

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

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CARTER F. SACKMAN SR. ET AL.,

Petitioner/Landlord,

Index No. 95195/2011

- against -

DECISION/ORDER

DOROTHY EMMERSON,

Respondents/Tenants.

----- X
Present:

Hon. Jack Stoller
Judge, Housing Court

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

<u>Papers</u>	<u>Numbered</u>
Notice of Motion and Supplemental Affidavits Annexed.....	1
Notice of Cross-Motion and Supplemental Affirmation Annexed	2
Affirmation In Reply and in Opposition to Cross-Motion	3
Affirmation In Reply to Affirmation In Opposition to Cross-Motion	4

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

Carter F. Sackman, Sr., et al., the petitioner in this proceeding (“Petitioner”) commenced this holdover proceeding against Dorothy Emmerson, the respondent in this proceeding (“Respondent”), seeking possession of 130 West 82nd Street, Apt. 4K, New York, New York (“the subject premises”) on the ground that Petitioner seeks possession of the subject premises, which is subject to the Rent Stabilization Law and Code, for the personal use of a family member of his. Both Respondent and Petitioner have moved for summary judgment in their favor. The Court consolidates both motions for resolution herein.

It is undisputed that Respondent is a senior citizen as defined by 9 N.Y.C.R.R.

§2520.6(p). A property owner may not seek possession of a rent-stabilized unit on the ground of personal use as against a tenant who is a senior citizen unless the owner offers the tenant an equivalent or superior housing accommodation at the same or lower regulated rent in a closely proximate area. 9 N.Y.C.R.R. §2524.4(a)(2). It is undisputed that Petitioner has offered Respondent a tenancy at another housing accommodation (“the Alternate Apartment”) and that the Alternate Apartment is not subject to rent regulation, although Petitioner has offered Respondent a lease rider that he purports would afford Respondent protections of the Rent Stabilization Code.¹

Regulations are generally subject to same canons of construction as statutes. ATM One, LLC v. Landaverde, 2 N.Y.3d 472, 477 (2004). The starting point in any case of statutory interpretation must always be the language itself, giving effect to the plain meaning thereof. Raynor v. Landmark Chrysler, 18 N.Y.3d 48, 56 (2011). The plain language of the regulation requires that Petitioner offer another apartment at a “regulated” rent. By the plain language of the regulation, then, Petitioner’s offer of the Alternate Apartment is inadequate. In addition to reading the plain language of the regulation, Courts are to interpret laws regulating rents broadly to effectuate their intended, remedial purpose of amelioration of the dislocations and risk of widespread lack of suitable dwellings that accompany a housing crisis. Federal Home Loan Mortg. Corp. v. New York State Div. of Hous. & Community Renewal, 87 N.Y.2d 325, 332 (1995). A read of the regulation on this background also compels the conclusion that the offer of the Alternate Apartment is inadequate.

¹ No rider is a part of the record at this time and it is unclear that it has yet been drafted.

The Court is further guided by a recent decision of the Appellate Term applying this construction of the regulation to deem inadequate an offer of a non-regulated alternate housing accommodation, “irrespective of whatever ... tenancy terms may be agreed upon by the tenant and the building owners involved.” Nestor v. Britt, 35 Misc.3d 5, 6-7 (App. Term 1st Dept. 2012).

Petitioner argues that Respondent’s answer did not raise the issue regarding the Alternate Apartment. However, paragraph 3 of Respondent’s answer alleged that she is a senior citizen and is protected by 9 N.Y.C.R.R. §2524.4(a)(2). While the answer does not go into more detail than that, this allegation is sufficient to put Petitioner on notice that the issue of the Alternate Apartment comprised the basis for a defense Respondent asserted, certainly to the extent that a potential benefit of the Rent Stabilization Code could not be deemed to be waived. See 9 N.Y.C.R.R. §2520.13 (restricting a valid waiver of any benefit of the Rent Stabilization Code to a withdrawal of a pending complaint before the Division of Housing and Community Renewal).

Accordingly, the Court grants Respondent’s motion and dismisses this proceeding. The Court denies Petitioner’s cross-motion for summary judgment.

This constitutes the decision and order of this Court.

Dated: New York, New York
July 12, 2012



HON. JACK STOLLER
J.H.C.