prime tenant engaged in a fraudulent scheme to evade rent stabilization laws and deregulate the apartments. The Court of Appeals found that it would be improper to use the rent paid by the illusory prime tenant for years prior to the complaint as the base rent as this amount was fraudulent. The Court chose to use the DHCR's default formula).

"Fraud consists of evidence [of] a **representation of material fact, falsity, scienter, reliance and injury**. The elements of fraud must be pleaded, and each element must be set forth

[1] "The amended CPLR 213-a, in conjunction with substantive law changes made by HSTPA, now provides a six-year statute of limitations, but specifying that a claim may be filed at any time." N.Y. C.P.L.R. 213-a (McKinney)

in detail." *Gridley v. Turnbury Vill., LLC*, 196 A.D.3d 95, 101 (2nd Dep't, 2021)(internal citations omitted)(emphasis added).

The Court finds that Respondent has properly put forth a colorable claim of fraud and has identified substantial evidence demonstrating a fraudulent deregulation scheme to remove an apartment from the protections of rent stabilization.

Respondent alleged the following in their proposed answer:

> 14. Petitioner has engaged in fraud by materially misrepresenting that there was an improvement done to the premises in 2010 which allowed Petitioner to take over an 8% increase, when in reality, no improvements were approved at that time. Upon information and belief, Petitioner knew or should have known that there was no improvement approved at that time.
> 15. Petitioner further misrepresented that there was a major capital improvement performed in 2018 which allowed Petitioner to increase the legal registered rent from $780.80 to $2,015.13, an increase of over 158%. Upon information and belief, Petitioner knew or should have known that the maximum MCI increase in 2018 was for $112.05 per room, based on MCI order FV1300750M, which is far less than the actual increase taken at that time.
> 16. Furthermore, Petitioner directly overcharged Respondent when she received her lease renewal dated December 1, 2022. Petitioner increased the legal registered rent by 4.8% at that time, when Petitioner was only allowed to take a 3.25% rent increase for one-year renewals.
> 17. Upon information and belief, Respondent relied on Petitioner's material misrepresentations by agreeing to sign leases reflecting grossly inflated legal registered rents of $2,015.13 in 2020 and $2,111.83 in 2022.
> 18. Even if Respondent had requested and reviewed the DHCR rent history for her apartment, Respondent could not have known that there were no improvements completed in 2010, because Petitioner fraudulently reported that one had been completed on the rent history. Nor could Respondent have discovered that Petitioner was not approved for an MCI increase of over 158% in 2018. The fact that Petitioner failed to register the rent in 2007 further gave Respondent no other choice than to rely on Petitioner's misrepresentations.

In the instant matter, the subject building's DHCR history demonstrates **an 8% increase in 2010 and dramatic jump of 158% in the rent price between 2017 and 2018**, which Petitioner represented was due to improvements made the property during those times. However, Petitioner still does not offer any documentary proof or even allege that any specific approved MCIs ("major

capital improvements") were made to the property during the 2017-2018 period that would cause a 158% increase in the rent. Respondent relied on this upon signing the leases at that rental amounts which they argue "reflect grossly inflated legal registered rents of $2,015.13 in 2020 and $2,111.83 in 2022" and that they experienced injury by paying these rents.

Respondent's counsel alleges that "review of the rent registration for the subject premises shows that while Petitioner characterized these increases as improvements, there were no such improvements approved for this period according to the listing of approved MCI orders on file with DHCR."[2]

Petitioner argues that the apartment was never deregulated and therefore, there can be no evidence of a fraudulent scheme to deregulate. However, Courts have determined that the four-year lookback period exception applies to schemes to overcharge *all* rent-stabilized apartments, not exclusively the ones that are ultimately deregulated. *435 Cent. Park W. Tenant Ass'n v. Park Front Apartments*, LLC, 183 A.D.3d 509, 510–11 (1st Dep't, 2020)("We reject defendant landlord's argument that the fraudulent exception to the four-year look back period applies only to a fraudulent-scheme-to-deregulate case. In the event it is proven that defendant engaged in a fraudulent rent overcharge scheme to raise the pre-stabilization rent of each apartment, tainting the reliability of the rent on the base date, then the lawful rent on the base date for each apartment must be determined by using the default formula devised by DHC").

Therefore, the Court finds that Respondent has put forth a colorable claim of fraud to overcome the four-year statute of limitations and denies Petitioner's request to strike Respondent's first affirmative defense.

II. PETITIONER'S REQUEST FOR SUMMARY JUDGMENT

[2] NYSCEF Documents #27 and #28.

"Summary judgment is a drastic remedy that should be granted only when there is no doubt that no triable issue of material fact exists" *Rotuba Extruders v. Ceppos*, 46 NY2d 223 (1978).

"The proponent of a motion for summary judgment bears the burden of a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact as to the claims at issue." *Wonderly v. City of Poughkeepsie*, 185 A.D.3d 632, 633 (2nd Dept. 2020).

Petitioner alleges that arrears amounting to $30,770.51 are owed through November 2023.[3] However, if Respondent can sufficiently prove her overcharge claim at trial, this amount will be greatly reduced.

Respondent's introduction of the DHCR Registration document demonstrating a suspiciously high increase in rent is enough to raise a triable issue of fact and Petitioner has not established a prima facie case regarding lease renewal or rent overcharge.

Therefore, the Court declines to grant Respondent summary judgment on these issues.

Respondent's motion to strike is denied. This constitutes the decision and order of the Court. The matter is adjourned to November 15, 2024 at 9:30 am for settlement or trial.

This constitutes the decision and order of the Court.

Dated: Queens, New York
October 25, 2024

HON. CLIFTON A. NEMBHARD
J.H.C.

[3] NYSCEF Document #19.