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MAJESTIC PROPERTIES LLC,

Petitioner-Landlord,

- against -

ZEROBAVAR SOLYMANNIA,

Respondent-Tenant,

“JOHN DOE,” “JANE DOE,”

Respondent-Undertenants.
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DECISION/ORDER
AFTER ARGUMENT

Present:

JOEL R. KULLAS
Judge, Housing Court

Recitation, as required by CPLR section 2219(a), of the papers considered in the review of this motion to vacate the stipulation of April 24, 2017 and for further relief:

<u>Papers</u>	<u>Numbered</u>
Order to show cause, affidavit and exhibits annexed	1
Opposition	2

Petitioner commenced this summary holdover proceeding in March 2017 seeking possession of the premises located at 79-25 150th Street, Apt. C-15, Flushing, NY 11367 (the “subject premises”). Petitioner terminated respondent’s tenancy due to respondent’s failure to sign a renewal lease pursuant to Rent Stabilization Code 2524.3(f). Respondent appeared pro se and entered into a stipulation dated April 24, 2017, granting petitioner a final judgment of possession and a warrant. The stipulation stayed execution of the warrant six months provided respondent paid arrears to date and use and occupancy. Respondent filed six pro se orders to show cause (“OSC”) disputing the terms of the April 24, 2017 stipulation. Those OSCs were denied.

Respondent, now represented by counsel, filed the instant OSC seeking: 1) to vacate the April 24, 2017 stipulation along with the judgment and warrant; 2) leave to interpose an amended answer pursuant to CPLR 3025(b); and 3) discovery.

It is well settled that stipulations of settlement "are favored by the courts and not lightly cast aside" *Hallock v State of New York*, 64 NY2d 224, 230 (1984). Stipulations may be vacated only on grounds sufficient to invalidate a contract, such as "fraud, mistake, collusion or accident" *Nash v. Yablon-Nash*, 61 AD3d 832, 833 (App. Div. 2nd Dept. 2009).

Respondent argues that the April 24, 2017 stipulation should be vacated because respondent waived a complete defense to this proceeding. Specifically, respondent argues that a holdover proceeding for failure to sign a renewal lease requires that petitioner offer a valid renewal lease and that the renewal lease offered prior to the commencement of this proceeding was invalid due to a rent overcharge. Respondent presents the Department of Housing and Community Renewal ("DHCR") Rent Registration History as evidence of the alleged overcharge (Exhibit J to Respondent's OSC). The Rent Registration History shows that the Legal Regulated Rent for 2010 was \$1,914.41 and the Legal Regulated Rent for 2011 was \$3,269.41, but with a preferential rent of \$1,950.00. *Id.* This represents a seventy one percent (71%) increase in the legal regulated rent from 2010 to 2011. The parties agree that petitioner was entitled to a twenty percent (20%) vacancy increase. Respondent argues that "It seems highly improbable that any alleged improvement could have been substantial enough to justify that kind of increase, especially in light of the fact that the rent registration also shows preferential rents for every subsequent year until the current registration." (Respondent's OSC ¶36).

The statute of limitations for a rent overcharge claim is four years. CPLR §213-a. However, the Court of Appeals has created an exception where the legal regulated rent was increased by illegality or fraud. *Thornton v. Baron*, 5 N.Y.3d 175 (2005); *Matter of Grimm v.*

New York State Div. of Hous. & Community Renewal, 15 N.Y.3d 358 (2010). This case was filed in March 2017, but the alleged overcharge occurred in 2011. Absent a showing of fraud, respondent was time barred from asserting an overcharge defense at the time he entered into the April 24, 2017 stipulation and there would be no grounds to overturn said stipulation.

