

Ten Sheridan Assoc. LLC v Cohen

2015 NY Slip Op 31495(U)

August 7, 2015

Supreme Court, New York County

Docket Number: 151253/2014

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

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TEN SHERIDAN ASSOCIATES LLC,

Plaintiff,

- v -

Defendant.

LILLIAN COHEN,

-----X

Index No.
151253/2014

**DECISION
and ORDER**

Mot. Seq. #2, 3

This action involves questions of rent calculation pursuant to a rent stabilized leased affected by the decision of *Roberts v. Tishman Speyer Properties, LP*, 13 NY 3d (2009).

Defendant, Lillian Cohen (“Cohen”), is a tenant of Apartment 12C (the “Apartment”) at 10 Sheridan Square, New York, New York (the “Premises” or “Building”). Plaintiff, Ten Sheridan Associates, LLC (“Ten Sheridan”), is the landlord of the Premises.

Cohen took occupancy of the Apartment on or about December 1, 2011, pursuant to a one year rent stabilized lease. The Lease listed the “monthly legal regulated rent” of \$4,237.33 per month and the “monthly rent paid” of \$2,350.00 per month. At the expiration of the Lease, Cohen executed a one-year lease renewal that commenced on December 1, 2012 and expired on November 30, 2013. The renewal lease listed the “new legal rent” of \$4,322.08 and “the lower rent to be charged, if any” for a one year lease of \$2,397.00. In September 2013, Ten Sheridan offered Cohen a rent stabilized renewal lease, listing the “new legal rent” of \$4,494.96 and “the lower rent to be charged, if any” for a one year lease of \$3,000.00. Cohen refused to sign the renewal lease and disputes Ten Sheridan’s calculation of rent.

Ten Sheridan commenced this action seeking an Order:

- i. Declaring that the legal regulated rent for the Premises includes all lawful increases and adjustments from immediately prior to deregulation in February 2006 to the present;
- ii. Declaring that the renewal offer made to Cohen in Sept. 2013 is binding and proper;
- iii. Declaring that Cohen is a holdover tenant based upon her refusal to accept and timely lease renewal;
- iv. Directing Cohen to pay use and occupancy at fair market value and a money judgment as against Cohen for any past due use and occupancy at that fair market rate, in an amount to be determined by the Court;
- v. Declaring that no rent overcharge has occurred with respect to the Premises;
- vi. In the alternative, directing DHCR to opine on, among other things, the appropriate formula to establish the legal rent for the Premises; and
- vii. A money judgment, as against Cohen for Ten Sheridan's attorney's fees and costs incurred in this proceeding.

See Ten Sheridan's Complaint.

Cohen answered and interposed three counterclaims for fraud, attorneys' fees, and reformation of the lease. Cohen claims that the rent sought by Ten Sheridan is an overcharge. Cohen claims that Ten Sheridan fraudulently misrepresented the rent and status of the Apartment, and even if the Court finds no fraud, Cohen's rent should be "frozen" to the rent charged four years prior to the Complaint – which was \$2,250.00 (even though she is currently paying \$2,397.00 per month).

Ten Sheridan moves for summary judgment on its Complaint and dismissal of Cohen's counterclaims. Cohen opposes. (Mot. Seq. #2)

Also before the Court is Ten Sheridan's motion to modify this Court's October 14, 2014 Order to the extent of limiting discovery; and (b) pursuant to CPLR 3013, granting Ten Sheridan a Protective order against Cohen's alleged "improper document demands." Alternatively, Ten Sheridan requested that discovery should be held in abeyance pending resolution of Ten Sheridan's motion for summary judgment. (Mot. Seq. #3). Cohen opposes.

CHRONOLOGY

Ten Sheridan received a J-51 Tax Abatement that commenced on January 1, 2005 and is currently in effect. As a result of that abatement, Cohen has been treated as a rent stabilized tenant since the inception of her tenancy in December 2011. (See Rent Registrations from 1983-2013 for the Premises).

Shortly after the J-51 benefits went into effect, Barbara Morrison, a prior long term rent stabilized tenant vacated the Premises.

