NEW YORK
Landlord v. Tenant®

APARTMENT LAW INSIDER TOTAL DECISION SERVICE FOR LANDLORDS, MANAGERS, AND ATTORNEYS

MARCH 2017 HIGHLIGHTS

Avoid Liability for Tenant-Installed Appliances

A court ruled that tenant couldn't sue landlord for negligence after she suffered a burn injury from her gas stove. Tenant herself had bought and installed the stove, and the lease required landlord to maintain only those appliances provided by landlord. *(See case #27555, p. 6.)*

Submit Contracts with MCI Rent Hike Application

The DHCR ruled that landlord couldn't get rent hikes based on MCIs because landlord failed to submit written contract for the work. The DHCR always requires proof of written contracts with MCI applications. *(See case #27566, p. 7.)*

Maintain Smoke and CO Detectors Already Provided in Public Areas

The DHCR ruled that since landlord provided smoke and CO detectors in the first-floor hallway, they were a required service under rent stabilization that the landlord had to maintain. *(See case #27569, p. 18.)*

Deduct Cost of Trash Removal from Security Deposit

A court ruled that landlord could deduct $425 for garbage removal and cleaning from former tenant's security deposit. Tenant left 19 bags of recyclable refuse in the apartment when he moved out, and the apartment wasn't in broom-swept condition. *(See case #27579, p. 24.)*

TO DOWNLOAD CASES: Go to *www.LandlordvTenant.com*
Search by Docket, ECB, Index, or LVT #

LANDLORD V. TENANT

Contributing Editor: **Eileen O'Toole, Esq.**

Executive Editor: **Heather L. Stone**

Director of Marketing: **Peggy Mullaney**

SUBSCRIPTIONS: *New York Landlord v. Tenant* [ISSN 0883-0746 (PRINT), 1938-3118 (ONLINE)] is published by Vendome Group, LLC. Subscription rate: $622 for 12 issues. Address all correspondence to: Vendome Group, LLC, 216 East 45th St., 6th Fl., New York, NY 10017. Tel.: 1-800-519-3692. Fax: 212-228-1308.

SUBMISSIONS: To submit a case for consideration in our next issue, please email it to the executive editor at *hstone@vendomegrp.com,* or send it by regular mail to: Heather Ogilvie Stone, Vendome Group LLC, 216 East 45th St., 6th Fl., New York, NY 10017. Please include your name and the name of your firm, indicate whether you represented the landlord or the tenant, and attach a copy of the decision.

Volume 31, Issue 8

DISCLAIMER: Every reasonable effort has been made in this publication to achieve accuracy. The law changes constantly, however, and is subject to differing interpretations. Always consult your attorney, therefore, and act only on his/her advice. This publication is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. The publisher shall not be responsible for any damages resulting from any inaccuracy or omission contained in this publication.

©2017 by Vendome Group, LLC. All rights reserved. No part of *New York Landlord v. Tenant* may be reproduced, distributed, transmitted, displayed, published, or broadcast in any form or in any media without prior written permission of the publisher. To request permission to reuse this content in any form, including distribution in educational, professional, or promotional contexts, or to reproduce material in new works, please contact the Copyright Clearance Center at *info@copyright.com* or (978) 750-8400. For custom reprints, e-prints, or logo licensing, please contact Heather Stone at (212) 812-8436 or *hstone@vendomegrp.com.*

TABLE OF CONTENTS

DAMAGES TO APARTMENTS 4
- Tenant Must Pay for Repair When He Caused Condition

EVICTION 4
- Mother Can't Evict Daughter Since There Was No Landlord-Tenant Relationship
- Tenant Can't Evict Her Sister Since There's No Landlord-Tenant Relationship
- Landlord Properly Evicted Apartment Visitor
- Tenant Unlawfully Evicted Must Be Restored to Possession

EXTERMINATION OF PESTS 5
- Landlord Can Return to Court If Bedbug Treatment Tenant Requested Doesn't Work

LANDLORD'S NEGLIGENCE 6
- Was Landlord Responsible for Tenant's Fall on Front Steps?
- Was Landlord Responsible for Attack on Tenant's Daughter?
- Landlord Not Responsible for Tenant's Burn Injury

LEAD PAINT 7
- Child's Cognitive Impairment Wasn't Caused by Lead Paint Exposure

MAJOR CAPITAL IMPROVEMENTS 7
- Rent Hike Disallowed for Work Performed Without a Contract
- Loft Building Was Rent Stabilized by Time MCI Application Was Filed
- Rent Hike for Bathroom Modernization Granted Even Though Tenants Denied Access
- Modification of Existing Sprinkler System Didn't Qualify as MCI
- Potential Gas Leak for New Boiler Corrected Quickly
- Work Relating to Penthouse Addition Disallowed in Connection with Roof MCI
- New Security Cameras Qualify as MCI
- Architect Fees for Work Related to MCIs Disallowed

MISCELLANEOUS 10
- NYC Water Board's 2017 Rate Increase and One-Time Credit Annulled

PASSING ON APARTMENTS 11
- Friend Who Moved Back in with Tenant Didn't Prove Succession Rights
- Tenant's Granddaughter Can't Get NYCHA Apartment
- Trial Needed on Whether Deceased Tenant's Son Was Disabled and Entitled to Succession

PETS 12
- Tenant Didn't Prove Neighbor's Dog Was Vicious

RENEWAL LEASES 12
- Landlord and LINC Tenant Signed Self-Executing Renewal Lease

RENT CONTROL COVERAGE 13
- Rent-Controlled Apartment Can't Get Deregulated After J-51 Benefits Expire
- Rent-Controlled Tenant Not Subject to Deregulation After J-51 Benefits End

TO THE READER

Each issue of **NEW YORK LANDLORD V. TENANT** covers recent landlord-tenant rulings. In this issue, you will find the following court cases and agency decisions through February 2017.

Landlord-tenant court cases reported in the *New York Law Journal* and *New York Supplement 2d.*

Unreported landlord-tenant cases obtained by the editors.

Important opinions selected by the editors from the Division of Housing and Community Renewal and the NYC Environmental Control Board.

Each case is identified by a paragraph number, and cases are numbered throughout the issue. To download DHCR cases in this issue, please visit *www.LandlordvTenant.com.*

KEY: NEW YORK LANDLORD V. TENANT uses the following abbreviations for various New York courts, agencies, legal publications, and technical terms:

ALJ	Administrative Law Judge
App. Div.	Appellate Division, Supreme Court (appeals)
App. T.	Appellate Term, Supreme Court (appeals)
Civ. Ct.	NYC Civil Court (trials)
Ct. App.	NYS Court of Appeals (highest court in state)
DEP	NYC Dept. of Environmental Protection
DHCR	NYS Division of Housing and Community Renewal
DOB	NYC Dept. of Buildings
DOF	NYC Dept. of Finance
DOH	NYC Dept. of Health & Mental Hygiene
DOS	NYC Dept. of Sanitation
DRA	DHCR District Rent Administrator
DSS	NYC Dept. of Social Services
DTF	NYS Dept. of Taxation & Finance
ECB	NYC Environmental Control Board
ETPA	Emergency Tenant Protection Act
HPD	NYC Dept. of Housing Preservation & Development
MBR	Maximum Base Rent
MCI	Major Capital Improvement
MCR	Maximum Collectible Rent
NYCHA	NYC Housing Authority
NYLJ	New York Law Journal
NYS2d	New York Supplement, 2nd Series, legal reporter
PAR	Petition for Administrative Review
SRO	Single Room Occupancy
Sup. Ct.	NYS Supreme Court (trials)

TABLE OF CONTENTS *(continued)*

RENT OVERCHARGE 13

Tenant Must Refund $54,000 Overcharge to Subtenant
Landlord Submitted Sufficient Proof of Individual Apartment Improvements
Landlord and Tenant Disagree on Whether Rent Was Frozen
DHCR Must Apportion Overcharge Award Between Tenant and SCRIE Program
DHCR Default Formula Applied to Set Base Date Rent
DHCR Won't Consider Complaint of Tenant Who Already Started Court Case
Rent of Stabilized Tenant Who Was Given No Lease Was Properly Set
Landlord Had No Acceptable Proof of Individual Apartment Improvements
DHCR Must Re-examine Overcharge Claim for Fraud
Landlord Didn't Raise Judicial Sale Claim Before the DRA
Landlord Refunded Overcharge and Filed Missing Registrations
Landlord Didn't Answer Rent Overcharge Complaint
Landlord Properly Collected Renewal Lease Increases

RENT REDUCTION DENIED 18

Rent Reduction for Minor Condition Tenants Didn't Complain About Was Revoked

RENT REDUCTION ORDERED 18

Landlord Didn't Maintain Smoke and CO Detectors in Public Areas
Landlord Relocated Laundry Rooms to Basement Without DHCR Approval
Landlord Changed Heat Delivery System Without DHCR Approval

