

Landlord Ordered to Pay Rent Controlled Tenant \$100,000! by CD Publications

New York. A landlord must pay its tenant approximately \$30,000 in rent overcharges and must pay treble damages and attorney's fees too because the landlord failed to pay the overcharges back before the tenant filed a lawsuit to collect what she was owed. The Division of Housing and Community Renewal determined that the landlord overcharged a rent stabilized tenant for two different periods of time. The DHCR determined the amount of the overcharge that had to be returned to the tenant.

The tenant sued the landlord to collect the amount of the overcharges plus interest, legal fees, expenses and treble damages when the landlord failed to pay the amount specified by the DHCR.

The landlord filed a motion asking the court to dismiss the tenant's lawsuit because it claimed to have tendered in "good faith" the full amount of the overcharges and interest (two checks totaling \$29,880.37). According to the landlord, the tenant could not claim treble damages since the money was tendered to the tenant.

The tenant opposed the motion and she even returned the two checks to her landlord. She filed a motion for summary judgment seeking the amount awarded by the DHCR plus the treble damages and attorneys' fees.

The tenant claimed her landlord did not make the payment until after she filed this lawsuit to collect the award and that the amounts tendered did not constitute the full payment due from the landlord. And she said the payment was unlawfully conditioned on her providing the landlord with a release.

A landlord has the burden to prove by preponderance of the evidence that the overcharge was not a "willful act." If the landlord fails to submit any evidence or if the evidence is equally balanced, the court will deem the overcharge to be willful.

The DHCR has held in other cases that if the landlord adjusts the rent on its own and then tenders the full refund (in good faith) to the tenant along with the interest owed, the landlord does not have to pay the treble damages provided for under the statute.

But the court rules the landlord failed to meet the burden of prove to establish the overcharge as not willful because there is no dispute in this case that the landlord failed to adjust the rent on its own and the landlord did not attempt to pay back the overcharges until the tenant sued to collect the unpaid award.

The tenant is therefore entitled to collect treble damages from the landlord and attorneys' fees in this action. The court dismisses the landlord's motion and judgment is entered in favor of the tenant and a date is set to determine the amount to award the tenant.

Lesson: The landlord will owe the tenant approximately \$100,000 in damages and attorneys' fees for overcharging her, which is probably more than the tenant paid in rent during this same time period. Landlords must follow the rules – especially the rent stabilized and rent control regulations since they allow for treble damages and attorneys' fees. Marjorie Charron, Plaintiff, v. 706 Realty Co., LLC, Defendant. 2008 NY Slip Op 31297(U) (N.Y. Sup. Ct. 2008).

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