

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK: HOUSING PART H

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EASTGATE WHITEHOUSE LLC,

Petitioner/Landlord,

Index No. 54752/2015

- against -

**DECISION/ORDER**

LAURIE CAGNASSOLA,

Respondents/Tenants.  
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Present: Hon. Jack Stoller  
Judge, Housing Court

Recitation, as required by CPLR §2219(a), of the papers considered in the review of these motions.

<b>Papers</b>	<b>Numbered</b>
Notice of Motion and Supplemental Affidavits and Affirmation Annexed.....	1, 2, 3
Notice of Cross-Motion and Supplemental Affidavit and Affirmation Annexed	4, 5, 6
Affirmation In Opposition to the Cross-Motion	7
Reply Affirmation and Affidavit In Support of Motion	8

Upon the foregoing cited papers, the Decision and Order on this Motion are as follows:

Eastgate Whitehouse LLC, the petitioner in this proceeding (“Petitioner”), commenced this summary proceeding against Laurie Cagnassola, the respondent in this proceeding (“Respondent”), seeking a money judgment and possession of 350 East 52<sup>nd</sup> Street, Apt. 12H, New York, New York (“the subject premises”), on the ground of nonpayment of rent. Respondent answered, raising defenses, inter alia, of partial payment, improper rent demand, rent overcharge, and breach of the warranty of habitability. Petitioner now moves to dismiss the Third Affirmative Defense of Respondent’s answer, which alleges that the rent demand is defective. Respondent cross-moves for summary judgment, or, in the alternative, leave to obtain

discovery. The Court consolidates both motions for resolution herein.

The Court first considers Respondent's cross-motion for summary judgment, as it raises a threshold issue. On the record, there is no dispute of material fact that Respondent and Petitioner entered into a lease commencing April 1, 2011 that did not contain any indication, by a rider or otherwise, that the subject premises is subject to the Rent Stabilization Law; that Petitioner had not registered the subject premises with the New York State Division of Housing and Community Renewal ("DHCR") pursuant to 9 N.Y.C.R.R. §2528.3 from May 7, 2007 up through the commencement of Respondent's tenancy; that Petitioner had been a beneficiary of a tax abatement pursuant to N.Y.C. Admin. Code §11-243 known colloquially as a "J-51" tax abatement; that Respondent, together with other tenants of the building in which the subject premises is located ("the Building"), commenced a plenary action against Petitioner in New York County Supreme Court ("the plenary action") seeking, *inter alia*, class action certification and damages sounding in rent overcharge; that a decision of the Court in motion practice in the plenary action is reported at Casey v. Whitehouse Estates, Inc., 36 Misc.3d 1225(A) (S. Ct. N.Y. Co. 2012); that Petitioner registered the subject premises with DHCR in November of 2011, after the commencement of the plenary action; and that the subject premises is subject to the Rent Stabilization Law.

The Court in Casey, supra, held that Petitioner deemed apartments in the Building to be deregulated pursuant to the luxury deregulation provisions of N.Y.C. Admin. Code §26-504.2 *et seq.* prior to the ruling in Roberts v. Tishman-Speyer Properties L.P., 13 N.Y.3d 270 (2009) that landlords who receive J-51 benefits may not avail themselves of luxury deregulation. The Court

likened Petitioner's conduct to the landlord/petitioner in the matter of 72A Realty Assoc. v. Lucas, 32 Misc.3d 47 (App. Term 1<sup>st</sup> Dept. 2011), *affirmed in part and modified in part*, 101 A.D.3d 401 (1<sup>st</sup> Dept. 2012), who similarly deregulated apartments despite receiving J-51 benefits prior to the holding in Roberts, *supra*.

Subsequent to the decision of Casey, *supra*, the Appellate Division modified the Appellate Term decision upon which the Court in Casey, *supra*, relied, holding, in part, that a landlord that deregulated apartments despite receiving J-51 benefits is not entitled to invoke the restriction in CPLR §213-a limiting the number of years in a rent history of an apartment that a tribunal may consider in determining whether a landlord has overcharged a rent-stabilized tenant, so long as there is a lack of clarity in the record to establish the legal rent. 72A Realty Assoc., *supra*, 101 A.D.3d at 402.

Applying that rule to the instant matter, the DHCR registration history for the subject premises shows that Petitioner increased the rent for the subject premises from \$789.27 in 2003 to \$1,631.24 in 2004. Petitioner would have otherwise been entitled to increase the rent by twenty percent over \$789.27 at that time, 9 N.Y.C.R.R. §2522.8(a)(1), which would have resulted in a rent of \$947.12. As Petitioner increased the monthly rent by an amount \$684.12 a month more than that, and as subsequent rent increases were predicated upon this higher rent, the evidence on Respondent's cross-motion sets forth a *prima facie* showing of a rent overcharge.

The law is well-settled that a party, in opposition to a motion for summary judgment, must assemble and "lay bare" affirmative proof to establish that the matters alleged are real and capable of being established upon a trial. Alfred E. Mann Living Trust v ETIRC Aviation

S.a.r.l., 78 A.D.3d 137, 142 (1<sup>st</sup> Dept. 2010), Johnson v. Phillips, 261 A.D.2d 269, 270 (1<sup>st</sup> Dept. 1999); Fileccia v. Massapequa General Hospital, 99 A.D.2d 796 (2<sup>nd</sup> Dept.), *aff'd*, 63 N.Y.2d 639 (1984); Hasbrouck v. Gloversville, 102 A.D.2d 905 (3<sup>rd</sup> Dept.), *aff'd*, 63 N.Y.2d 916 (1984). In opposition to Respondent's motion, Petitioner does not submit any evidence rebutting Respondent's showing of a rent overcharge.

In order to be entitled to relief in a summary proceeding, it is not only necessary that a landlord plead the rent regulatory status and compliance with the appropriate statutes and codes, but that a landlord actually be in compliance therewith. Caceres v. Golden, 1991 N.Y. Misc. LEXIS 856 (App. Term 2<sup>nd</sup> Dept. 1991). As Petitioner has failed to rebut Respondent's showing that Petitioner has not fulfilled an element of its *prima facie* case for nonpayment of rent, the Court grants Respondent's motion and awards Respondent summary judgment dismissing this proceeding. The Court further notes that dismissal is the only relief that Respondent seeks in this vein, that the Court's finding is strictly limited to a finding of a failure to prove an element of a *prima facie* case on a nonpayment proceeding, and that the Court makes no other finding that could be preclusive of any other issue in any other proceeding.

Similarly, the Court does not reach any of the other issues raised in Respondent's cross-motion or Petitioner's motion, as dismissal of this proceeding renders them moot.

This constitutes the decision and order of this Court.

Dated: New York, New York  
June 25, 2015

  
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HON. JACK STOLLER  
J.H.C.