RENT STABILIZATION COVERAGE 19

Apartment Became Subject to Deregulation After J-51 Tax Benefits Ended
Building Was Rent Stabilized Due to Illegal Sixth Apartment
Building Was Converted from Commercial to Residential in 1999
Apartments Occupied by Nonprofit Not Exempt from Stabilization
Did Landlord Fraudulently Deregulate Apartment?
Tenant's Failure to Answer Luxury Deregulation Application Excused
Tenant Didn't Receive J-51 Rider with Every Renewal Lease
Tenant's Failure to Verify Income Before Rent Administrator Excused
Apartment Wasn't Rent Stabilized After Owner Occupancy
Landlord Can't Prove Apartment Became Deregulated After 1993 Fire

REQUIRED SERVICES 23

Replacement of Intercom System Requires Telephone Landlines
Landlord Can't Discontinue Laundry Service Provided by Contractor

SECURITY DEPOSITS 24

Landlord Can Deduct Cost of Trash Removal from Security Deposit

SUBLETTING 24

Landlord's Claim of Illegal Subletting Wasn't Supported by Allegation of Facts
No Illusory Tenancy Found in Connection with Tenant's Illegal Sublet
Landlord's Notices of Illegal Sublet Were Insufficient to Support Eviction Petition

© 2017 by Vendome Group, LLC. Any reproduction is strictly prohibited. For more info call 800-519-3692 to visit *www.LandlordvTenant.com*

DAMAGES TO APARTMENTS

Tenant Must Pay for Repair When He Caused Condition
#27556

Public housing tenant filed an Article 78 appeal of the Housing Authority's decision to charge tenant $8.25 to fix a clogged bathtub drain in tenant's apartment. The court ruled against tenant. The court found that the Housing Authority's decision wasn't arbitrary or capricious. Tenant had exclusive occupancy and control of the apartment. The fact that the Authority's executive director testified at a hearing in support of imposing the charge didn't render the Authority's ruling arbitrary, capricious, or an abuse of discretion. And tenant's lease specified that the cost to repair a condition attributable to a tenant's action or neglect would be paid by tenant.

- Scott v. Village of Nyack Housing Auth.: 2017 NY Slip Op 01212, 2017 WL 600184 (App. Div. 2 Dept.; 2/15/17; Eng, PJ, Balkin, Sgroi, Barros, JJ)

EVICTION

Mother Can't Evict Daughter Since There Was No Landlord-Tenant Relationship
#27597

A mother sued to evict her daughter from a single-family home that she owned. The court found that there was no landlord-tenant relationship and dismissed the case. The daughter moved in with the mother in 1999, moved out in 2006, and moved back in in 2010 when her then-husband was deployed in military service. The daughter used the whole house but didn't pay rent to her mother. The mother alone paid for the maintenance and upkeep of the house.

- Calderon v. Mancilla: Index No. 53272/16, NYLJ No 1202778231401 (Civ. Ct. Richmond; 1/19/17; Mundy, J)

Tenant Can't Evict Her Sister Since There's No Landlord-Tenant Relationship
#27576

Tenant sued to evict her sister from her apartment, claiming that the sister was a licensee. The sister asked the court to dismiss the case. The court ruled for the sister, finding that it was improper to maintain a summary eviction proceeding against a family member. Tenant was the legal guardian of her sister's children, and the sister claimed that she contributed to the household expenses, living with tenant as a family. Tenant failed to show that there was a landlord-tenant relationship with her sister.

- Jit v. Johnson: Index No. 73861/16, NYLJ No 1202779521376 (Sup. Ct. Queens Co.; 2/22/17; Rodriguez, J)

Landlord Properly Evicted Apartment Visitor
#27586

Tenant's visitor sued landlord, claiming that she was unlawfully evicted from tenant's apartment. The court ruled against the visitor, who appealed and lost. The visitor was a mere licensee and not protected from eviction without legal process. The visitor also wasn't a "known occupant" of the apartment who was listed in tenant's required

© 2017 by Vendome Group, LLC. Any reproduction is strictly prohibited. For more info call 800-519-3692 to visit *www.LandlordvTenant.com*

filings as a household member. The visitor was required to sign in on the visitor's log each time she sought access to tenant's apartment.

- Tantaro v. Common Ground Community Housing Development Fund, Inc.: 2017 NY Slip Op. 01493, 2017 WL 758235 (App. Div. 1 Dept.; 2/28/17; Renwick, JP, Mazzarelli, Moskowitz, Kapnick, Webber, JJ)

Tenant Unlawfully Evicted Must Be Restored to Possession
#27578

Landlord sued to evict rent-stabilized tenant for nonpayment of rent, based on oral rent demand. The court ruled for landlord, and tenant was evicted after not appearing in court. She then asked the court to be restored to possession, claiming that no one ever spoke with her to demand rent payment and that she never received any court papers. Tenant was out of town when the eviction took place. Landlord's new managing agent also admitted that landlord accepted rent after landlord started the court case, including the two months of outstanding rent at issue when the case started. The court ruled for tenant and ordered landlord to restore her to possession, based on unlawful eviction. Landlord had re-rented the apartment, but that tenant failed to appear in court in response to the court's notice of a hearing on tenant's claim. So an eviction warrant was issued against new tenant.

- Walton Avenue Realty Assocs. LLC v. Soriano: Index No. 62025/2016, NYLJ No. 1202779528387 (Civ. Ct. Bronx; 2/6/17; Lutwak, J)

EXTERMINATION OF PESTS

Landlord Can Return to Court If Bedbug Treatment Tenant Requested Doesn't Work
#27557

Landlord sued to evict tenant for unreasonably refusing access to the apartment in order to exterminate and remove bedbugs. Landlord's termination notice stated that, although tenant claimed that she couldn't accept the bedbug treatment for medical reasons, tenant also refused alternative treatments. Landlord and tenant, by their attorneys, signed a series of settlement agreements in court by which tenant was required to provide access on certain dates for extermination by steam service and cryonite, and landlord was to pay for storage and cleaning of tenant's belongings.

Tenant later sued landlord in federal court, claiming that landlord was violating her rights under the Fair Housing Act and the Americans with Disabilities Act. She claimed that her unique health situation required reasonable accommodation when exterminating, as any use of chemicals would have a negative impact. The federal court denied tenant's request to stay the housing court proceeding and asked the housing court to review questions. Later, after a hearing, the housing court answered the federal court questions, finding that tenant had a medical condition that was a disability and was entitled to a reasonable accommodation, that landlord had reasonably accommodated tenant, and that it was unclear whether nonchemical bedbug treatment would cure the condition.

The housing court further ruled that: (a) tenant must provide access for extermination within 30 days and follow-up; (b) tenant must provide access and properly prepare the

© 2017 by Vendome Group, LLC. Any reproduction is strictly prohibited. For more info call 800-519-3692 to visit *www.LandlordvTenant.com*

apartment for extermination; (c) the extermination must be done using any nonchemical method, including cryonite or steam and freeze, that landlord's contractor deems most effective; and (d) if the nonchemical treatment doesn't work, landlord can go back to court to seek further appropriate relief while relocating tenant and her family during chemical treatment.

- 2 Perlman Dr., LLC v. Stevens: 54 Misc.3d 1215(A), 2017 NY Slip Op 50173(U) (Civ. Ct. Kings; 2/9/17; Avery, J)

LANDLORD'S NEGLIGENCE

Was Landlord Responsible for Tenant's Fall on Front Steps? #27584

Tenant sued landlord for negligence and for building code violations following his fall while descending the front steps of a two-family building. Landlord asked the court to dismiss the case without trial, claiming that she wasn't responsible for tenant's injuries. The court ruled for landlord. Tenant appealed and won. The appeals court found that there were questions of fact as to whether the absence of handrails was a breach of landlord's duty to maintain the staircase in a reasonably safe condition. The court also found that tenant's familiarity with the front stairs didn't mean landlord didn't have a duty to maintain the premises in a reasonably safe condition.

- DeCarlo v. Vacchio: 45 NYS3d 581, 2017 NY Slip Op 00627 (App. Div. 2 Dept.; 2/1/17; Chambers, JP, Austin, Hinds-Radix, Barros, JJ)

Was Landlord Responsible for Attack on Tenant's Daughter? #27554

Tenant sued landlord NYCHA, claiming that landlord was negligent in failing to provide a properly locked front door at the building and that this caused her daughter's injuries. NYCHA asked the court to dismiss the case without a trial. The court ruled against landlord, who appealed and lost. The transcript of pre-trial questioning raised questions of fact regarding whether the building's front entrance door was operating properly prior to, and on the day of, the incident when the attacker entered the building. There were also questions as to whether the attacker was an intruder who gained access to the building through a negligently maintained entrance. A trial was needed to determine the facts.

