

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: TRIAL PART R

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PAULA ARROJO AND FRANCO FINSTAD,
Petitioners-Landlords,

Index No: L&T 77463/15
DECISION/ORDER

-against-

MARGARET SERDULA,
Respondent-Tenant'

"WILLIE DOE"
Respondent-Undertenant.

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Hon. A. Katz,J.H.C.:

The underlying summary holdover proceeding was commenced by petitioners against respondent and respondent undertenant to recover possession of apartment 3F at 105 Riverside Drive New York NewYork. The predicate Notice dated May 11, 2015 alleges that "pursuant to the Rent stabilization Law of 1969 and the Rent Stabilization code §2524.4(a)(2)...the owner has offered to provide and will provide the equivalent or superior housing accommodations at the same or lower regulated rent in an area closely proximate to the premises..." the Notice further alleged that "Paula Arrojo and Franco Finstad need your apartment and seek to recover it at the expiration of your term on August 31, 2015 to complete configuration of the entire premises into a single family home and live there upon renovation as their primary residence...". The respondents having failed to vacate as requested by the Notice the petitioners thereafter served a Petition and Notice of petition commencing the holdover proceeding to recover possession of the premises in question.

Respondents, by counsel, filed a Notice of Appearance, Answer and Counterclaim. In relevant part, inter alia, the respondents at the Fifth Defense at paragraph 12 deny that petitioner complied with the statute and "...has failed to offer respondent an 'equivalent or superior housing accommodation at the same or lower rent regulated rent in a closely proximate area' as required by the Rent Stabilization Code".

The court commenced the trial of this proceeding. On its prima facie case petitioner proved that respondents were offered apartment 1A at 66 West 84th Street, Apartments 2R, 2F,3R and 4F at 636 West End Avenue. Petitioners evidence included statements that these alternative apartments were comparable or superior to respondents current apartment and the rent charged would be the same as that currently being paid by respondents with rent stabilized increases as allowed by Law.

At the close of petitioners prima facie case respondents Counsel moved to dismiss. Counsels argument is that pursuant to §2524.4(a) the alternative apartments are not subject to the Rent

Stabilization Law and you cannot create regulation by contract. Petitioners opposed arguing that the statute says: ..at the same or lower stabilized rent ...”. Petitioner argues they have offered units at the same rent respondents currently pay and will abide by all legal increases as provided by the various Rules affecting regulated units. The parties submitted Memorandum supporting their arguments. This decision was rendered on the next trial date.

Initially it is noted that petitioners argue that respondents answer fails to allege that the alternative units were not subject to regulation and therefore cannot be raised at trial. The court finds this argument misplaced and directs the parties attention to the fifth defense where respondents state that petitioner failed to comply with the statute.

The question before the Court is what is the meaning of §2524.4(a) as it refers to a rent stabilized rent. This court relies in deciding this question on the matter of 546 West 156th Street HDFC v. Smalls 43 Ad3d 7 (A.D., 2007) rendered by the Appellate Division , First Department by the Hon. Peter Tom In that case the question posed was whether parties to a residential lease can by private agreement subject an apartment to regulation under the Rent Stabilization Law . The appellate court answered the question in the negative stating in relevant part, “It is appropriate to observe that rent stabilization is a creation of the Legislature...the courts may not permit parties to a regulated tenancy to evade the provisions governing that tenancy...”

It is not simply a matter of the amount of rent to be charged a tenant. Apartments subject to the Rent Stabilization Law have many provisions applicable thereto; for example rights to succession, amounts to be charged for improvements etc. Merely setting an amount of right does not make an apartment rent stabilized. The courts have consistently held that parties by agreement cannot create or eliminate a rent regulatory status (even if its beneficial to the tenant). *Drucker v. Mauro*, 30 A.D.3d 37 (AD 1st Dep’t, 2006).

Petitioner offered supplementary evidence to the court after petitioner rested its case and after oral argument and after the submission of Briefs. As that evidence was not part of the trial record it cannot be considered in this motion.

Based upon all the evidence and application of relevant Law the court finds that petitioner, having failed to offer respondents alternative accommodations that were rent stabilized they have failed to comply with §2524.4(a). The motion is granted. The proceeding is dismissed.

This constitutes the Decision and Order of the Court.

Dated: New York, N.Y.
December 14, 2017



Anne Katz, J.H.C.