New York Law Journal
SERVING THE BENCH AND BAR SINCE 1888
WWW.NYLJ.COM
An ALM Publication
VOLUME 262—NO. 42
WEDNESDAY, AUGUST 28, 2019

As Rent Reforms Shake Out, Judge Nixes Overcharge Defense

According to the lawyers for the landlord in the case, the ruling is significant because it provides "clarity" and "guidance" from a judge on the rent overcharge issue at a time when many tenants may seek to renew their fights.

BY JASON GRANT

A rally at the State Capitol in Albany in May, in support of the universal rent control legislation.

IN WHAT may be one of the first decisions addressing a tenant's move to seek relief under newly enacted, statewide pro-tenant rent reforms, a New York City judge has knocked down a tenant's effort to revive—by pointing to a newly expanded statute of limitations—his previous affirmative defense of rent overcharge in an eviction action.

According to the lawyers for the landlord in the case, the ruling by city Civil/Housing Court Judge Frances Ortiz is significant—at least in relation to oft-raised rent-overcharge claims made in landlord-tenant disputes—because it provides "clarity" and "guidance" from a judge on the rent overcharge issue at a time when many tenants may seek to renew their fights.

Most pointedly, as the attorneys at Rosenberg & Estis say they understand Ortiz's decision, it means that a tenant overcharge claim already dismissed may not be relitigated even if that claim is still within the newly expanded six-year look-back, or statute of limitations, period, because the changes made to the statutory rent overcharge provisions only pertain to still-pending or newly brought claims.

Before the changes, there was a four-year look-back period.

"What the clarity does," said Neil Dwork, a Rosenberg & Estis member and a lawyer for landlord 400 E58 Owner LLC in the action, "is it will cut down on additional motion practice and litigation that the court isn't going to consider."

Dwork and Rosenberg & Estis associate Laura Davidov added during a phone interview Monday that it's expected that under the new reforms, many tenants will

seek to "relitigate" certain issues.

But Davidov added in a post-interview email that Ortiz's ruling "provides guidance to practitioners as to how the new law is being applied to previously adjudicated overcharge claims. It makes clear that the new law does not provide tenants with an opportunity to re-litigate overcharge claims which have previously been determined."

The new overcharge look-back period—six years instead of four—is just one of the many sweeping reforms made part of the Housing Stability and Tenant Protection Act of 2019, which was signed into law in June and made effective June 14.

The act and the series of changes aimed at bolstering tenant protections, especially for lower-income residents and those living in rent-stabilized dwellings, have been touted by state congressional leaders as the strongest tenant protections in state history.

They include doing away with allowing residential units to be removed from rent stabilization when the cost of rent, or a tenant's income, passed specific thresholds, for example.

And the changes have apparently so upset some landlords and building owners that in July a coalition of them filed a lawsuit in the U.S. District Court for the Eastern District of New York aimed at striking down the state's rent control laws.

In the "non-payment dwelling" eviction before Ortiz, the judge found herself addressing a motion for leave to renew her previous dismissal of an overcharge defense that had been lodged by Samuel Herrnson, a Manhattan building tenant facing eviction.

Herrnson, according to the judge, had based his July 17 renewal motion in part on "a change in the law," referring specifically to the Housing Stability and Tenant Protection Act of 2019, that would allegedly thereby change Ortiz's decision to grant the petitioner 400 E58 Owner LLC's motion to dismiss and summary judgment on the affirmative defense of rent overcharge, among other defenses dismissed. (Herrnson also pointed to new facts and arguments in his motion, pointing to an alleged fraud from years ago by management, but Ortiz also tossed aside that alleged renewal reason.)

Herrnson, according to Dwork and court documents, had been represented by counsel in the action but is now pro se. He could not be reached for comment Monday.

Addressing Herrnson's change-in-the-law argument in her Aug. 7 decision, Ortiz wrote, in part, that "the changes to the rent overcharge provisions in the Housing Stability and Tenant Protection Act of 2019 relate to claims pending or filed after the effective day of the statute (June 14, 2019)." And she then pointed out that "this court dismissed the 'rent overcharge' issue in a decision dated June 13, 2019," just a day before the statute took effect.

Near the conclusion of her decision, Ortiz also wrote that Herrnson's "motion to renew based on Housing Stability and Tenant Protection Act of 2019 is denied," and, as part of her reasoning, then pointed out that "it has been more than four years from the July 2001 deregulation and time to challenge for a FMRA," or fair market rent appeal.

In 2018, Herrnson was sued for eviction by 400 E58 Owner based on alleged nonpayment, according to Dwork and a court document.

Said Dwork on Monday of Ortiz's denial of the renewal motion by Herrnson, "Essentially, what the judge is saying is that you don't get a second bite at the apple now" on the rent overcharge issue.

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