- Ramos v. NYCHA: 2017 NY Slip Op 01244, 2017 WL 599918 (App. Div. 2 Dept.; 2/15/17; Mastro, JP, Austin, Miller, Maltese, JJ)

Landlord Not Responsible for Tenant's Burn Injury #27555

Tenant sued landlord for negligence after she suffered a burn injury to her head when she used a match to try to light a burner on the top of her gas stove because the stove's igniter didn't work. The court denied landlord's request to dismiss the case without a trial. Landlord appealed and won. Tenant herself had bought the stove and had it installed. Tenant's lease required landlord to repair and maintain any appliance provided by landlord but imposed no duty on landlord to repair or maintain appliances

supplied by tenant herself. So landlord wasn't liable for tenant's injuries. Tenant also claimed that the accident was related to a condition created by landlord in the course of a gas pipe replacement project in the building. But landlord showed that the project was performed by a licensed contractor in accordance with permits, and was inspected and certified as safe when completed two years before the accident. The project didn't involve any work on tenant's stove, except to assure that there was gas service to the stove and that it was safe with no leaks when the project was done.

- Kaplan v. Tai Properties, LLC: 45 NYS3d 792, 2017 NY Slip Op 00729 (App. Div. 1 Dept.; 2/2/17; Sweeny, JP, Acosta, Moskowitz, Kapnick, Kahn, JJ)

LEAD PAINT

Child's Cognitive Impairment Wasn't Caused by Lead Paint Exposure
#27550

Tenant sued landlord, claiming that her child developed cognitive deficits due to exposure to lead-based paint in tenant's apartment. Landlord asked the court to dismiss the case without a trial.

The court ruled against landlord, who appealed and won. The appeals court found that exposure to lead didn't cause the child's cognitive deficits, and that the reports of two doctors were insufficient to raise issues of fact requiring a trial. The child had undisputed speech and language deficits from infancy, well before his first known exposure to lead paint. The child received speech and language therapy and individualized education programs into high school and an expert pediatric neurologist's report showed that no peer-reviewed study had found that lead contributed to conditions in children with pre-existing cognitive deficits. A neuropsychologist's report submitted by tenant also was insufficient to raise any questions as to whether the child's exposure to lead created greater difficulties for him than he would have had if he hadn't been exposed to lead.

- Adrian T. v. Millshan Realty Co., LLC: 2017 NY Slip Op 01122, 2017 WL 536018 (App. Div. 1 Dept.; 2/10/17; Sweeny, JP, Renwick, Mazzarelli, Manzanet-Daniels, Feinman, JJ)

MAJOR CAPITAL IMPROVEMENTS

Rent Hike Disallowed for Work Performed Without a Contract
#27566

Landlord applied for MCI rent hikes based on the installation of an interior staircase, roof membrane, chimney and liner, electric meter, exterior wall resurfacing, and cornice replacement. The DRA ruled against landlord because landlord failed to submit a requested written contract for the work. Landlord appealed and won, in part. Landlord claimed that a written contract wasn't needed for the work performed. But the DHCR always requires proof of written contracts with MCI applications. Landlord did submit to the DRA a written contract describing the exterior wall resurfacing project. So that portion of the MCI application was granted.

- AIE Holdings, LLC: DHCR Adm. Rev. Docket No. AM220019RO (1/31/17) [3-pg. doc.]

© 2017 by Vendome Group, LLC. Any reproduction is strictly prohibited. For more info call 800-519-3692 to visit *www.LandlordvTenant.com*
To download cases, go to *www.LandlordvTenant.com* and search by Docket, ECB, Index, or LVT #

Loft Building Was Rent Stabilized by Time MCI Application Was Filed
#27593

Landlord applied for MCI rent hikes based on exterior restoration, installation of a roof water tank, and a sidewalk bridge. The DRA ruled against landlord because the work was done while the building was under the NYC Loft Board's jurisdiction. Landlord appealed, arguing that the work was done after the building received its Certificate of Occupancy in 2006, that the work had nothing to do with building legalization, and that the building was subject to rent stabilization when the MCI application was filed. The DHCR ruled for landlord and reopened the case. The Loft Board's March 2012 order clearly showed that the building became subject to DHCR jurisdiction by the time landlord filed its MCI application in August 2012.

- JR Building Assocs.: DHCR Adm. Rev. Docket No. CT410041RO (2/17/17) [2-pg. doc.]

Rent Hike for Bathroom Modernization Granted Even Though Tenants Denied Access
#27541

The DRA granted landlord's MCI rent increase application based on bathroom modernization. Tenant appealed and lost. Tenant claimed that the bathroom modernization wasn't performed in her apartment. She said that since the bathroom and plumbing in her apartment were in good condition, landlord agreed not to replace them and made tenant sign a document declining the work. Landlord pointed out that tenant denied access for the bathroom replacement and that it remained ready to replace tenant's bathroom as soon as access was provided.

The DHCR noted that tenant responded to the MCI application, admitting that she declined the bathroom modernization. This didn't exempt her from the MCI rent hike and tenant should provide access for landlord to complete the work.

Tenant also claimed that the bathroom had been modernized 10 years before the MCI was performed, but there was no prior MCI application filed for any bathroom work. Tenant also claimed that the bathroom modernization was an individual apartment improvement. But it was the DHCR's established position that this work was an MCI. The fact that three of the building's 17 rent-stabilized tenants denied access for the work wasn't grounds to deny the MCI rent hike.

- Heredia: DHCR Adm. Rev. Docket No. DP430034RT (1/31/17) [2-pg. doc.]

Modification of Existing Sprinkler System Didn't Qualify as MCI
#27589

Landlord applied for MCI rent hikes based on installation of new 2-1/2 inch sprinkler water service from the city water main to the building wall. The DRA ruled against landlord, finding that the work didn't qualify as an MCI. Landlord appealed and lost. The plumbing work in question primarily consisted of modification to an existing sprinkler system. The type of work doesn't qualify as an MCI.

- 40 West 75th St., LLC: DHCR Adm. Rev. Docket No. BR410046RO (2/9/17) [1-pg. doc.]

© 2017 by Vendome Group, LLC. Any reproduction is strictly prohibited. For more info call 800-519-3692 to visit *www.LandlordvTenant.com*

Potential Gas Leak for New Boiler Corrected Quickly
#27565

The DRA granted landlord's application for MCI rent hikes based on the installation of a new boiler, electrical upgrading, roof replacement, and security cameras. Tenant appealed and lost. Tenant claimed that the roof leaked, the security cameras didn't work, that repairs weren't performed by licensed individuals, that the boiler was installed incorrectly, and that electricity in the hallways cuts out. The DHCR found that tenant's claims had been addressed during prior reconsideration of the MCI application. And documentation from National Grid showed possible gas leaks found at the header pipes connected to the gas meters for the building were repaired within a week and a thorough safety inspection had been conducted, showing that the new piping for the boiler had been installed correctly.

- Hamilton: DHCR Adm. Rev. Docket No. ES210011RT (1/11/17) [2-pg. doc.]

Work Relating to Penthouse Addition Disallowed in Connection with Roof MCI
#27592

Landlord applied for MCI rent hikes based on installation of a new roof. The DRA ruled against landlord. Landlord appealed and won, in part. Items claimed by landlord to be related to the MCI were still disallowed. These included a roof deck, roof pavers, tree pruning, engineers, engineering services, landmark approval, and building department expediter relating to a new penthouse addition. These didn't qualify for an MCI rent hike. But the DHCR otherwise granted an MCI rent hike for the new roof installation.

- Holliswood 90 LLC: DHCR Adm. Rev. Docket No. ES410047RO (2/17/17) [2-pg. doc.]

New Security Cameras Qualify as MCI
#27590

The DRA granted landlord's application for MCI rent hikes based on installation of security cameras. Tenant appealed and lost. Tenant claimed that landlord wasn't maintaining her apartment. But this claim wasn't raised before the DRA and the claim was beyond the scope of review of an MCI application.

- Cummings: DHCR Adm. Rev. Docket No. EW110046RT (2/17/17) [1-pg. doc.]

Architect Fees for Work Related to MCIs Disallowed
#27540

Landlord applied for MCI rent hikes based on the installation of a garage roof. The DRA ruled for landlord but disallowed a portion of the MCI costs allocable to an inspector's fee for concrete placement cancellation, landscape architect services, painting, architect fees, asbestos, and filing fees.

Landlord appealed and lost. Landlord argued that the DRA improperly increased the cost allocation for the commercial share benefitting from the MCI without explanation, improperly disallowed architect fees, painting of the garage roof replacement, and renovation of the underground garage. But the DHCR found that the painting

© 2017 by Vendome Group, LLC. Any reproduction is strictly prohibited. For more info call 800-519-3692 to visit *www.LandlordvTenant.com*

was cosmetic and not considered an MCI or necessary work directly related to an MCI. It was also long-standing DHCR policy that architectural services must be both necessary and customary to qualify as part of MCI costs. Here, the architectural services were for related necessary work—landscaping, driveways, walkways above the garage, and interior renovation of the underground garage—rather than for the MCI itself. So the architect fees didn't qualify. Also, landlord didn't show that an architect's expertise was needed for this project.

