

Westlaw.

694 N.Y.S.2d 878
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Supreme Court, Appellate Term, New York.
 Second Department.
 BRAGSTON REALTY CORP., Respondent,
 v.
 Sylvia DIXON, Also Known as Silvio G. Dixon,
 Appellant.

June 28, 1999.

Landlord brought a nonpayment proceeding to recover possession of a rent-stabilized apartment and arrears. Tenant answered and asserted an overcharge claim. The Civil Court, Kings County, B. Kramer, J., denied the tenant's motion for partial summary judgment on the overcharge claim, and, following the entry of a stipulated final judgment awarding the landlord possession and an arrearage amount, the tenant appealed. The Supreme Court, Appellate Term, held that: (1) the appeal would be treated as having been taken from the final judgment; (2) the final judgment was appealable despite having been pursuant to a stipulation; and (3) the tenant's overcharge claim was time-barred.

Affirmed.

West Headnotes

[1] Limitation of Actions ⚡58(1)

241k58(1) Most Cited Cases

Rent overcharge for a rent-stabilized apartment occurs, triggering the four-year limitations period for the tenant to bring an overcharge claim, when the landlord collects an amount above the authorized rent, not when the annual apartment registration is filed or late-filed. McKinney's CPLR 213-a; New York City Administrative Code, §§ 26-516, subd. a(2), 26-517.

[2] Landlord and Tenant ⚡200.75

233k200.75 Most Cited Cases

Filing of an annual registration for a rent-stabilized apartment is relevant in rent overcharge cases only insofar as it is determinative of the legal regulated rent. New York City Administrative Code, §§

26-516, 26-517.

[3] Limitation of Actions ⚡58(1)

241k58(1) Most Cited Cases

Where a proper registration for a rent-stabilized apartment was filed four years before the most recent registration, the legal regulated rent had to be determined with reference to the earlier registration, in determining when an alleged overcharge occurred so as to trigger the four-year limitations period for the tenant to bring an overcharge claim. McKinney's CPLR 213-a; New York City Administrative Code, §§ 26-516, subd. a(2), 26-517.

[4] Landlord and Tenant ⚡200.79

233k200.79 Most Cited Cases

Tenant's appeal from an intermediate order denying him summary judgment on the rent overcharge claim he asserted in the landlord's nonpayment proceeding to recover possession of the tenant's rent-stabilized apartment and arrears would be deemed as taken from the final judgment that was later entered in the landlord's favor. McKinney's CPLR 5520(c).

[5] Appeal and Error ⚡74

30k74 Most Cited Cases

No appeal lies from an intermediate order once a final judgment has been entered. McKinney's CPLR 5520(c).

[6] Landlord and Tenant ⚡315(1)

233k315(1) Most Cited Cases

Final judgment awarding a landlord possession of a rent-stabilized apartment, though entered pursuant to a stipulation, remained appealable, particularly because the tenant reserved his right to appeal from a prior contested order denying his overcharge claim. McKinney's CPLR 5501(a), par. 1, 5520(c).

**879 *1018 Brooklyn Legal Services Corp. B, Brooklyn (John C. Gray and Elisabeth Fiekowsky of counsel), for appellant.

Meryl L. Wenig, Brooklyn, for respondent.

PRESENT: ARONIN, J.P., SCHOLNICK and

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PATTERSON, JJ.

***1019 MEMORANDUM.**

Final judgment unanimously affirmed without costs.

In this nonpayment proceeding to recover possession of a rent-stabilized apartment and arrears, the answer, filed in April 1998, asserted a claim of rent overcharge. In support of a motion for summary judgment with respect to this claim, tenant established that the annual apartment registration for 1987 was not filed until July 31, 1997 and that this registration showed an increase in rent from \$174.75 in 1986 to \$450 in 1987. Tenant claimed that under section 26-517(e) of the Rent Stabilization Law of 1969 (Administrative Code of the City of New York) the failure to file a proper and timely 1987 registration barred landlord from collecting rent in excess of \$174.75 until the statement was filed on July 31, 1997. In opposition, landlord's president stated that landlord had purchased the building in June 1997 and that he had reviewed the registration statements for the preceding four years and found them to be in order. Landlord claimed that the statute of limitations (CPLR 213-a), as amended by the Rent Regulation Reform Act of 1997 (L.1997, c. 116 [Act]), limited review of the rent history to four years.

