

**Jacob Marion, LLC, Petitioner,**  
**v.**  
**"John Doe" et al., Respondents.**  
**86889/14**  
**Civil Court of the City of New York, Kings County**  
**Decided on June 30, 2015**

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Gary F. Marton, J.

Recitation of the papers considered in the review of the motion:

**Papers Numbered**

Respondent's motion with affirmation & affidavit.....	1
Petitioner's opposing affirmation & affidavit.....	2
Respondent's affirmation in reply.....	3
The court file.....	4

This is a holdover proceeding. Petitioner alleges that the premises, once rent-stabilized, became deregulated in 2006 when the premises became vacant and the maximum legal rent rose above \$2,000.00 per month. Petitioner claims that it is now entitled to regain possession of the premises because respondents were month-to-month tenants whose tenancy it has terminated. Respondent Leticia Cruz interposed an answer in which, among other things, she denies the same.

Now respondent moves for summary judgment. For the reasons set out below, the court grants the motion, holds that the premises is rent-stabilized, and awards respondents a judgment dismissing the proceeding. The court also severs

respondent's first and second counterclaims because they are unrelated to the gravamen of this proceeding. Upon service of a copy of the judgment with notice of entry, respondent may move for relief on the remaining counterclaim, which is for attorney's fees.

The following facts are not disputed. The premises is one of eight apartments in a building built before 1974. The building is presumptively covered by the Rent Stabilization Code ("RSC") because it has six or more units. See RSC (9 NYCRR) § 2520.11. Respondent became a tenant in or about September, 2011 pursuant to a written lease dated August 30, 2011. Petitioner became the landlord when it acquired the building about two-and-a-half years later by a deed dated May 28, 2014.

The records of the State of New York's Division of Housing and Community Renewal ("DHCR") show that a Wanda Walker became the premises' tenant of record in 1986 and that four years later, in 1989, the legal monthly rent was \$311.82. Registrations for each of the next nine years were not filed at DHCR until 1998. These registrations show that from 1990 to 1998 the premises was vacant or otherwise temporarily exempt from rent regulation. The registrations also show claimed increases in the monthly rent to \$500.00 in 1993, to \$600.00 in 1994, to \$750.00 in 1995, and to \$900.00 in 1996. Inasmuch as the premises was vacant or exempt during these years, the increases were without legal basis.

The DHCR registration for 1998 shows that in that year the premises was rented to a Thomas Wells. Thereupon the exemption from rent regulation ended and coverage under rent-stabilization resumed. Wells entered into a lease for a monthly rent of \$650.00 but, as is discussed at greater length *infra*, the maximum legal rent was arguably no more than \$375.43<sup>1</sup>. Also in that registration the maximum legal rent was claimed to have increased to \$1,080.00 monthly. However, as an amendment to the RSC in 2000 makes clear, the legal rent after a period of exemption such as that here is the rent actually paid, i.e., the rent "agreed to by the owner and the first rent stabilized tenant taking occupancy...." RSC § 2526.1(a)(3)<sup>2</sup>. See also *656 Realty LLC v Cabrera*, 27 Misc 3d 1225(A) (Civ Ct, NY Co., 2009), *aff'd*, 27 Misc 3d 138(A) (App Term, 1st Dep't, 2010); *660 Partners L.P. v DHCR*, 2009 NY Slip Op 31311(U) (Sup Ct., NY Co., 2009). Therefore, if that amendment is applicable here, the maximum monthly rent was \$650.00.

DHCR records also show that the maximum legal rent was registered in 1999 as \$1,080.00 and that the monthly rent paid was \$650.00, in 2000 as \$1,101.60 and

that the rent paid was \$697.59, in 2001 as \$1,145.66 and the premises was vacant, in 2002 as \$1,351.88 and a tenant named Corey Jones paid \$700.00, in 2003 as \$1,595.22 and a tenant named Kenny Tooks paid \$750.00, in 2004 as \$1,914.26 and a tenant named Norris Brown paid \$750.00, in 2005 as \$1,914.26 again and Brown paid \$750.00 again, and in 2006 as \$2,019.54 and Brown paid \$791.25. The records also show that in 2007 the maximum legal rent was registered as \$2,079.84 but the listing for the tenant and the actual rent paid was "high rent vacancy." DHCR records show that thereafter no one registered information concerning the premises.

In 2014 the RSC was amended to set forth a somewhat different formula for calculating the maximum legal rent in the event of a vacancy or other temporary exemption. RSC §2526.1(a)(3)(iii) provides:

Where a housing accommodation is vacant or temporarily exempt from regulation pursuant to section 2520.11 of this Title on the base date, the legal regulated rent shall be the prior legal regulated rent for the housing accommodation, the appropriate increase under section 2522.8, and if vacated or temporarily exempt for more than one year, as further increased by successive two year guideline increases that could have otherwise been offered during the period of such vacancy or exemption and such other rental adjustments that would have been allowed under this Code.

Under this formula, the maximum legal rent in 1998 would have been \$507.00<sup>3</sup>.

Taking the highest of the three possible maximum legal rents in 1998, i.e., \$650.00, and adding the maximum permissible increases through 2008 results in a maximum legal rent in 2008 of \$1,386.10<sup>4</sup>. Increases for 2009, 2010, 2011, 2012, 2013, and 2014 may not be claimed because the premises was not registered with DHCR. Accordingly, the court finds that the maximum legal rent for the premises never exceeded the \$2,000.00 threshold for deregulation fixed in the Rent Regulation Reform Act of 1997 and that the premises was not deregulated.

Petitioner opposes respondent's motion on two grounds. One is that respondent's argument rests on copies of one or more leases annexed as exhibits to the moving papers, that these copies are not in admissible form, yet being in admissible form is a *sina qua non* for summary judgment to be granted. This argument is unavailing because respondent's argument rests not on the leases but on the DHCR records.

Petitioner's other argument is that respondent has not made a showing sufficient "to warrant the court as a matter of law in directing judgment in favor of [respondent]," CPLR 3212(b). The court disagrees. The court holds that respondent's moving papers sufficiently "demonstrated [her] entitlement to summary judgment [and that petitioner had to] demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for [its] failure to do so ...." *Zuckerman v City of New York*, 49 NY2d 557, 560 (1980). Inasmuch as petitioner does not offer anything that shows that there is an issue of fact, the court grants the relief set out above.

The court will mail copies of this decision and order to the parties.

Dated : Brooklyn, NY

June 30, 2015

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**Gary F. Marton**

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Footnotes:

<sup>1</sup>. The calculation is as follows: \$311.82 plus a vacancy increase of 18% for the vacancy and a longevity increase of 0.6% for each of the four years of Walker's tenancy. In light of the result reached herein, the court need not decide whether \$375.43 was the maximum legal rent.

<sup>2</sup>. Although this amendment to the RSC was enacted in 2000 it is arguably applicable here. If so, the maximum legal monthly rent in 1998 was the \$650.00 that Wells paid. In light of the result reached here, the court need not decide whether \$650.00 or some lower number was the maximum legal rent.

<sup>3</sup>. The calculation is as follows: a monthly rent of \$311.82 in 1988-1989 plus 9% for a two-year increase in 1990 plus \$5.00 for a 1990 surcharge plus 6.5% for a two-year increase in 1992 plus 5% for a two-year increase in 1994 plus 4% for a two-year increase in 1996 plus \$20.00 for a 1996 surcharge plus 18% for a vacancy increase in 1998 plus 2.4% for the longevity increase described in footnote 1 above.

<sup>4</sup>. The calculation is as follow: \$650.00 plus 2% for a one-year increase in 2000 plus no increase for 2001 when the premises was vacant plus 18.60% for an increase when Jones became a tenant after a one year vacancy plus 18.00% for a vacancy increase when Jones left and Took became the tenant for one year plus 20.00% for a vacancy increase when Took left and Brown became the tenant for

two years plus 5.50% for Brown's two-year renewal increase in 2006 plus 18.00% for a vacancy increase for the next tenant registered for the premises at DHCR. The court notes that this calculation does not address respondent's argument that petitioner waived some of these increases by not specifying that the rent charged was preferential only for the term of the lease.

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