Regarding the commercial allocation, the garage's square footage was listed in the MCI application under professional units, so the DRA correctly included the square footage of the garage in the calculation as commercial space benefitting from the MCI.

- Shalimar & Mandalay Leasing, LP: DHCR Adm. Rev. Docket No. EN110008RO (1/6/17) [3-pg. doc.]

MISCELLANEOUS

NYC Water Board's 2017 Rate Increase and One-Time Credit Annulled #27553

Landlords sued the NYC Water Board after the board approved a one-time $183 credit for 664,000 owners of one-, two-, and three-family dwellings. With this rebate, the board increased charges by 2.1 percent for fiscal year 2017 for owners of apartment houses and co-op and condo buildings. Landlords claimed that the board overstepped its authority and violated the state Public Authorities Law because owners of apartment houses and co-op and condo buildings paid a disproportionate amount of the cost of supplying water services in the city. The court ruled for landlords and suspended the water bill rebate.

The Water Board appealed and lost. The appeals court agreed that water rates for 2016-17 should continue to be frozen for all, rather than increased for multifamily customers so that single-family homeowners could get a credit, and upheld the lower court's ruling. Landlords had argued that the Water Board's actions, in this case, were beyond its authority, but even if they were not, the rate increase adopted and credit issued to some, but not all, of its customers were without a rational basis and, therefore, arbitrary. The appeals court stated, "We agree, however, with the trial court's assessment that the one-time credit adopted for some, but not all, water customers at the same time the Water Board needed to increase overall water rates to fund a projected budget shortfall for that particular year, has no rational basis."

One judge disagreed with the appeals court's decision, finding that the rate increase and one-time credit to small residence owners was neither ultra vires nor arbitrary and capricious.

- Prometheus Realty Corp. v. NYC Water Board: 2017 NY Slip Op 01263, 2017 WL 628338 (App. Div. 1 Dept.; 2/16/17; Friedman, JP, Moskowitz, Gische, Kahn [dissenting], JJ)

© 2017 by Vendome Group, LLC. Any reproduction is strictly prohibited. For more info call 800-519-3692 to visit *www.LandlordvTenant.com*
To download cases, go to *www.LandlordvTenant.com* and search by Docket, ECB, Index, or LVT #

PASSING ON APARTMENTS

Friend Who Moved Back in with Tenant Didn't Prove Succession Rights

#27549

Landlord sued to evict apartment occupant after rent-stabilized tenant died. Occupant claimed that she was a nontraditional family member who had succession rights. The trial court ruled for landlord.

Occupant appealed and lost. Although tenant and occupant may have lived together in a close relationship at one time, they had separated in 1988 and occupant lived elsewhere for 15 years. She moved back into the apartment in 2003 because she was facing eviction from her Queens apartment, but there was no evidence that she then lived with tenant in a relationship that had "emotional and financial commitment and interdependence." No friends, neighbors, or family members testified on occupant's behalf, and there was no documentary or other credible proof that occupant and tenant intermingled finances, had jointly owned property, or formalized any legal obligations. Evidence showed only that tenant and occupant were friends, roommates, and business colleagues. One of the appellate judges disagreed, finding that the 30-year relationship between tenant and occupant involved typical day-to-day family chores and responsibilities uncharacteristic of a mere friendship.

- 530 Second Ave. Co., LLC v. Zenker: 54 Misc.3d 144(A), 2017 N.Y. Slip Op. 50232(U) (App. T. 1 Dept.; 2/22/17; Schoenfeld, JP, Lowe III, Ling-Cohan [dissenting], JJ)

Tenant's Granddaughter Can't Get NYCHA Apartment

#27552

NYCHA denied granddaughter's succession rights claimed after tenant died. The granddaughter appealed and lost. While the granddaughter initially joined the household lawfully in 1989, she was no longer included in tenant's income reports by 2010. The granddaughter claimed that she continuously lived in the apartment with tenant even when her mother moved out, but proof was conflicting. Also, tenant had submitted a temporary residence request form to landlord in 2009, asking that granddaughter be allowed to move in with her and listing granddaughter's address as elsewhere. The granddaughter claimed that she brought a 2011 income affidavit and a permanent residence request form to tenant in the hospital, but tenant died there a few weeks later without completing the forms. The granddaughter didn't prove that she met the one-year residency requirement to get succession rights.

- Clark v. NYCHA: 2017 NY Slip Op 01290, 2017 WL 628241 (App. Div. 1 Dept.; 2/16/17; Richter, JP, Manzanet-Daniels, Gische, Webber, Kahn, JJ)

Trial Needed on Whether Deceased Tenant's Son Was Disabled and Entitled to Succession

#27574

Landlord sued to evict rent-stabilized tenant's son after tenant died. The son claimed succession rights. After pre-trial questioning, landlord asked the court to rule in its favor without a trial. The court ruled against landlord. Landlord proved that it owned the apartment, that tenant died in May 2014, and that tenant's son moved in with her

© 2017 by Vendome Group, LLC. Any reproduction is strictly prohibited. For more info call 800-519-3692 to visit *www.LandlordvTenant.com*

less than two years before tenant died. But tenant's son claimed that he was disabled and therefore only had to prove he lived with tenant for one year before she died.

The court found that there were questions of fact that required a trial. The son claimed that he suffered from depression and alcoholism and began receiving SSI benefits in March 2016, retroactive to September 2015. Depression may constitute a disability under federal law. Landlord argued that Rent Stabilization Code Section 2523.5(b)(4) precludes alcoholism as a grounds for finding that the son was disabled. But depression may have a separate cause than alcoholism. Landlord also argued that the son's disability didn't arise until after prior tenant died and that therefore the one-year co-residency requirement for succession by disabled family members didn't apply. However, when a tenant acquires a status while a case is pending, the tenant generally may rely on the benefits of that status. For example, a tenant is protected from eviction in owner occupancy cases when tenant accumulates 20 years of occupancy or turns 62 while the case is pending. And it was unclear whether the son's depression first manifested after tenant died. In any event, there were issues of fact concerning whether the son was disabled, and a trial was needed to determine the facts.

- Roc-Jane St. LLC v. Riffon: Index No. 67873/2015, NYLJ No. 1202778035284 (Civ. Ct. NY; 1/25/17; Stoller, J)

PETS

Tenant Didn't Prove Neighbor's Dog Was Vicious
#27588

Tenant sued neighboring tenant after neighboring tenant's dog bit tenant. Tenant claimed strict liability and negligence. The court granted neighbor's request to dismiss the negligence claim because New York law doesn't recognize a negligence claim based on injuries caused by a domestic animal. But tenant could make a claim based on strict liability if tenant proved that the dog had vicious propensities and that the neighbor knew or should have known of his dog's vicious propensities. The court granted neighbor's request to dismiss the case. Proof, including pre-trial questioning results, showed that the neighbor had the dog for six years without incident before tenant claimed that it bit her. While tenant claimed that the dog behaved aggressively toward other dogs and would bark loudly and growl, lunge, and snap at humans or animals that got close to it, this claim contradicted tenant's prior answers in a deposition as well as statements from two non-party witnesses.

- Berman v. Bowman: 54 Misc.3d 1216(A), 2017 NY Slip Op 50192(U)(Sup. Ct. Queens; 2/10/17; McDonald, J)

RENEWAL LEASES

Landlord and LINC Tenant Signed Self-Executing Renewal Lease
#27598

Landlord sued to evict tenant after tenant's lease expired and without first sending a 30-day termination notice. Landlord claimed that no prior notice was required. Tenant asked the court to dismiss the case, claiming that she had received a Living in Communities (LINC) subsidy and that she and landlord signed a lease rider giving her a self-executing renewal lease. Therefore, her lease hadn't expired. The court ruled

© 2017 by Vendome Group, LLC. Any reproduction is strictly prohibited. For more info call 800-519-3692 to visit *www.LandlordvTenant.com*

for tenant and dismissed the case. Landlord said he had received a notice from the LINC program indicating that tenant would be terminated from LINC when the lease expired. But tenant claimed she never received this notice and landlord didn't deny that he signed the lease rider that automatically entitled tenant to a self-executing renewal lease for a second year.

- Kpanou v. Green: Index No. 26593/2016, NYLJ No. 1202778475625 (Civ. Ct. Bronx; 12/19/17; Asforis, J)

RENT CONTROL COVERAGE

Rent-Controlled Apartment Can't Get Deregulated After J-51 Benefits Expire

#27543

Landlord applied for high-rent/high-income deregulation of tenant's rent-controlled apartment in 2011, 2013, 2014, and 2016. The DRA ruled against landlord because the building previously received J-51 tax benefits and rent-controlled apartments continue to be exempt from luxury deregulation after J-51 benefits expire. Landlord appealed and lost. the DHCR was obligated to follow the 2014 decision of an appeals court in the case of *Matter of RAM 1 LLC v. DHCR.* Unlike the Rent Stabilization Law, there is nothing in the Rent Control Law that provides for the resumption of the availability of high-income rent deregulation after J-51 tax benefits have expired.

