

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

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TEN SHERIDAN ASSOCIATES, LLC

Petitioner, Landlord,

-against-

**Index No. L&T 77575/12
DECISION AND ORDER**

TIMOTHY HALL

Respondent-Tenant
-----X

MICHELLE D. SCHREIBER, J.

Recitation as required by CPLR 2219(a), of the papers considered in the review of the respondent's motion for discovery.

Papers	Numbered
Notice of Motion, Affirmation, & Affidavit.....	1
Affirmation & Affidavit in Opposition	2
Reply Affirmation	3

Upon the foregoing cited papers, the Decision/Order of this Court on this motion is as follows:

In this non-payment proceeding the petition states that the rent stabilized monthly rent is \$2,450, and arrears of \$7,350 are due from June through August 2012. The respondent appeared by counsel and filed a written answer raising numerous defenses and counterclaims, including improper service, improper rent amount, unsigned rent demand, breach of the warranty of habitability, and rent overcharge. The respondent moves for leave to conduct discovery.

In support of the motion the respondent submits an affidavit stating that he entered into a written lease with petitioner for the period February 1, 2012 through January 31, 2013. The lease rider provided that the legal monthly rent was \$2,484.76, but the preferential rent charged was \$2,450. The rider indicated the last legal regulated rent was \$990.15 and increases as follows: (a) \$163.38 based upon a 16.5% vacancy increase; (b) \$160.40 longevity increase, and (c) \$1,170.83

individual apartment improvement increase (“IAI”) for a total legal rent of \$2,484.76. The respondent asserts that in order for petitioner to justify the \$1,170.83 IAI it would have had to incur \$70,249.80 in costs. The respondent states that his apartment is a studio measuring less than 300 square feet and that “it strains credulity to think that the owner could have spent as much as \$70,000 on work” in the premises; he claims that the quality of the work done was poor.

The respondent seeks to depose both the petitioner and contractor (RCGC LLC- a non party) who did the work. Additionally, the respondent demands copies of any leases in effect from August 1, 2008 to the present, rent collected for the premises from August 1, 2008 to the present, security deposits collected for the premises from August 1, 2008 to the present, records of any work performed between August 1, 2008 to the present whether repair or improvement, all correspondence between owner of the building or agent and any occupant of the premises concerning the tenancy from August 1, 2008 to the present, all documents used to calculate the amount of rent that could be charged for the premises from August 1, 2008 to the present, and all initial and/or annual apartment registrations filed with DHCR for the subject premises from 2007 to the present.

According to the Rent Act of 2011 and *Division of Housing and Community Renewal* (“DHCR”) *Fact Sheet #12*, owners of buildings with more than 35 units can collect an increase of 1/60th of the cost of the individual apartment improvement. Further, *DHCR Policy 90-10* and *DHCR Fact Sheet #12* require that any claim for individual apartment improvements should include at least one of one following: (1) cancelled check(s) contemporaneous with the completion of the work; (2) invoice receipt marked paid in full contemporaneous with the completion of the work; (3) signed contract agreement; (4) contractor’s affidavit indicating that

the installation was completed and paid in full.

It is not disputed that the respondent herein filed a rent overcharge proceeding at DHCR. In response to the proceeding the petitioner submitted documents in support of its claim of expenses of \$70, 249.80 for improvements to the subject premises. The documents (copies of which are attached as exhibits to the instant motion) include a contract agreement dated December 12, 2011 with RCGC LLC for apartment renovations at the subject premises, a signed letter from the president of RCGC LLC dated April 28, 2012 confirming he did renovations at the subject premises, two RCGC LLC invoices for work to the subject premises dated 12/11/11 for \$30,000 and another invoice dated 1/20/12 for \$40,250, and two canceled checks to RCGC, LLC from petitioner for \$40,250 and \$30,000. Subsequently, respondent withdrew his rent overcharge complaint at DHCR so he could pursue his claims in this court.


In opposition to the motion the petitioner submits an affidavit from its agent, Darin Goldstein, The petitioner argues that the respondent is on a fishing expedition, and that the claims of “exorbitant” costs or poor quality of the work are insufficient to grant discovery. The petitioner asserts that the respondent is already in possession of all relevant documents concerning the work based upon the documentation provided to the respondent in the context of the DHCR proceeding.

Discovery in a special proceeding is not granted as of right but is only permitted by leave of court pursuant to *CPLR § 408*. Leave to conduct discovery may be granted where the movant demonstrates a meritorious claim, ample need, that the discovery sought is tailored to the facts of the case, and no prejudice to the opposing party. *New York University v. Farkas*, 121 Misc.2d 643 (Civ. Ct. NY Cty 1983). Where an issue of the propriety of the IAI is raised discovery may

be warranted. *See e.g., 150 West 82nd Street Realty Assoc. v Linde, 36 Misc.3d 155(A) (AT 1st Dep't 2012).*

Here, while the respondent has failed to show any meritorious claim or ample need for further document production, the respondent has established ample need for a deposition and the motion is granted to the extent of directing petitioner to comply with this demand within 45 days. The respondent's motion for discovery of the nonparty contractor is denied without prejudice to renew after the completion of petitioner's deposition. The matter is marked off calendar pending the conclusion of discovery and may be restored by motion or stipulation. This is the decision and order of the Court, copies of which are being mailed to those indicated below.

Dated: New York, NY
December 20, 2012



Michelle D. Schreiber, JHC

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