

Trapp v State of New York

2023 NY Slip Op 33873(U)

October 30, 2023

Supreme Court, New York County

Docket Number: Index No. 451312/2023

Judge: Sabrina Kraus

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. SABRINA KRAUS **PART** **57TR**

Justice

-----X

GEORGE TRAPP,

Petitioner,

- v -

STATE OF NEW YORK, DIVISION OF HOUSING AND
COMMUNITY RENEWAL, MHK ASSOCIATES, LLC

Respondent.

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INDEX NO. 451312/2023

MOTION DATE 08/18/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

BACKGROUND

Petitioner is the tenant of record of Apt. IRE at 409 West 48th Street, New York, NY 10036 (“Subject Premises”). MHK Associates LLC is the landlord of the subject building.

Petitioner received a Rent Reduction Order from DHCR under DHCR Dkt. No. HT-410263-S on February 26, 2021.

The Landlord alleges it attempted to gain access to the Subject Premises on multiple occasions to complete repairs and was denied access. The landlord filed an Application to Restore Rent, dated February 11, 2022, based on what it asserted was the tenant's unreasonable refusal to permit the landlord to restore service(s).

DHCR scheduled a "No-Access" inspection May 3, 2022, and at said inspection, the DHCR inspector determined that the tenant refused to allow the landlord to make repairs with workers who were there, ready and able to make the repairs.

On November 22, 2022, DHCR issued the Order Restoring Rent, Dkt. No. KN-410054-OR restoring the rent under Dkt. No. HT-410263-S. The Order states that services are deemed restored as the tenant refused access to the owner and its workers to make repairs.

Thereafter, the tenant filed a Petition for Administrative Review ("PAR") challenging the Order Restoring Rent. On March 24, 2023, Deputy Commissioner Woody Pascal issued the Order and Opinion Denying Petition for Administrative Review, PAR Dkt. No. KX-410030-RT, which is the subject of this proceeding.

ALLEGED FACTS

The Subject Premises is regulated under the Rent Stabilization Law ("RSL") and its implementing regulations, the Rent Stabilization Code ("RSC")

On February 26, 2021 the RA issued an order granting Petitioner's rent reduction complaint based on the findings of DHCR's on-site inspection conducted on February 12, 2020. The inspector found the following service defects: missing stove/oven door handle; leakage in kitchen sink water supply valve; defective kitchen sink cabinet floor and door; leakage in bathroom main water valve; defective bathroom door; and defective bedroom #1 door.

The February 26, 2021 order ("rent reduction order") further directed the restoration of all services found not maintained.

On February 17, 2022, the landlord filed a rent restoration application with DHCR based on Petitioner's refusal to grant access for repair of the service defects cited in the rent reduction order. Owner submitted as evidence two letters addressed to the Petitioner requesting access, along with certified mail receipts.

On March 23, 2022, Petitioner answered, through counsel, that Petitioner denied access because Owner failed to comply with Petitioner's "reasonable" access demands. Petitioner demanded the following:

- (1) At least 24 hours before the Access Date/Time, you will transmit a letter to me via email (tomhillgardner@gmail.com) enumerating which of the six items mentioned in the Rent Reduction Order for which you seek access to correct and explaining the anticipated scope of work as for each such item.
- (2) Your letter shall include the name, address, telephone number, and email address of (a) landlord's representative who you will be sending to oversee the work (if any), and (b) all contractors you are hiring to perform the work who will need to be admitted to Mr. Trapp's apartment at the Access Date/Time. Other than landlord's representative, only contractors and/or their employees will be admitted to Mr. Trapp's apartment on the Access Date/Time. Landlord's employee, Marcos Rivera, shall not be present at the Access Date/Time.
- (3) In order to be admitted to Mr. Trapp's apartment at the Access Date/Time, landlord's representative and all workers employed by any contractor identified by you in your letter must produce and permit photocopying of either a photo identification card issued in their name by their employer or a government issued ID and the business card of their employer.
- (4) Landlord's representative and all contractors and their employees desiring to be admitted to Mr. Trapp's apartment at the Access Date/Time shall produce proof of vaccination in the form of either a vaccination record card or an Excelsior Pass.
- (5) Landlord's representative and all contractors and their employees shall wear masks at all times while in the building.
- (6) All contractors and their workers shall arrive to commence work by 10:00 am or not at all.
- (7) All work shall conclude by 5:00 pm.
- (8) Your letter identifying the scope of the work and providing information about the contractors shall reference this letter from me to you by date and shall contain a statement to the effect that you agree to abide by all the terms and conditions set forth herein.

