CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: PART S x L&T No. 77718/14

ABM 75 REALTY LLC

Petitioner

-against -

POST-TRIAL DECISION/ORDER

YAGIL BARIS

Respondent

x

Hon. MICHELLE D. SCHREIBER

This nonpayment summary proceeding was tried before me on April 29, 2015. Post trial memorandum of law were submitted on May 22, 2015. Based upon the credible testimonial and documentary evidence the Court makes the following findings of fact and conclusions of law.

The petition seeks rent for the subject rent stabilized apartment (#6RE) in the amount of $1,037.99 per month for the period from May through August 2014 and a balance for April 2014 of $471.46; the petition was amended at trial to include all rent due through April 2015. The petitioner established its prima facie case through the credible testimony of Yusuf Bildirici, an employee of petitioner, and through documentary evidence including certified copies of the deed, Multiple Dwelling and Division of Housing and Community Renewal statements, the original lease and lease renewals, and the rent ledger.

The respondent filed a written answer claiming the rent was paid and disputing the amount based upon an alleged agreement precluding an increase in rent beyond "standard rent increases."

On July 24, 2009 the petitioner applied for a rent increase based upon a Major Capital Improvement regarding the installation of an elevator. DHCR issued an order granting the MCI on September 27, 2010; it was modified by order dated May 31, 2012 due to a J-51 tax

abatement, and a PAR was denied by order dated June 4, 2014 (certified copies of the orders were admitted into evidence). As a result the petitioner was permitted to increase the rent at the rate of $28.75 per room; rent for respondent's three room apartment therefore could be increased by $86.25 but calculating the maximum 6% allowed resulted in an MCI monthly charge of $50.

Mr. Bildirici credibly testified regarding an agreement executed between the parties on November 6, 2007 in reference to the elevator work. The elevator was installed in the hallway space formerly used as a bathroom for the four tenants on respondents' floor. The petitioner agreed to relocate the respondent to another apartment (2RE) on a different floor during the renovations, not charge rent during this time, install a private bathroom in the respondent's apartment (as was done in other apartments on the floor), and to vacate a judgment against respondent as the result of prior litigation. It was further agreed that the respondent's rent for the subject premises "will remain in effect as a rent stabilize lease [sic] and will not be brought up to market rent as long as Mr. Baras reside [sic] in the apartment, it is understood that Mr. Baras does not give up or waive any of his rights of apartment 6RE. And it is also understood that Mr. Baras will have no claim on apt 2 RE." The respondent refused to pay the newly calculated rent based on the MCI increase and lease renewal, and petitioner commenced the instant nonpayment proceeding.

The respondent admitted that he agreed in writing to allow the elevator and renovations in his apartment; he admitted further that he received the agreement several days prior to signing it. He claimed however that prior to the written agreement there had been an oral agreement that his rent would not be raised as a result of the work. Notwithstanding this claim, the respondent admitted he signed renewal leases after the completion of the work, and paid the increased rent. Only upon the granting of the MCI increase and petitioner's demand for payment thereof did the

respondent stop paying rent. The respondent asserted that he understood his rent would be increased based upon applicable rent guidelines but not based upon an MCI increase.

The respondent admitted signing the agreement authorizing installation of an elevator and renovations in his apartment. The agreement specifically provides that the work will not result in "market rent" for the subject premises as long as respondent resides in the apartment and that he will remain a rent stabilized tenant. "Extrinsic evidence of the parties' intent may be considered only if the agreement is ambiguous, which is an issue of law for the courts to decide." *Greenfield v Philles Record, Inc., 98 N.Y.2d 562, 569 (2002).* The writing itself is the best evidence of what the parties intended and "when parties set down their agreement in a clear, complete document, their writing should as a rule be enforced according to its terms." *W.W.W. Assocs. Inc. v Giancontieri, 77 N.Y.2d 157, 162 (1990).* Here, there is no ambiguity in the written agreement. The only limitation provided for in terms of rent increases was that the elevator and renovations would not result in "market rent." That the respondent did not understand that as a rent stabilized tenant he could be subject to MCI rent increases does not alter the clear meaning of the terms of the written agreement.

The respondent is also precluded from collaterally attacking the orders of the DHCR which allowed for an MCI rent increase as a result of the installation of the elevator. "Administrative determinations are binding on the parties and the courts until either vacated by the issuing agency or set aside upon judicial review (citation omitted)." *Atsiki Realty LLC v Munoz, 2015 NY Slip Op 25166 (AT 1st Dep't).*

Based upon petitioner's establishing a prima facie case and respondent's failure to establish any defenses, the petitioner is awarded a final judgment in the amount of $7,488.46 representing all rent due through April 30, 2015; issuance of the warrant is forthwith and

execution is stayed for five days.

This is the decision and order of the Court, copies of which are being mailed to the attorneys indicated below. The parties are directed to pick up their exhibits from Part S (room 820) within ten days of the date of this decision or the exhibits will be mailed or disposed of in accordance with DRP-185

(www.nycourts.gov/COURTS/nyc/SSI/directives/DRP/DRP185.pdf).

Dated: June 16, 2015
New York, NY

Michelle D. Schreiber, JHC

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