By order dated July 8, 1998, Judge Kramer denied tenant's motion. He reasoned that the 1997 Act and its legislative history made it clear that the Legislature **880 intended to limit review of the rent records to the four years immediately preceding the interposition of the overcharge claim. On July 28, 1998, the parties stipulated that a final judgment would be entered awarding landlord possession and the sum of \$8,499.40, subject to tenant's reservation of his right to appeal the overcharge issue.

On this appeal, tenant contends that the 1987 registration may be examined because it was not filed until July 1997, which is within four years of when the rent overcharge claim was interposed. Finding support for his claim in the language of several nisi prius decisions (*Myers v. Frankel*, 179 Misc.2d 225, 229, 684 N.Y.S.2d 750 ["the date the (statute) starts to run is the date when the rent is registered ..."]; *Crabtree v. New York State Div. of Hous. & Community Renewal*, NYLJ, Dec. 9, 1998,

at 26, col. 1 [Sup.Ct., N.Y. Co.] ["the filing of the registration statement (supplies) the measuring date for purposes of establishing the four year limitation period"]), tenant argues that the limitations period for a claim of rent overcharge begins to run on the date that the rent is registered. Tenant also argues that the *1020 penalties imposed by section 26-517(e) of the Rent Stabilization Law of 1969 (Administrative Code) for unfiled registrations remain unaffected by the 1997 Act. Finally, tenant argues that if the 1997 Act does bar his overcharge claim, it deprives him of his property without due process of law because it unconstitutionally shortens the limitations period for his claim, which, he again asserts, did not accrue until the 1987 registration was filed on July 31, 1997.

[1][2][3] We reject tenant's contentions and disapprove the language in the nisi prius decisions upon which tenant relies. A rent overcharge does not occur when a registration is filed or late-filed. It occurs when an owner collects "an overcharge above the rent authorized for a housing accommodation ..." (RSL § 26-516[a]). The filing of a registration is relevant in overcharge cases only insofar as it is determinative of the legal regulated rent. Where, as here, a proper registration was filed four years prior to the most recent registration, the legal regulated rent must be determined with reference to the rent stated in that earlier registration (*id*). Tenant does not claim that an overcharge occurred when the rent collected is measured against that legal regulated rent. Because "the first overcharge alleged" by tenant occurred in 1987 and tenant did not interpose his claim within four years of that overcharge, his claim is time-barred (CPLR 213-a; RSL § 26-516[a][2]; *see, Zafra v. Pilkes*, 245 A.D.2d 218, 666 N.Y.S.2d 633; *Rovito v. Melendez*, 175 Misc.2d 279, 669 N.Y.S.2d 779).

[4][5][6] As a procedural matter, tenant's appeal has been deemed to be from the final judgment (*see*, CPLR 5520[c]) because no appeal lies from an intermediate order once a final judgment has been entered (*Matter of Aho*, 39 N.Y.2d 241, 383 N.Y.S.2d 285, 347 N.E.2d 647). Although the final judgment was entered pursuant to a stipulation, it remains appealable, in particular because tenant reserved his right to appeal from the contested order (*Nayman v. Remsen Apts.*, 125 A.D.2d 378, 382,

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509 N.Y.S.2d 354; *Messina v. Lufthansa German Airlines*, 64 A.D.2d 890, 408 N.Y.S.2d 109, *affd.* 47 N.Y.2d 111, 417 N.Y.S.2d 39, 390 N.E.2d 758; *see, Sirianni v. Sirianni*, 14 A.D.2d 432, 221 N.Y.S.2d 693). The issues raised upon the appeal from the contested order have been considered on the appeal from the final judgment (CPLR 5501 [a][1]).

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