- Regina Metropolitan Co. LLC: DHCR Adm. Rev. Docket Nos. ER420051RO/ES420022RO (1/27/17) [4-pg. doc.], ER420053RO (1/27/17) [4-pg. doc.], ES420024RO (1/26/17) [4-pg. doc.]

Rent-Controlled Tenant Not Subject to Deregulation After J-51 Benefits End

#27582

Landlord applied for high-rent/high-income deregulation of tenant's rent-controlled apartment in 2016. The DRA ruled against landlord because, as a matter of law, the apartment remained exempt from high-rent/high-income deregulation after J-51 tax benefits expired. Landlord appealed and lost. In the case of *RAM I LLC v. DHCR,* the First Department appeals court had ruled that the governing statute concerning the effect of J-51 benefit expiration was different for rent-controlled and rent-stabilized tenants. Under Rent Control Law Section 26-403(e)(2)(j), high-income rent deregulation exemption from rent control isn't available for apartments in buildings that had received J-51 benefits.

- Regina Metropolitan Co. LLC: DHCR Adm. Rev. Docket No. ES420026RO (1/4/17) [4-pg. doc.]

RENT OVERCHARGE

Tenant Must Refund $54,000 Overcharge to Subtenant

#27581

Subtenant complained of rent overcharge against tenant and landlord, and claimed that there was an illusory tenancy. The DRA ruled for subtenant in part, finding that tenant overcharged subtenant by $54,000, including triple damages. But there was no proof of an illusory tenancy. Subtenant appealed and lost. Landlord didn't profit from tenant's overcharge of subtenant. Here, subtenant paid rent to tenant's daughter.

© 2017 by Vendome Group, LLC. Any reproduction is strictly prohibited. For more info call 800-519-3692 to visit *www.LandlordvTenant.com*

Landlord received rent from tenant and had no reason to believe that tenant didn't occupy the apartment. Landlord wasn't treating subtenant as a tenant.

- Riggin: DHCR Adm. Rev. Docket No. ES410063RT (1/19/17) [4-pg. doc.]

Landlord Submitted Sufficient Proof of Individual Apartment Improvements
#27564

Rent-stabilized tenant complained of rent overcharge. The DRA ruled against tenant, who appealed and lost. The DRA found that the base date rent was legal and that landlord was entitled to a vacancy increase for tenant along with an increase for individual apartment improvements (IAIs). Since landlord charged less than the legal rent on the base date, that became the legal rent, but there was no subsequent overcharge. Tenant claimed that IAIs weren't done, but landlord submitted sufficient proof of the kitchen and bathroom work, including invoices and cancelled checks. Statements from former tenants concerning IAIs that tenant submitted with his PAR couldn't be considered.

- Rodriguez: DHCR Adm. Rev. Docket No. ER-210011-RT (11/21/16) [7-pg. doc.]

Landlord and Tenant Disagree on Whether Rent Was Frozen
#27547

Tenant complained of rent overcharge. She claimed that landlord failed to lower her rent in compliance with outstanding rent reduction orders and pointed out that she received DRIE benefits. The DRA ruled for tenant. Landlord appealed and won, in part. Despite tenant's claims to the contrary, landlord said that it did freeze tenant's rent. The DHCR found no proof of overcharge payments and sent the case back to the DRA to reconsider all proof of what rent was paid.

- Arym Equities LLC: DHCR Adm. Rev. Docket No. ET210060RO (1/5/17) [3-pg. doc.]

DHCR Must Apportion Overcharge Award Between Tenant and SCRIE Program
#27562

Rent-stabilized tenant complained of rent overcharge. The DRA ruled for tenant and ordered landlord to refund $11,770 to tenant. Landlord appealed and argued that the DRA failed to apportion the rent refund between tenant and the NYC Department of Finance (DOF), which subsidized tenant's rent under the SCRIE program. The DHCR ruled against landlord, who then filed an Article 78 appeal. The court sent the case back to the DHCR, ruling that the DHCR must apportion any rent overcharge attributable to rent payments by tenant and that covered by SCRIE benefits. The DHCR sent the case to the DRA to issue a new order incorporating the apportionment.

- Rego Estates: DHCR Adm. Rev. Docket No. EV110002RP (11/15/16) [3-pg. doc.]

© 2017 by Vendome Group, LLC. Any reproduction is strictly prohibited. For more info call 800-519-3692 to visit *www.LandlordvTenant.com*

DHCR Default Formula Applied to Set Base Date Rent

#27545

Rent-stabilized tenant complained of rent overcharge. The DRA ruled for tenant and ordered landlord to refund $34,000, including triple damages and interest. The DRA used the default formula to set the base date rent because landlord didn't submit a base date lease.

Landlord appealed and lost. Landlord argued that the DRA incorrectly applied the default formula. But the DHCR found that the DRA properly applied the default formula set forth in Rent Stabilization Code Section 2522.6. Rent registration data for the base date couldn't be relied on alone to determine the base rent. And the registered rents in this case weren't reliable. The base date rent registration matched a prior lease listing a rent of $914.70. But subsequent annual rent registrations didn't corroborate the base date rent. The figures presented by landlord as lawfully following the alleged base date rent also didn't correlate with the rents listed on subsequent registrations. So the registrations couldn't be used to prove the rent history during the four years since the base date. There also was no proof of the individual apartment improvements landlord claimed were made, and landlord submitted no rent ledgers.

- 1326 Riverside Dr. LLC: DHCR Adm. Rev. Docket No. ES410055RO (1/4/17) [7-pg. doc.]

DHCR Won't Consider Complaint of Tenant Who Already Started Court Case

#27560

Tenant complained to the DHCR of rent overcharge, claiming that landlord gave him a nonregulated lease in violation of the Rent Stabilization Law. The DRA dismissed the complaint because tenant already had started a pending complaint against landlord in State Supreme Court. Tenant appealed and lost. Tenant filed the rent overcharge complaint three years before he filed his DHCR complaint. That complaint was still pending, and there was no indication that the Court had stayed that case or stated that it would defer to the DHCR. So it was reasonable for the DRA to terminate this case because tenant filed the Court complaint first. Tenant's claim that the Court won't fairly judge his complaint based on its interim rulings to date wasn't grounds for the DHCR to decide the claim.

- Johnson: DHCR Adm. Rev. Docket No. ER410050RT (12/2/16) [3-pg. doc.]

Rent of Stabilized Tenant Who Was Given No Lease Was Properly Set

#27573

Tenant complained of rent overcharge. He moved into the apartment in 2011 at a monthly rent of $1,550 but never received a lease. In 2014, landlord increased tenant's rent to $1,670. The DRA ruled for tenant and ordered landlord to refund $93,670, including triple damages. Landlord appealed and lost. Since prior tenant's last rent was $955 and landlord didn't give tenant a vacancy lease when he moved in, tenant's legal rent was $955, not $1,550. Landlord waived the right to collect a vacancy increase as well as any increase for individual apartment improvements. Since the apartment was vacant on the base rent date four years before tenant filed his complaint, the DRA also reasonably set the legal rent at the amount paid by the last tenant before

© 2017 by Vendome Group, LLC. Any reproduction is strictly prohibited. For more info call 800-519-3692 to visit *www.LandlordvTenant.com*

the vacancy and froze the rent at that amount. It didn't matter that landlord registered tenant's rent at $1,550.

- Bedeau Realty Corp.: DHCR Adm. Rev. Docket No. EV210052RO (1/4/17) [6-pg. doc.]

Landlord Had No Acceptable Proof of Individual Apartment Improvements #27571

The DHCR's Tenant Protection Unit (TPU) filed a rent overcharge complaint after landlord responded insufficiently to TPU's audit of individual apartment improvement (IAI) rent increases for tenant's apartment. The DRA ruled for tenant and ordered landlord to refund $101,000, including triple damages. Landlord appealed and lost. Landlord claimed it spent $26,000 for labor in connection with IAIs. But the only proof submitted was a sworn statement signed after-the-fact. This wasn't substantial proof of the labor cost. In addition, much of landlord's proof of IAI costs was for work done on three apartments with insufficient proof of which work was performed in each apartment. And, since no IAI rent increase was proved, the DRA properly found the overcharge to be willful.

- Sha Realty, LLC: DHCR Adm. Rev. Docket No. EP210025RO (1/25/17) [4-pg. doc.]

DHCR Must Re-examine Overcharge Claim for Fraud #27548

Tenant complained of rent overcharge. The DRA ruled for tenant, finding that the base date rent was $1,800 per month, that there was no reason to review rental events pre-dating the base date, and that the total rent overcharge was $963 plus interest due to landlord's failure to offer a valid initial lease. Tenant appealed, claiming that landlord engaged in a fraudulent scheme to deregulate the apartment and that the overcharge was willful. The DHCR ruled against tenant, who then filed an Article 78 court appeal.