Respondent argues that the seventy one percent (71%) increase from 2010 to 2011 and the fact that petitioner offered preferential rents after the increase demonstrate fraud. In *Grimm*, the

Court of Appeals stated:

Generally, an increase in the rent alone will not be sufficient to establish a ‘colorable claim of fraud’ and a mere allegation of fraud alone, without more, will not be sufficient to require DHCR to inquire further. What is required is evidence of a landlord’s fraudulent deregulation scheme to remove an apartment from the protections of rent stabilization. 15 N.Y.3d at 367.

Respondent presents no evidence to establish a fraudulent deregulation scheme. The DHCR Rent Regulation History notes that petitioner filed in 2011 that it took a vacancy increase and made improvements to the subject premises as part of the rent increase. Respondent acknowledges the validity of the vacancy increase but simply states that it is “highly improbable” that the improvements were substantial enough to justify that increase. Respondents “mere skepticism about the quality or extent of those improvements” are not sufficient to establish a colorable claim of fraud. *Breen v. 330 East 50th Partners, L.P.*, 154 A.D.3d 583 (App. Div. 1st Dept. 2017); *See Also Matter of Boyd v. New York City Div. of Hous. & Community Renewal*, 23 N.Y.3d 999 (2014); *Taylor v. 72A Realty Assoc. L.P.*, 151 A.D.3d 95 (App. Div. 1st Dept. 2017) (“Assertions of possible fraud in connection with the apartment improvements made in 2000 are pure speculation and insufficient...”).

Respondent did not address in its OSC, but brought up at oral argument the argument that petitioner offering preferential rents to tenants after the large rent increase is evidence that petitioner was trying to hide its fraudulent rent increase. Respondent cites *121 Post Avenue LLC*

v. *Rosario*, NYLJ 9/28/16 P. 34 (NY Civ. Ct. 2017) for the proposition that the use of preferential rents can be considered as part of the determining whether there was a fraudulent scheme to deregulate. However, in *Rosario*, the court found other significant indicia of fraud beyond the rent increase and the preferential rents such as improper registrations and noncompliant lease renewals. *Id.* at 6. In this case, there is no indicia of fraud that petitioner would be using the preferential rents to hide. Moreover, petitioner provides a non-fraudulent reason why petitioner offered preferential rents after the large rent increase. At the time of the rent increase, the premises were subject to rent stabilization due to petitioner receiving a J-51 tax credit, could not be luxury de-controlled and the market would not bear a rent higher than that offered as a preferential at that time (Petitioner's Aff. In Opp. ¶52).

Even if respondent had provided more than just a suggestion of fraud, petitioner provides significant evidence that the rent increase from 2010 to 2011 was legitimate. Petitioner attaches to its opposition cancelled checks from petitioner to Real Deal Decorations LLC in the amount of \$56,500.00 (Exhibit 7 to Petitioner's Aff. in Opp.). These checks are dated in 2010 and 2011. Petitioner also presents the lease it entered into with a new tenant commencing December 1, 2010 (Exhibit 6 to Petitioner's Aff. in Opp.). This lease contained a Rent Stabilization Lease Rider. Page 3 of the Rider shows the calculations made by petitioner to increase the rent from \$1,914.41 to \$3,269.43. The Rider includes a list of the improvements and how much of an individual apartment improvement ("IAI") was taken for each improvement. The list includes renovation of two bathrooms, kitchen cabinets and air conditioning along with new dishwasher, stove and refrigerator. The total IAI was \$972.14 which correlates to petitioner spending \$38,885.60 on the apartment². Petitioner's affidavit in opposition and the affidavit of petitioner's


² At the time the improvements were made, petitioner was entitled to a rent increase of 1/40th the cost of the IAIs

Respondent was time-barred from asserting an overcharge defense and thus there are no grounds to vacate the April 24, 2017 stipulation.

Based on the foregoing, respondent's OSC is denied in its entirety. Execution of the warrant is stayed through January 18, 2018, for respondent to vacate. Warrant may execute upon service of a marshal's notice by mail.

This constitutes the decision and order of this court.

1-8-18
Date


JOEL R. KULLAS
Judge, Housing Court

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