Ten Sheridan “completed individual apartment renovations and increased the legal regulated rent from \$1,307.55 to \$1,924.11.”¹ Ten Sheridan provides copies of the invoice and cancelled check as evidence of the individual apartment improvements of \$12,500.00.

The next tenant Julia Foland entered into a rent stabilized lease dated March 1, 2005, with a “monthly rent” \$1,850.00 per month. The lease commenced on March 1, 2005 and ended on February 28, 2006. Ten Sheridan states, “Ms. Foland vacated in December, 2005, and the rent was increased pursuant to RGBO 37, which permitted Plaintiff to collect a statutory vacancy increase of 17.25%, to increase the legal regulated rent to \$2,256.01.”

Maura O’Shea moved into the apartment on or about February 1, 2006 pursuant to a “standard form of apartment lease (for apartments not subject to the rent stabilization law)” for a term of one year. The lease commenced on February 1, 2006, and expired on January 31, 2007. Ms. O’Shea lease provided for a “monthly rent” of \$1,900.00. At the expiration of Maura O’Shea’s lease, she executed a one-year lease renewal that commenced on February 1, 2007 and expired on January 31, 2008, “at a monthly rent of \$1,980.76.”

Ms. O’Shea vacated. James Heavey signed a “standard form of apartment lease (for apartments not subject to the rent stabilization law)” for a term of one year. The lease commenced on February 1, 2008 through January 31, 2009. Mr.

¹ According to Ten Sheridan, “The legal rent was calculated as follows: the last legal regulated rent of \$1,307.55, plus a 17% [vacancy] increase under Rent Guidelines Board Order (“RGBO”) 36 of \$222.28 plus an eleven (11) year longevity allowance (.06% x 11 years x 1,307.55) of \$91.53 plus \$302.75 which represents one fortieth of 12,110.00 in individual apartment improvements equaling the new legal regulated rent of \$1,924.11 per month.”

Heavey's lease provided for a "monthly rent" of \$2,400. Heavey vacated prior to the expiration of his lease.

Emily Keating executed a "standard form of apartment lease (for apartments not subject to the rent stabilization law)" on or about September 23, 2009, effective November 1, 2009, for a term of one year. Keating's tenancy commenced on October 15, 2009. Ms. Keating's lease provided for "monthly rent" of \$2,250.00.

After the Court of Appeals issued *Roberts v. Tishman Speyer Properties LP*, Plaintiff offered rent stabilized leases for the Premises and calculated the legal regulated rent by applying all lawful increases and adjustments available under the Rent Stabilization Law, from the time that the apartment had been deregulated in February, 2006 forward. All vacancy and renewal increases were added to the legal regulated rent, and the actual rents paid were treated as preferential rents – which is exactly what Plaintiff argues it would have done, had Plaintiff not taken the Premises out of rent stabilization in accordance with DHCR protocol.

The first post *Roberts* tenant, Wienands, took occupancy of the Premises in December 2010 pursuant to a rent-stabilized lease for a one year term. The lease reflected Plaintiff's calculation of the legal rent in the amount of \$3,637.19 but the actual rent charged was \$2,200.

Cohen moved into the Premises on or about December 1, 2011, pursuant to a one year rent stabilized lease. Cohen's lease listed the "monthly legal regulated rent" of \$4,237.33 per month and the "monthly rent paid" of \$2,350.00 per month. At the expiration of the Lease, Cohen executed a one-year lease renewal that commenced on December 1, 2012 and expired on November 30, 2013. The renewal lease listed the "new legal rent" of \$4,322.08 and "the lower rent to be charged, if any" for a one year lease of \$2,397.00. In September 2013, Ten Sheridan offered Cohen a rent stabilized renewal lease, listing the "new legal rent" of \$4,494.96 and "the lower rent to be charged, if any" for a one year lease of \$3,000.00. Cohen refused to sign the renewal lease and disputes Ten Sheridan's calculation of rent.

RELEVANT LAW:

Rent Stabilization Code ("RSC") §2522.6 provides:

- (a) Where the legal regulated rent or any fact necessary to the determination of the legal regulated rent, ... is in dispute between the owner and tenant, or is in doubt, or is not known, the DHCR, at any time upon written

request of either party, or on its own initiative, may issue an order in accordance with the applicable provisions of this Code determining the facts, including the legal regulated rent....