The court ruled for tenant and sent the case back to the DHCR for further consideration. The court found that the prior landlord, without having applied to destabilize the apartment, simply stopped filing rent registrations with the DHCR. This was enough to show a colorable claim of a fraudulent scheme to remove the apartment from rent stabilization. The DHCR sent the case back to the DRA and noted that refund of the previously determined overcharge was stayed pending the DRA's decision.

- Drosdeck: DHCR Adm. Rev. Docket No. EX210003RP (1/12/17) [3-pg. doc.]

Landlord Didn't Raise Judicial Sale Claim Before the DRA #27563

Rent-stabilized tenant complained of rent overcharge. The DRA ruled for tenant, used the default method based on an incomplete rent history, and ordered landlord to refund $30,450, including triple damages. Landlord appealed and lost. Landlord pointed out that it had purchased the building after a judicial sale and therefore shouldn't be responsible for overcharges it didn't collect or be subject to triple damages. But landlord didn't submit the referee's deed it now relied on to the DRA and didn't raise the judicial sale or foreclosure argument before the DRA. Landlord also

© 2017 by Vendome Group, LLC. Any reproduction is strictly prohibited. For more info call 800-519-3692 to visit *www.LandlordvTenant.com*

didn't submit any reasonable excuse for failing to raise this issue before the DRA, and the DHCR couldn't consider new evidence on appeal. The DRA correctly applied the default formula because landlord didn't submit proof of the base date rent in the form of either a lease or rent ledger.

- W 1881 LLC: DHCR Adm. Rev. Docket No. ER110006RO (11/29/16) [6-pg. doc.]

Landlord Refunded Overcharge and Filed Missing Registrations #27546

Unregulated tenant complained of rent overcharge. The DRA ruled for tenant and ordered landlord to refund $5,355. Since landlord had already refunded more than that amount to tenant, no money was due to tenant. Tenant appealed and lost, claiming that there was fraud and that there should have been triple damages. But the DHCR found that landlord investigated in response to the complaint, admitted that the apartment was rent stabilized, froze the rent at the base date rent until late registrations were filed, and made a refund to tenant that was more than the overcharge plus interest. This showed that landlord wasn't attempting to fraudulently deregulate the apartment and rebutted the presumption of willfulness.

- Thurlow: DHCR Adm. Rev. Docket No. DX410030RT (1/11/17) [9-pg. doc.]

Landlord Didn't Answer Rent Overcharge Complaint #27561

Rent-stabilized tenant complained of rent overcharge. Her initial rent was $1,400 per month, and she claimed prior tenant paid $836 per month. The DRA ruled for tenant and ordered landlord to refund $72,000, including triple damages. Landlord appealed and lost. Landlord didn't respond to two requests for rent history records or to a final notice of triple damages. Landlord submitted rent history documents with its PAR, claiming individual apartment improvements (IAIs) costing $8,100 had been performed before tenant moved in and that a longevity increase should be granted since prior tenant lived in the apartment for 29 years. But landlord didn't submit any proof of the rent history going back to the base date while the complaint was pending before the DRA. So the DHCR couldn't consider it for the first time on appeal. The DRA correctly set the base rent at $750 using the statutory default formula, which freezes the rent from the base date. Imposition of the default rent formula also presumes that the overcharge was willful.

- B-Emet Realty Corp.: DHCR Adm. Rev. Docket No. ET610053RO (11/7/16) [4-pg. doc.]

Landlord Properly Collected Renewal Lease Increases #27572

Tenants complained to the DHCR of rent overcharge in 2012 and claimed that landlord failed to properly register the apartment. They claimed they moved into the apartment in 1992 under a fraudulent lease. They also claimed that landlord failed to properly file an amended initial registration form although directed to do so in a 1996 DHCR decision. Landlord pointed out that, in a 2013 nonpayment proceeding against tenants, the housing court had ruled that even if landlord hadn't served or filed the amended RR-1, this didn't bar landlord from collecting the lawful rent upon lease

© 2017 by Vendome Group, LLC. Any reproduction is strictly prohibited. For more info call 800-519-3692 to visit *www.LandlordvTenant.com*

renewal. The DRA ruled that the housing court had already resolved the overcharge claim but ordered landlord to amend a renewal lease that commenced on Dec. 1, 2012, but had been offered late on Nov. 15, 2013. The DRA said that the renewal lease should reflect a commencement date of March 1, 2014, and that any rent increase collected before that date should be refunded. Landlord and tenants both appealed. The DHCR found that the DRA had correctly ordered amendment of the renewal lease. And the housing court had resolved the overcharge claim and its decision was affirmed on appeal.

- Ordway Holdings, LLC/Pugmire: DHCR Adm. Rev. Docket Nos. EO410042RO, EO410059RT (1/26/17) [10-pg. doc.]

RENT REDUCTION DENIED

Rent Reduction for Minor Condition Tenants Didn't Complain About Was Revoked

#27559

(Decision submitted by Larry L. Rukaj of the Paramus, N.J., law firm of Larry L. Rukaj & Associates, Inc., attorney for the landlord.)

Rent-stabilized tenants complained of a reduction in building-wide services. The DRA ruled for tenants in part, finding that the paint/plaster above the window by the lobby entrance door wasn't maintained. The DRA reduced tenants' rents. Landlord appealed, arguing that tenants didn't complain about that condition and that it was, at any rate, *de minimis.* Landlord also said that the DHCR waited almost a year after inspection to issue its rent reduction order, which was unfair to landlord. The DHCR ruled against landlord, who then filed an Article 78 court appeal.

The court sent the case back to the DHCR for reconsideration. The DHCR then ruled for landlord and revoked the rent reduction. Rent Stabilization Code Section 2523.4(e)(17) included as a *de minimis* condition "isolated or minor areas where paint or plaster is peeling; or other similarly minor areas requiring repainting; provided there are no active water leaks." The DHCR also agreed that tenants didn't specifically complain about this condition, and landlord had repaired it.

- C.E.Y. Realty Assoc., LLC: DHCR Adm. Rev. Docket No. EU430006RP (2/16/17) [3-pg. doc.]

RENT REDUCTION ORDERED

Landlord Didn't Maintain Smoke and CO Detectors in Public Areas

#27569

Rent-stabilized tenant complained of a reduction in building-wide services, claiming that carbon monoxide detectors and smoke detectors on the building's first floor weren't maintained. The DRA ruled for tenant and reduced his rent. Landlord appealed and lost. Landlord argued that the NYC Administrative Code required these devices only in apartments, not in the building's public areas. But, since landlord provided these detectors in the first-floor hallway, they were a required service under rent stabilization that the owner had to maintain.

- 361 East 50th St., LLC: DHCR Adm Rev. Docket No. ER420022RO (1/13/17) [2-pg. doc.]

© 2017 by Vendome Group, LLC. Any reproduction is strictly prohibited. For more info call 800-519-3692 to visit www.LandlordvTenant.com
To download cases, go to www.LandlordvTenant.com and search by Docket, ECB, Index, or LVT #

Landlord Relocated Laundry Rooms to Basement Without DHCR Approval
#27570

Rent-stabilized tenants complained of a reduction in building-wide services, after landlord moved laundry room service from each floor in the building to the common basement area. The DRA ruled for tenants and reduced their rents. Landlord appealed and lost. The relocation of the laundry room service on each floor to the basement location was a modification of required services made without any filing by landlord of an application to the DHCR for permission to do so.

- HFZ Capital Group: DHCR Adm. Rev. Docket No. ER410112RO (1/13/17) [3-pg. doc.]

Landlord Changed Heat Delivery System Without DHCR Approval
#27568

Rent-stabilized tenant complained of a reduction in services because landlord had eliminated heating in tenant's bathroom. Because landlord had installed new heating and cooling units in the wall, tenant now paid Con Edison for that heating. The DRA ruled for tenant and reduced his rent. Landlord appealed and lost. Landlord changed the mode of heat delivery to tenant's apartment without first filing an application with the DHCR for permission to modify required services. The fact that landlord filed such application, now pending, three months after tenant complained of reduced services didn't matter.

- Pelham 1540, LLC: DHCR Adm. Rev. Docket No. EU610032RO (1/31/17) [3-pg. doc.]

RENT STABILIZATION COVERAGE

Apartment Became Subject to Deregulation After J-51 Tax Benefits Ended
#27551

Landlord applied to the DHCR for high-rent/high-income deregulation of tenant's rent-stabilized apartment. Tenant claimed that he wasn't subject to high-rent/high-income deregulation because the building previously received J-51 tax benefits. The DHCR ruled for landlord and deregulated the apartment.

