

CIVIL COURT of the CITY of NEW YORK
NEW YORK COUNTY
HOUSING COURT: PART D

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245 OWNERS, LLC,
Petitioner-Landlord,

L & T Index No. 54373/13

-against-

MARISSA LYNN RANN, SAMANTHA J. ALESSIO,
ASHLEY DISARRO,
Respondents-Tenants

Decision & Order

-and-

“JOHN DOE and JANE DOE” 1,
Respondents-Undertenants.

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Hon. Brenda S. Spears, J., H.C.:

Recitation, as required by CPLR 2219(A), of the papers submitted in the review of petitioner’s motion for summary judgment and the respondents’ cross-motion for summary judgment

<u>Papers</u>	<u>Numbered</u>
Notice of Motion and affidavits annexed.....	1
Answering affirmation and cross-motion.....	2
Replying affirmation.....	3
Exhibits.....	4
Petitioner’s memorandum of law.....	5

Upon the foregoing cited papers, the decision and order on these motions is as follows:

The petitioner commenced the instant litigation to regain possession of the subject apartment, a free-market unit, on the grounds that the lease had expired and the petitioner had elected not to renew said lease. The petitioner has also sought use and occupancy.

The respondents served a joint verified answer, with counterclaims, denying the petitioner's contentions. Specifically, they allege that they did not have a contractual relationship with the instant petitioner; that the petition is defective because it misstates the Multiple Dwelling registration information; and that the petition fails to state the managing agent's address. Most importantly, the respondents allege that the proceeding is in violation of the applicable rent regulatory statutes because they have a rent stabilized tenancy. The respondents also assert two counterclaims, alleging a rent overcharge; they seek their attorneys' fees.

By court order dated March 12, 2013, the respondents were directed to pay outstanding use and occupancy at the last lease rate of \$2950 per month. Said payments were without prejudice the rights of either party.

The petitioner then moved for summary judgment. The respondents opposed this motion and cross- moved to dismiss the petition. These are the motions that are presently before this court.

For the reasons set forth herein, the petitioner's motion is granted; the cross-motion is denied.

The relevant facts can be briefly stated. Sometime in 2009, Margaret Sands, the rent stabilized tenant who had lived in the subject apartment for more than 20 years, surrendered the subject apartment in the context of a summary proceeding with the prior owner. The apartment was then renovated and new appliances were purchased. The prior owner established a new rent for the subject premises, calculated based on the Rent Stabilization Code §2522.8(a) as follows: the longevity bonus based upon an amount arrived at by multiplying the last legal rent by the number of years since the imposition of the last vacancy increase (here 24 years); 17% based upon the fact that the vacancy lease was for one year. In addition, the prior owner calculated the amount it could add to the rent as a result of improvements to the apartment, or 1/40th of the cost of said improvements.

The respondents inspected the apartment, as detailed in the e-mails attached to the respondents' motion papers. In these e-mails, the managing agent addressed the issues raised by the respondents concerning the heat; the installation of a ceiling fan; and installation of a pressurized wall. The respondents executed a one year lease with the prior owner, with a commencement date of February 2, 2010 at a monthly rent of \$2950. The respondents were provided with a notice entitled "Notice to First Tenant of Apartment deregulated after vacancy due to a rent of more than 2,000". This notice set forth owner's calculations to describe how it arrived at the new rent. The Notice advised the respondents that they could verify the information by contacting the New York State Division of Housing & Community Renewal. Each respondent signed this Notice. There was one lease renewal, also at \$2950 per month.

Now, the respondents have argued that there is a question of fact precluding the petitioner for obtaining a summary judgment in this matter. They argue that they are rent stabilized tenants because the petitioner provided no justification for the rent increase calculation. They claim that based upon the apartment's condition when they signed the lease, the prior owner could have spent the amount claimed or made the claimed improvements.

Yet, the respondents proffer no facts to support their claims. In fact, he improvements claimed, the documents presented lead to a different conclusion. The e-mails annexed to the respondents' motion papers point out only three issues of concern at the time the lease was signed: the heat in the apartment; the respondents' desire to install a pressurized wall to create a third bedroom; and their request to replace the light fixture with a ceiling fan. These requests were granted and the heating valve repaired.

No evidence is presented which would indicate that either the respondents or their guarantor raised any other issues with respect to the apartment's conditions, improvements made to the apartment, or any of the documents presented to them

when they signed the lease. In addition, the respondents have presented no evidence that they raised any issues concerning the apartment's condition during their tenancy, prior to this litigation.

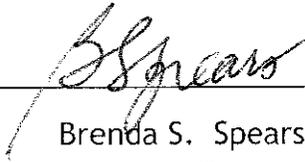
Respondents have also challenged the petitioner's right to commence this proceeding based on the actions taken by the prior landlord. Clearly, this argument is without merit. The petitioner was assigned all the rights and obligations of the prior owner once it acquired the building.

Thus, the situation before the court is this: the respondents signed a lease for a fair market apartment, which was not longer subject to rent stabilization when they signed the lease because of major improvements done after the last rent regulated tenant surrendered possession. The petitioner elected not to offer a further lease renewal. The claim that the respondents do not believe that the work done should not have cost what the prior owner paid for it is not relevant.

Thus, under these circumstances, the petitioner's motion for summary judgment in its favor is granted. Issuance of the warrant is stayed 5 days. The cross-motion to dismiss is denied.

This proceeding is adjourned to September 9, 2013 in Part D at 9:30AM for a hearing as to fair market use and occupancy for the subject premises and for attorneys fees.

This constitutes the decision and order of this court.



Brenda S. Spears, J.


Dated: New York, New York

July 22, 2013

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