(b)(1) Such order shall determine such facts or establish the legal regulated rent in accordance with the provisions of this code...

RSC §2520.6(f) provides:

(f) Base Rent. For the purpose of proceedings pursuant to sections 2522.3 and 2526.1 of this Title, base date shall mean the date which is the most recent of:

1. the date four years prior to the date of the filing of such appeal or complaint;
2. the date on which the housing accommodation first became subject to the RSL; or
3. April 1, 1984, for complaints filed on or before March 31, 1988 for housing accommodations for which initial registrations were required to be filed by June 30, 1984, and for which a timely challenge was not filed.

RSC §2520.6(e) provides:

Legal regulated rent. The rent charged on the base date set forth in subdivision (f) of this section, plus any subsequent lawful increases and adjustments.

An owner is entitled to an increase when it performs major capital improvements under RSC 2522.4(a)(2).

ARGUMENTS

Cohen contends that the rent-stabilized lease renewal offer was improper and that the rent remains frozen at the rent paid by the last rent-stabilized tenant prior to the deregulation of this apartment in February 2006.

Ten Sheridan seeks a judicial determination of the legal regulated rent of Premises and, more specifically, a declaration that such amount includes all lawful

increases and adjustments from immediately prior to deregulation in February 2006 to the present, a total \$4,237.33.

CALCULATIONS:

The base date for an overcharge determination proceeding is the date four years prior to the filing date of the Complaint. In the instant proceeding, the case was filed on February 11, 2014. The base date is February 11, 2010.

Lease Year	Tenant	Preferential Rate	Legal Regulated Rent
2009-2010	Keating	2250	
2010-2011	Wienands	2200	\$2,621.25 (2250 X 16.5%* + 2250)
2011-2012	Cohen	2350	\$3,053.75 (2621.25 X 16.5%* + 2621.25)
2012-2013*	Cohen	2397	\$3,114.83 (3053.75 X 2% + 3053.75)
2013-2014			
2014-2015			

*Between October 1, 2011 and September 30, 2012, the vacancy allowances that were in effect are 16.5%.

*Renewal lease (one year)

CONCLUSION:

The base date for an overcharge proceeding is the date four years prior to the filing of the complaint. In the instant proceeding, the case was filed on February 11, 2014. The base date is February 11, 2010. As calculated above, the legal regulated rent on the base date of February 11, 2010 is \$2,621.25, the legal regulated rent for Cohen's 2011-2012 lease is \$3,053.75, and the legal regulated rent for Cohen's 2012-2013 renewal lease is \$3,114.83, as calculated above.

Wherefore, it is hereby

ORDERED that the motion for summary judgment is granted to the following extent (Mot. Seq. #2); and it is further

ORDERED, DECLARED AND ADJUDGED that that the formula for calculating rent going forward for Apartment 12C at 10 Sheridan Square, New York, New York, shall be based on the base date of February 11, 2010 and shall include all lawful increases and adjustments; and that it is further

ORDERED, DECLARED AND ADJUDGED that the legal regulated rent on the base date of February 11, 2010 for Apartment 12C at 10 Sheridan Square, New York, New York, is calculated as \$2,621.25 as calculated above; and it is further

ORDERED, DECLARED AND ADJUDGED that the legal regulated rent for Cohen's 2011-2012 lease for Apartment 12C at 10 Sheridan Square, New York, New York, is calculated as \$3,053.75 as calculated above; and it is further

ORDERED, DECLARED AND ADJUDGED that the legal regulated rent for Cohen's 2012-2013 lease for Apartment 12C at 10 Sheridan Square, New York, New York, is calculated as \$3,114.83 as calculated above; and it is further

ORDERED the motion to modify discovery (Mot. Seq. #3) is granted to the extent that the parties are to appear for a Compliance Conference on September 22, 2015, to determine what discovery remains needed on Cohen's counterclaims; and it is further

ORDERED the remainder of the action shall proceed.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

DATED: August 7, 2015


EILEEN A. RAKOWER, J.S.C.