Tenant appealed and lost. The court and appeals court found that the DHCR correctly determined that the apartment continued to be subject to high-rent/high-income deregulation after the expiration of J-51 tax benefits because the building was already rent stabilized before receipt of the J-51 benefits. Landlord wasn't required to serve a J-51 rider on tenant with leases to trigger reversion of his rent-stabilized apartment to the original rent-regulation scheme that it was governed by. When J-51 expires, applicable statutes expressly provide for different treatment of apartments that were regulated before the receipt of J-51 tax benefits and those that became rent stabilized solely because of the J-51 benefits.

- Bramwell v. DHCR: 2017 NY Slip Op 01276, 2017 WL 628284 (App. Div. 1 Dept.; 2/16/17; Friedman, JP, Mazzarelli, Andrias, Feinman, Gesmer, JJ)

© 2017 by Vendome Group, LLC. Any reproduction is strictly prohibited. For more info call 800-519-3692 to visit *www.LandlordvTenant.com*

Building Was Rent Stabilized Due to Illegal Sixth Apartment
#27595

Landlord sued to evict month-to-month tenant and claimed that the building was unregulated because it contained fewer than six apartments. Tenant claimed that the building had six apartments and that she therefore was rent stabilized. The court ruled for tenant and dismissed the case. The building's Certificate of Occupancy stated that the building was a five-unit residential family building. But tenant produced documentation and testified credibly that she had been in each of the building's six apartments. And the property manager testified inconsistently that the ground-floor rear apartment was a storage unit but also that it was a residential unit. Landlord didn't rebut the tenant's proof of six apartments. The use of an illegal unit as a residential unit created six apartments, and therefore tenant was rent stabilized.

- Boreland v. Blackwood: Index No. 90899/15, NYLJ 1202778475567 (Civ. Ct. Kings; 1/6/17; Stanley, J)

Building Was Converted from Commercial to Residential in 1999
#27577

Landlord sued to evict unregulated tenant, who claimed that he was rent stabilized. Landlord claimed that the building was exempt from rent stabilization due to substantial rehabilitation in 1999 that converted the building from an empty warehouse lacking even the means to access the space above the ground floor into a residential building. The court ruled for landlord. Tenant appealed and lost. Landlord had submitted substantial proof that the building was converted from purely commercial to 23 apartments between 1999 and 2003. A residential Certificate of Occupancy was issued in 2005. Rent Stabilization Code Section 2520.11(e)(8) permits, but does not require, landlord to obtain a prior opinion from the DHCR as to whether work qualifies as a substantial rehabilitation.

- 885 Park Avenue Brooklyn, LLC v. Goddard: Index No. 1976/2014, NYLJ No. 1202779859195 (App. T. 2 Dept.; 2/10/17; Weston, JP, Solomon [dissenting in part], Elliot, JJ)

Apartments Occupied by Nonprofit Not Exempt from Stabilization
#27575

Landlord sued to evict tenant from four rent-stabilized apartments in the same building, after refusing to renew tenant's leases. Landlord claimed that the apartments were exempt from rent stabilization because they were rented to a corporate entity not as a primary residence. The court and appeals court dismissed the cases without prejudice because landlord's notices stated insufficient facts to support the claims and misrepresented the rent regulatory status of the apartments. Landlord then started new eviction proceedings after sending 30-day termination notices for the apartments, which stated that the apartments weren't rent stabilized because the apartments had been rented to tenant for occupancy by persons affiliated with tenant's nonprofit purposes. The court again dismissed the cases based on the prior dismissals.

Landlord appealed and lost. The lower court incorrectly dismissed the cases on res judicata grounds. But the cases were correctly dismissed for a different reason. Rent Stabilization Code Section 2520.11(f) exempts from rent stabilization apartments rented by a nonprofit institution operated exclusively for charitable or educational purpos-

© 2017 by Vendome Group, LLC. Any reproduction is strictly prohibited. For more info call 800-519-3692 to visit *www.LandlordvTenant.com*

es and occupied by a tenant whose initial occupancy is contingent upon an affiliation with the institution. That provision didn't apply in this case since the apartments were occupied by the institution, not by affiliated tenants.

- 2363 ACP Pineapple, LLC v. Iris House, Inc.: Index No. 570573/16, NYLJ No. 1202779859877 (App. T. 1 Dept.; 2/22/17; Lowe III, PJ, Schoenfeld, Gonzalez, JJ)

Did Landlord Fraudulently Deregulate Apartment?
#27558

Landlord sued to evict tenant for nonpayment of rent and asked the court to rule without a trial. The court ruled against landlord, finding that there were questions requiring a trial as to whether a fraudulent scheme to destabilize the apartment tainted the reliability of the base date rent. Landlord appealed and lost. Landlord had increased the 1997 rent of $1,551 to over $8,000 in later years, offered tenant a free-market lease in 2005 at a rent of $8,750 while landlord was receiving J-51 tax benefits for the building, and failed to file annual rent registrations for the first several years of that tenancy. For the first time on appeal, landlord claimed that a rent increase was warranted based individual apartment improvements or an undisclosed vacancy prior to the current tenancy. These claims couldn't be considered for the first time on appeal and, if they were, only created additional issues of fact requiring trial.

- 305 Riverside Corp. v. Sandlow: 54 Misc.3d 143(A), 2017 NY Slip Op 50215(U) (App. T. 1 Dept.; 2/17/17; Lowe III, PJ, Schoenfeld, Gonzalez, JJ)

Tenant's Failure to Answer Luxury Deregulation Application Excused
#27539

Landlord applied in 2013 for high-rent/high-income deregulation of rent-stabilized tenant's apartment. The DRA ruled for landlord based on tenant's failure to respond to the notice of the application.

Tenant appealed, and the case was reopened. Tenant claimed that his income was below the deregulation threshold and submitted copies of his 2011 and 2012 tax returns. He also argued that he had been disabled by lung disease since 2013. He said that his disability impaired his concentration and his ability to sort out financial issues. The DHCR ruled for tenant and reopened the case. Two doctors submitted documents supporting tenant's claim concerning numerous serious physical and mental medical issues that affected tenant's mental capacity and memory. Although landlord questioned why tenant's wife couldn't have answered the deregulation petition notice, the DHCR found that tenant showed good cause to excuse his default. The case was sent back to the DRA to confirm whether tenant's income was below the deregulation threshold.

- Levy: DHCR Adm. Rev. Docket No. ER410069RT (1/24/17) [5-pg. doc.]

Tenant Didn't Receive J-51 Rider with Every Renewal Lease
#27580

Tenant complained of rent overcharge. Landlord argued that tenant was no longer rent stabilized after the expiration of the building's J-51 tax benefits in 1996, and that tenant's initial and relevant renewal leases included a rider notifying tenant that the

© 2017 by Vendome Group, LLC. Any reproduction is strictly prohibited. For more info call 800-519-3692 to visit *www.LandlordvTenant.com*
To download cases, go to *www.LandlordvTenant.com* and search by Docket, ECB, Index, or LVT #

apartment would be deregulated after J-51 benefits expired. The building was constructed after Jan. 1, 1974. The DRA ruled for tenant, finding that tenant remained rent stabilized because landlord didn't include J-51 lease riders in all of tenant's renewal leases. The DRA also found a rent overcharge.

Both sides appealed. Landlord claimed that the DHCR shouldn't examine leases issued more than four years before the complaint was filed. But, for purposes of whether tenant received adequate notices concerning the expiration of J-51 benefits, the four-year rule didn't apply. The DRA properly found that the apartment remained rent stabilized until tenant moved out. Tenant argued that his rent should have been rolled back to the last registered rent in 1998. But the DHCR ruled that the filing of an improper exit registration in 1999 didn't by itself trigger a freezing of the collectible rent back to 1998. There also was no evidence of fraud in this case.

- Kostic/Amdar Company, LLC: DHCR Adm. Rev. Docket Nos. EN410023RT, EN410025RO (1/11/17) [6-pg. doc.]

Tenant's Failure to Verify Income Before Rent Administrator Excused
#27594

Landlord applied in 2011 for high-rent/high-income deregulation of tenant's rent-stabilized apartment. The DRA ruled for landlord based on tenant's failure to answer the DHCR's notice of the application or to provide required income verification information, despite several requests. Tenant appealed and claimed that she was unable to file tax returns for the years in question due to her employer's protracted closing and that, once these issues were resolved, she had now filed 2009 and 2010 NYS income tax returns. The DHCR ruled against tenant, who then filed an Article 78 court appeal. The court sent the case back to the DHCR for further consideration. The DHCR then remanded the case to the DRA to further consider the merits of whether the apartment qualified for high-income rent deregulation.

- Barry: DHCR Adm. Rev. Docket No. FM410004RP (2/13/17) [4-pg. doc.]

Apartment Wasn't Rent Stabilized After Owner Occupancy
#27544

Tenant complained of rent overcharge. The DRA ruled against tenant, finding that tenant moved in after vacancy deregulation and that the apartment therefore wasn't rent stabilized.

