

<b>Hopkins v West 137th 601 LLC</b>
2018 NY Slip Op 33149(U)
December 3, 2018
Supreme Court, New York County
Docket Number: 150435/2016
Judge: Kathryn E. Freed
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. KATHRYN E. FREED PART IAS MOTION 2**

*Justice*

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INDEX NO. 150435/2016

CHRISTOPHER HOPKINS

Plaintiff,

MOTION SEQ. NO. 001

- v -

WEST 137TH 601 LLC,

Defendant.

**INTERIM DECISION AND  
ORDER**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28  
were read on this motion to/for SUMMARY JUDGMENT.

Upon the foregoing documents, it is ordered that the motion is decided as follows.

In this action by plaintiff/tenant Christopher Hopkins seeking, inter alia, damages for rent overcharges and a determination that his residence, 601 West 137<sup>th</sup> Street, apartment 43 (the apartment), New York, New York, is rent stabilized, defendant/landlord West 137<sup>th</sup> 601 LLC moves, pursuant to CPLR 3212, for summary judgment dismissing the complaint. After oral argument, and after a review of the parties' motion papers and the relevant statutes and case law, the motion is decided as follows.

**FACTUAL AND PROCEDURAL BACKGROUND:**

In June 2010, plaintiff moved into the apartment pursuant to a lease he signed with defendant's predecessor in interest. Doc. 1 at par. 7.<sup>1</sup> The lease term was June 15, 2010-July 14,

<sup>1</sup> All references are to the documents filed with NYSCEF in this matter.

2011 and the monthly rent was \$4,200. Doc. 1 at par. 7. Pursuant to a lease renewal, plaintiff leased the apartment for an additional term running from July 15, 2011-September 14, 2012 at a monthly rent of \$4,250. Doc. 1 at par. 8. Plaintiff claims, however, that the last annual rent registration filed by defendant for the apartment with the New York State Division of Housing and Community Renewal (DHCR), which filing occurred in August 2009, reflects that the legal rent for the unit was \$1,452.47 per month. Doc. 1 at par. 10.<sup>2</sup> In July 2010, defendant filed a rent registration statement claiming that the apartment was permanently exempt from rent regulation due to high rent vacancy deregulation. Doc. 1 at par. 11.

In January 2016, plaintiff commenced the captioned action, claiming that defendant willfully, wrongfully, and fraudulently engaged in a scheme to improperly deregulate the apartment, thereby depriving him of his rights pursuant to the Rent Stabilization Law (RSL), the Rent Stabilization Code (RSC), and/or the Emergency Tenant Protection Act (ETPA). Doc. 1, at pars. 16, 19, 22. Plaintiff seeks a declaration that the apartment is subject to rent stabilization; an order directing defendant to provide him with a rent stabilized lease; damages for rent overcharges arising from defendant's failure to treat the apartment as rent stabilized; and for attorneys' fees. Doc. 1.

In its answer filed April 20, 2016, defendant denied that the apartment is rent stabilized and asserted affirmative defenses as well as a counterclaim. Doc. 3.

Defendant now moves: 1) pursuant to CPLR 3212, seeking summary judgment dismissing the complaint or, in the alternative; 2) granting partial summary judgment dismissing any claims

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<sup>2</sup> Plaintiff does not state whether he still lives in the apartment, although his affidavit in opposition suggests that he does. Doc. 24 at par. 11.

predating May 1, 2015, which claims were allegedly waived by plaintiff pursuant to a so-ordered stipulation in Housing Court; 3) for legal fees and costs; and 4) for such other relief as this Court deems just and proper. Docs. 11-21. Plaintiff opposes the motion.<sup>3</sup> Defendant asserts that the apartment became exempt from rent regulation after a gut renovation (Doc. 12 at 19, 23), whereas plaintiff maintains that defendant did not make any improvements to the apartment or that defendant exaggerated the value of the improvements made. Docs. 23 and 24.

### LEGAL CONSIDERATIONS:

Although this Court has jurisdiction over this rent overcharge matter, it finds, in its discretion (*see Davis v Waterside Hous. Co.*, 274 AD2d 318, 318-319 [1<sup>st</sup> Dept. 2000]) that, pursuant to the doctrine of primary jurisdiction, the matter should be determined by DHCR given that agency's expertise in rent regulation.<sup>4</sup> *See Olsen v Stellar W. 110, LLC*, 96 AD3d 440, 441-442 (1<sup>st</sup> Dept 2012), *lv dismissed* 20 NY3d 1000 (2013). DHCR can investigate plaintiff's claims of fraud, determine the regulatory status of the apartment, and, if necessary, determine other issues such as the amount of overcharges. *Olsen*, 96 AD3d at 442. Additionally, since DHCR has access to records relevant to the apartment's rent stabilization status, some of which will be several years old, it is best suited to determine whether defendant failed to register the apartment as rent stabilized when it should have been, whether there were any improper rent overcharges for the

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<sup>3</sup> Inexplicably, plaintiff opposes the summary judgment motion brought pursuant to CPLR 3212 by citing cases involving motions to dismiss pursuant to CPLR 3211.

<sup>4</sup> The doctrine of primary jurisdiction is designed to coordinate the relationship between courts and administrative agencies to avoid discrepancies regarding their interpretations of statutes such that a court, in making a determination, is able to take into consideration not only an agency's findings concerning factual and technical issues, but also the interpretation of the relevant statutes and regulations by an agency. *Davis*, 274 AD2d at 318.

apartment based on renovations which were or were not made, whether plaintiff is entitled to a rent stabilized lease, and whether plaintiff is entitled to any damages as a result of any acts, fraudulent or otherwise, which defendant is alleged to have committed.

In its discretion, this Court also stays the captioned action pending the determination of the DHCR. See CPLR 2201.

Therefore, in light of the foregoing, it is hereby:

ORDERED that defendants' motion, pursuant to CPLR 3212, seeking summary judgment dismissing the complaint, is referred to the New York State Division of Housing and Community Renewal for a determination as to whether: 1) defendant willfully, wrongfully, and/or fraudulently engaged in a scheme to improperly deregulate plaintiff's apartment, thereby depriving him of his rights pursuant to the Rent Stabilization Law (RSL), the Rent Stabilization Code (RSC), and/or the Emergency Tenant Protection Act (ETPA); 2) plaintiff's apartment is subject to rent stabilization; 3) whether plaintiff is entitled to a rent stabilized lease and, if so, the date of the term thereof and the amount of the rent due thereunder; and 4) whether plaintiff is entitled to recover damages from defendant for rent overcharges and/or other penalties arising from defendant's failure to treat the apartment as rent stabilized and, if so, the amount of the same; and it is further

ORDERED that the New York State Division of Housing and Community Renewal is to provide a written report to this Court regarding its findings; and it is further

ORDERED that, within 15 days after the issuance of the written report by the New York State Division of Housing and Community Renewal, either party may move to confirm or reject the same; and it is further


ORDERED that this matter is stayed pending the determination of the aforementioned issues by the New York State Division of Housing and Community Renewal; and it is further

ORDERED that, on July 17, 2019 at 4:30 p.m., the parties are to participate in a telephone conference with the Court to discuss the status of the captioned action; and it is further

ORDERED that this constitutes the interim decision and order of the court.

12/3/2018

DATE

  
KATHRYN E. FREED, J.S.C.

CHECK ONE:

CASE DISPOSED  
GRANTED  DENIED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION  
GRANTED IN PART  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: