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RENT STABILIZATION

Courts Tackle HSTPA Issues


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The New York State Legislature enacted the Housing Stability and Tenant Protection Act (L. 2019, ch 36) (HSTPA) on June 14, 2019. Notwithstanding the raging philosophical policy debates as to the wisdom of the statute, courts must now go about the mundane business of applying the statute to new and pending cases. Some of those recent decisions are discussed below.

When is an Overcharge Complaint "Pending?"

HSTPA Part F amends RSL §26-516, which governs claims of rent overcharge. Section 7 of Part F states in relevant part:

This act shall take effect immediately and shall apply to any claims pending or filed on or after such date.

The question of when an overcharge claim is "pending" was addressed in *315 Jefferson LLC v. Antonio*, 2019 WL 3884587 (Civ. Ct., Kings County). There, in response to the landlord's non-payment proceeding, the tenant moved for summary judgment on his counterclaim for rent overcharge. On May 9, 2019, Housing Court Judge Kenneth Barany denied the tenant's motion for summary judgment, and granted the landlord summary judgment on the rent overcharge issue.

Following passage of the HSTPA, the tenant moved for renewal. The tenant asserted that under the expanded lookback period set forth in the HSTPA, the scope of inquiry had widened with respect to tenant's rejected claim that the landlord had engaged in a "fraudulent scheme."

Judge Barany denied renewal in a decision issued on Aug. 7, 2019, holding that the tenant's counterclaim for rent overcharge "was not *pending* at the time of the HSTPA enactment, having already been dismissed by this court." The court added:

> Notwithstanding the raging philosophical policy debates as to the wisdom of the statute, courts must now go about the mundane business of applying the statute to new and pending cases.

> To hold otherwise would give the HSTPA unintended retroactive effect notwithstanding that the prior decision of this court was decided based on the law existing at the time.

The same issue arose in *400 E 58 Owner LLC v. Herrnson*, L&T Index No. 771000/18 (Civ. Ct. New York County), also decided on Aug. 7, 2019. In *400 E 58,* the Court (Ortiz, H.C.J.) dismissed the tenant's counterclaim for overcharge on June 13, 2019, the day before the HSTPA was enacted. As in *315 Jefferson*, the tenant moved for renewal, arguing that the HSTPA's expanded lookback period allowed the tenant to establish his overcharge claim. The court denied the tenant's motion, stating:

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). This Court dismissed the 'rent overcharge' issue in a decision dated June 13, 2019.

The court reached a different conclusion in *SF 878 E. 176th LLC v. Grullon,* 2019 WL 2896677 (Civ. Ct. Bronx County). There, the landlord and the *pro-se* tenant settled a non-payment proceeding on June 11, 2018 pursuant to a *so-ordered* stipulation, whereby the tenant agreed to pay certain sums. The landlord thereafter sought to restore the proceeding to the court's calendar based on the tenant's failure to comply with the stipulation. Additional stipulations followed.

Following the enactment of the HSTPA, the tenant (now represented by counsel) moved to vacate the stipulation, arguing that she believed that she had been overcharged. She also sought

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to amend her answer. The landlord, *inter alia*, argued that the stipulation should be enforced.

The court (Garland, H.C.J.), vacated the stipulation, although there was no evidence of collusion, mistake, accident, fraud, or surprise. Instead, the court appeared to hold that based on the HSTPA, the tenant's overcharge complaint—which was now more viable—should be determined on the merits:

> Under the law as it stood before June 14, 2019, although the charging of a preferential rent may have permitted Respondent to look back beyond the four years preceding her complaint of an overcharge, this Court had questions about whether Respondent had met her burden of showing a fraudulent scheme to deregulate the apartment which would then allow further inquiry. The law has changed. Courts are now being given greater latitude in investigating claims of overcharge such that a showing of fraud is not necessary so long as, all factors considered, a party claiming a rent overcharge can show the unreliability of the rent records.

There is no way to reconcile this case with *315 Jefferson* and *400 E 58 Owner*. In *SF 878 E. 176th*, the tenant's claim of rent overcharge ceased to be "pending" when the parties entered into a *so-ordered* stipulation under existing law. Absent fraud or any similar factor, it is difficult to understand how a change in law one year after a so-ordered stipulation warrants its vacatur.

The case of *Arnold v. 4-6 Bleecker Street LLC*, 2019 WL 3891175 (Sup. Ct. New York County), shows just how devastating the applicability provisions of the HSTPA can be. In *Arnold*, the tenants commenced an action in 2013 seeking (1) a declaration that they were rent-stabilized; and (2) damages for rent overcharge. The four tenants were able to establish overcharges of $299,993.76, $333,405.72, $37,548.38, and $111,349.06.

Unfortunately for the landlord, the case was still pending on the enactment date of the HSTPA. Supreme Court held that based on the new statute, additional damages were warranted:

> However, with the recent passage of the Housing Stability and Tenant Protection Act of 2019 (HSTPA), the amounts due to plaintiffs must be amended. As required by CPLR 4511(a), this court takes judicial notice of the public statutes of New York. The HSTPA amended Section 26-516(a) of the Administrative Code of the City of New York to expand the overcharge period from four (4) to six (6) years before the filing of an overcharge complaint, and the treble damages period to also six (6) years. As the HSTPA was passed during the pendency of this matter, Plaintiff may recalculate the amounts owed on the overcharge and treble damages amounts" (internal citations omitted).

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A more interesting scenario arises where DHCR denied a tenant's overcharge complaint prior to enactment of the HSTPA, but the tenant's Article 78 proceeding was pending on the enactment date. Following the logic in *315 Jefferson* and *400 E 58 Owner,* the argument could be made that DHCR's determination dismissed and terminated the tenant's overcharge complaint; what was "pending" on the enactment date was not an overcharge complaint—which asks a tribunal to determine whether there has been an overcharge—but an Article 78 petition, which asks whether DHCR's determination was arbitrary and capricious. There are no cases yet in this regard, but it is inevitable that courts will be called upon to determine the issue.

When is an Owner Occupancy Proceeding Pending?

In *Fried v. Lopez*, 2019 WL 3519712 (Civ. Ct., Kings County), the applicability issue arose in the context of an owner occupancy proceeding commenced in 2018. The landlord sought to recover the tenant's apartment to further the landlord's plan to recover all apartments in the building so as to convert it to a single-family home.

At the time the landlord commenced the proceeding, RSL §26-511(c)(9)(b) authorized an owner to recover "one or more dwelling units" for personal use. Section 2 of Part I of the HSTPA, however, limited a landlord's recovery to "one unit." Section 5 of Part I provided that "[t]his act shall take effect immediately and shall apply to any tenant in possession at or after the time it takes effect, regardless of whether the landlord's application for an order, refusal to renew a lease or refusal to extend or renew a tenancy took place before this act shall have taken effect."

After the enactment, the tenant in *Fried* moved to dismiss, or, in the alternative, for summary judgment. The landlord opposed, arguing that the amendment was prospective only, and that the pre-HSTPA version of the statute should govern. The court (Harris, H.C.J.) dismissed the proceeding, holding that the landlord's position was untenable in light of the plain language of Part I, Section 2.