Tenant appealed and lost. The DRA looked at records before the four-year base date and properly found that there was no fraud shown that would permit consideration of older rent history records to determine an overcharge. The apartment was owner occupied for several years. The first tenant after that temporary exemption, who was the prior tenant, was charged $2,250 per month starting in March 2007. At that time Rent Stabilization Code Section 2526.1 provided for the first rent to be set after temporary exemption by agreement between landlord and tenant. Since that rent was over the deregulation threshold, the rent was properly deregulated. So the next tenant, who was the complaining tenant, wasn't rent stabilized.

The DRA also correctly declined to further investigate other pre-base date rental events. The fact that landlord registered the apartment as vacant from 2003 to 2006

© 2017 by Vendome Group, LLC. Any reproduction is strictly prohibited. For more info call 800-519-3692 to visit www.LandlordvTenant.com

and then later claimed that the apartment was owner occupied for part of that time wasn't proof of fraud. Either way, the apartment wasn't occupied by rent-stabilized tenants during that time. Landlord's nephew also submitted a sworn statement that he lived in the apartment during the time in question, and tenant presented no contrary evidence.

- Healy: DHCR Adm. Rev. Docket No. ER410062RT (1/24/17) [6-pg. doc.]

Landlord Can't Prove Apartment Became Deregulated After 1993 Fire
#27542

Landlord asked the DHCR to determine whether tenant's apartment was rent stabilized, arguing that the apartment should be exempt. Landlord claimed that: (1) the apartment was vacant from 1993 to 2003 following a fire; (2) the apartment was substantially rehabilitated at a cost of $32,000 in 2003; (3) the building was uninsured at the time of the fire; (4) therefore no insurance proceeds were obtained or used to fix the apartment; and (5) the apartment was first rented after the fire in 2004. In March 2004, landlord gave new tenant a deregulated two-year lease at a monthly rent of $2,000 with a preferential rent of $800. Tenant responded that landlord fraudulently deregulated the apartment. The DRA ruled against landlord, finding that the building was rent stabilized and that there was no high-rent vacancy deregulation of tenant's apartment.

Landlord appealed and lost. While it was the DHCR's long-standing policy that the cost of individual apartment improvements (IAIs) made to an apartment based on fire damage can't be passed on to tenants, that policy applied where insurance proceeds were used to pay for the IAIs. But there was proof in HPD complaints filed in 1996 and 2016 that a tenant was living in the apartment after the fire. The DHCR annual rent registrations for 2003–2006 showed the legal rent as $800-$850. The 2009 registration listed the legal rent as $1,200, and the 2009 registration listed the apartment as exempt at a legal rent of $2,000 with expired J-51 benefits. The current legal rent for the apartment would be determined in a pending rent overcharge complaint filed by tenant.

- McDavid: DHCR Adm. Rev. Docket No. EU210015RO (1/13/17) [4-pg. doc.]

REQUIRED SERVICES

Replacement of Intercom System Requires Telephone Landlines
#27591

Landlord asked the DHCR for permission to replace a traditional wired intercom system with a modernized telephone-based intercom system. The DRA ruled for landlord on condition that, in order to offset costs to rent-regulated tenants of maintaining landline telephones to use with the new system, legal rents were reduced by $15 per month.

Landlord appealed and lost. Landlord argued that it was an error for the DRA not to notify landlord during processing that the rent reduction would be a condition to approval. The DHCR noted that, while not specifically spelled out by the Rent Stabilization Code, the DHCR's standard policy for intercom changeovers to a telephone-based system required touch-tone landline phones along with a permanent rent reduction to offset the basic cost for maintenance of the landline. Landlord also stated

© 2017 by Vendome Group, LLC. Any reproduction is strictly prohibited. For more info call 800-519-3692 to visit *www.LandlordvTenant.com*

that it was in the process of reverting back to the old intercom system. If so, the DHCR stated that landlord must now submit a new service modification application based on the reconversion of the intercom system.

- Claflin Apartments LLC: DHCR Adm. Rev. Docket No. EU610048RO (2/24/17) [3-pg. doc.]

Landlord Can't Discontinue Laundry Service Provided by Contractor
#27567

Tenants complained of a reduction in building-wide services based on various conditions, including discontinuation of laundry room service, front door key access removal, and removal of hallway emergency lighting and smoke/carbon monoxide detectors. The DRA ruled for tenants on some claims and reduced their rents.

Landlord and tenants both appealed. Landlord argued that smoke and carbon monoxide detectors weren't required in the building's first-floor common area. The DHCR noted that, this was true but that, since landlord had provided those detectors there, they became a required service. The DRA found that discontinuance of laundry room service to be *de minimis* because it hadn't been maintained for over 30 years. But tenants showed that the service was discontinued in 2014. Although the laundry room service was provided by an outside contractor, the contractor didn't discontinue the service. It was discontinued due to landlord's actions. So landlord must restore that service.

- Various Tenants of 361 East 50th St./361 East 50th St., LLC: DHCR Adm. Rev. Docket Nos. DV430028RT, DW430005RO (1/13/17) [7-pg. doc.]

SECURITY DEPOSITS

Landlord Can Deduct Cost of Trash Removal from Security Deposit
#27579

Former tenant sued landlord for return of $3,500 security deposit. Landlord claimed that tenant owed landlord money for damaging the apartment. The court's arbitrator ruled for landlord in part. Tenant left 19 bags of recyclable refuse in the apartment when he moved out, and the apartment wasn't in broom-swept condition. The parties agreed that landlord could deduct $425 for garbage removal and cleaning. Landlord also got $50 for repair of one hole in a wall. But landlord couldn't withhold $1,551 for spackling and painting the walls since landlord failed to prove damages beyond normal wear and tear.

- Truong v. 10 Yue 2015, Inc.: Index No. 1743/2016, NYLJ No. 1202779037113 (Civ. Ct. Queens; 2/15/17; Frederick, Arb.)

SUBLETTING

Landlord's Claim of Illegal Subletting Wasn't Supported by Allegation of Facts
#27587

Landlord sued to evict rent-stabilized tenant for subletting or assigning his apartment without landlord's permission. Tenant asked the court to dismiss the case, arguing that landlord's termination notice was insufficient. The court ruled for tenant and

© 2017 by Vendome Group, LLC. Any reproduction is strictly prohibited. For more info call 800-519-3692 to visit *www.LandlordvTenant.com*

dismissed the case, finding the termination notice to be too broad and generic. While lack of a lease nonrenewal notice didn't bar landlord from seeking eviction for subletting without permission, landlord's termination notice failed to allege specific facts in support of its claim. The termination notice was dated two days after the cure date listed in landlord's prior notice to cure and didn't state any facts in support of landlord's conclusion that tenant continued to illegally sublet the apartment when the cure period ended.

- 76 West 86th St. Corp. v. Junas: 45 NYS3d 921, 2017 NY Slip Op 27027 (Civ. Ct. NY; 2/7/17; Weisberg, J)

No Illusory Tenancy Found in Connection with Tenant's Illegal Sublet
#27585

Landlord sued to evict tenant and subtenant for tenant's illegal subletting. The subtenant claimed illusory tenancy. The court ruled for landlord, finding that tenant and subtenant participated in a scheme to hide the sublet from landlord. Tenant and subtenant appealed and lost. They had claimed that subtenant was tenant's roommate, which caused landlord to settle a prior illegal sublet case against tenant. Neither of them informed landlord that tenant moved out. Also, rent was paid from a joint account bearing both tenant's and subtenant's names, although the account was funded and used primarily by subtenant. Tenant also continued to sign renewal leases for the apartment. Evidence supported the court's finding that landlord didn't have actual or constructive knowledge of the sublet, and tenant didn't engage in profiteering.

- 68-74 Thompson Realty LLC v. Heard: 54 Misc.3d 144(A), 2017 NY Slip Op 50238(U) (App. T. 1 Dept.; 2/23/1; Lowe III, PJ, Shoenfeld, Gonzalez, JJ)

Landlord's Notices of Illegal Sublet Were Insufficient to Support Eviction Petition
#27596

Landlord sued to evict tenant for illegal subletting. Tenant asked the court to dismiss the case, arguing that landlord's notice to cure and termination notice were insufficient. The court ruled for tenant and dismissed the case. Landlord's notices each cited only one date where the building super observed sublet activity. While landlord's sworn statement submitted in opposition to tenant's dismissal request contained many more details regarding the sublet, these weren't included in the predicate notices and defective notices can't be cured.

- Zara Realty Holding Corp. v. Santos: Index No. 73383/16, NYLJ 1202778231347 (Civ. Ct. Queens; 1/17/17; Ressos, J)

© 2017 by Vendome Group, LLC. Any reproduction is strictly prohibited. For more info call 800-519-3692 to visit *www.LandlordvTenant.com*
To download cases, go to *www.LandlordvTenant.com* and search by Docket, ECB, Index, or LVT #