On March 8, 2022 at 5:20 pm, the landlord's representative sent Petitioner's counsel an email, in which she confirmed access scheduled for the next day at 10 am, provided names of the property manager and two workers who will be present, confirmed that all work should be done in the same day and that if supplies or parts are found to be needed another access date can be

scheduled, confirmed that all three named individuals will be wearing masks, and that all three named individuals will provide their I.D.'s although Petitioner will not be allowed to photograph them.

Petitioner's counsel responded that access shall be denied because Petitioner requires a "permanent record" of the I.D.'s, the email confirmation was late as it was due that morning (24 hours before access), one of the named individuals is not a licensed plumber.

In accordance with RSC § 2523.4 and DHCR Policy Statement 90-2, the RA requested "No Access" agency inspection of the Apartment to facilitate the resolution of the complaint and to ascertain the conditions of the service defects upon which the rent reduction order was based.

On April 19, 2022, a "Notice of Inspection – For Access" was provided to the parties directing both parties to be present at the Apartment on May 3, 2022 between 9:30 am and 10:30 am so as to provide access to Owner and/or Owner's contractors for the purpose of repairing the service defects cited in the rent reduction proceeding (a list of said effected items were also provided). The Notice stated that a DHCR inspector will be present, and that Petitioner may ask to see his/her official I.D. The Notice provided that failure of either party to appear would result in a determination based solely on the evidence presently in the record.

DHCR's inspector reported that on May 3, 2022 an Agency "No Access" inspection was attempted at the Subject Premises, as scheduled. The inspector noted that all parties were present, including Owner's contractors who were ready to perform repairs; and that Petitioner refused to allow the contractors access into the Subject Premises.

Based on Petitioner's failure to grant access for repair at the time of the "No Access" inspection, the RA, on November 22, 2022, granted Owner's rent restoration application in accordance with RSC § 2523.4 and DHCR Policy Statement 90-2.

DISCUSSION

A court's role in reviewing a determination of an administrative agency is a limited one. The proper standard for judicial review of an administrative determination is whether it was arbitrary or capricious or without a rational basis or warrant in the administrative record. *Greystone Mgt. Corp. v. Conciliation and Appeals Bd.*, 94 A.D.2d 614 (1st Dept. 1983), *aff'd*, 62 N.Y.2d 763 (1984). A court may not disturb an administrative decision unless the agency's action was arbitrary and capricious, in violation of lawful procedures, or made in excess of its jurisdiction. *Matter of Pell v. Board of Educ.*, 34 N.Y.2d 222 (1974); *Ansonia Residents Assoc., v. N.Y.S. Div of Hous. & Comm. Renewal.*, 75 N.Y.2d 206 (1989).

Moreover, the reviewing Court may not substitute its own judgment for that of the administrative agency [*P'ship 92 LP v. State Div. of Hous. & Cmty. Renewal*, 46 A.D.3d 425, 427 (2007) *aff'd*, 11 N.Y.3d 859 (2008)].

It is for DHCR to weigh the evidence in a proceeding before it. *Jane St. Co. v. DHCR*, 165 A.D.2d 758, (1st Dept. 1990). Issues as to credibility and weight of evidence are for the administrative body to determine as trier of fact. *Stork Restaurant, Inc. v. Boland*, 282 N.Y. 256 (1940). An administrative agency charged with enforcing a statute has broad discretion in evaluating pertinent factual data and determining the inferences to draw from it. *Hawthorne Gardens, LLC v. DHCR*, 4 A.D.3d 135 (1st Dept. 2004); *Wembly Management Co. v. DHCR*, 205 A.D.2d 319 (1st Dept. 1994).

Here, the rent restoration order is fully supported by RSC § 2523.4 and evidence in the record, including a DHCR No-Access inspection at which Petitioner denied access for repair without sufficient cause. Petitioner's access demands were unreasonable and his failure to provide access was intentional.

Therefore, the Final Order affirming rent restoration order is neither arbitrary nor capricious, is rationally based on the administrative record before the agency and is in full accord with controlling law.

ACCORDINGLY, for the foregoing reasons it is hereby

ADJUDGED that the petition for relief pursuant to Article 78 is denied and the proceeding is dismissed; and it is further

ORDERED that, within 20 days from entry of this order, Respondent shall serve a copy of this order with notice of entry on the Clerk of the General Clerk’s Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that any relief not expressly addressed has nonetheless been considered and is hereby denied; and it is further

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

10/30/2023

DATE

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

APPLICATION:

SETTLE ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

SUBMIT ORDER

FIDUCIARY APPOINTMENT

REFERENCE

202310301635415BKRAUS917AC32318DD4082842FDE0FE41639CC

SABRINA KRAUS, J.S.C.