

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK: HOUSING PART F

Index No. L&T 78995/14

-----x  
MP CORNELIA PROPERTY GROUP, LLC  
RFC CORNELIA LLC, GMT CORNELIA LLC  
148 CORNELIA LLC and ASK PROPERTY  
HOLDINGS LLC as Tenants In Common Interest  
Petitioners-Landlords,

**Decision/Order**

-against-

RANDAL RICHARDSON a/k/a RANDALL  
RICHARDSON VEJLGAARD  
Respondent-Tenant,

“JOHN DOE’ and/or “JANE DOE”  
Respondent-Undertenant.

-----x  
Hon. A.Katz:

Respondent, pro se, moves the court to dismiss the proceeding commenced by the petitioner to recover possession of premises 11 Cornelia Street apartment 3F new York, N.Y. 10014. The respondent alleges that petitioner failed to timely offer him a renewal lease and the lease that he was offered had incorrect commencement and expiration dates thereby resulting in the Golub Notice being untimely served. The petitioner cross moves for discovery. The predicate Notice dated May 14, 2014 alleges that respondent is not primarily residing in the subject premises; that respondent resides elsewhere; owns property elsewhere that he alleges is his primary residence; and that there have been a succession of unknown individuals occupying the premises.

As per the respondent, his rent stabilized Lease was for a term that commenced September 1, 2010 and expired August 31, 2012. His argument is that the renewal Lease offer should have been sent between May 1, 2012 and June 30, 2012 but instead, he received it August 13, 2012. He returned the offer on October 28, 2012 and requested a two year renewal lease. As per respondent, the landlord did not return the executed copy of the Lease he had sent the landlord but, instead, the landlord subsequently sent a Lease that had been backdated some ten months. As per the tenant, he had conversations with the landlord about this and the landlord assured him the higher rental amount would not have to be paid until after the Lease was executed. The tenant signed the lease dated May 15, 2012 on April 24, 2013, the Landlord signed the Lease on April 29, 2013 and the lease was returned to the tenant on June 12, 2013.

Rent Stabilization Code Section 2523.5(c)(1) states;”When an owner fails to timely offer a renewal lease or rental agreement in accordance with subdivision (a) of this section, the one or two year lease term selected by the tenant shall commence at the tenant’s option, either (i) on the date a renewal lease would have commenced had a timely offer been made or (ii) on the first payment date occurring no less than 90 days after the date the owner does offer the lease to the

tenant. In either event, the effective date of the increased rent under the renewal lease shall commence on the first rent payment date occurring no less than 90 days after such offer is made by the owner, and the guidelines rate applicable shall be no greater than the rate in effect on the commencement date of the lease for which a timely offer should have been made.”

In the case at bar, the tenant did return the belated renewal lease offer with dates altered to reflect the commencement and expiration dates that would have been correct. However, the tenant did not challenge the failure of the landlord to sign and return the corrected lease. The tenant acknowledged that he knew he could have done this but chose not to. Additionally, when the landlord did, subsequently, forward to the tenant a different lease the tenant signed it and returned it to the landlord. The tenant accepted the landlord’s explanation that the higher rent could not start until 90 days after the execution of the Lease. In fact, the tenant did not begin paying the higher rent until ninety days hence. A review of the statute indicates the intent of the provision for failure to timely renew is focused on the amount of rent to be charged the tenant. As stated by the Appellate Division, First Department *In the Matter of Kenneth Friedman v. New York State Division of Housing and Community*, 60 A.D.3d 541, 877 N.Y.S.2d 12, “there exists no basis to disturb DHCR’s credibility based finding that petitioner failed to establish that his predecessor timely tendered a renewal lease to the tenant in 2005, **or that the tenant had not made a conscious decision about the commencement date of the untimely renewal offered...**” (Emphasis supplied). Further, as stated by the Appellate Term, First Department in *Santorini Equities v. Picarra*, 12 Misc.3d 132(A), 820 N.Y.S.2d 846 , “that the renewal lease may have been belatedly offered to the tenant in August 2000 did not serve to retroactively alter the commencement and expiration dates of the lease term, or the applicable window period. Tenant executed the renewal lease without any exercise of his statutory option to choose the commencement date of the lease...” And, as stated in *South Park Associates, LLC. V. Toledano*, 259 AD2d 306, “Thus, according to the Rent Stabilization Code, it does not appear that untimely delivery of the lease renewal form (i.e. after the expiration of the lease) nullifies the renewal lease offer. Rather, Section 2523.5 (a) specifically refers to subdivision (c) as controlling, and subdivision (c) gives the tenant the option in such cases to choose the commencement date of the lease, subject to the restrictions set forth.” Based upon the statute and case law, the tenant accepted the terms of the renewal lease offer and cannot, at this late date, be heard to complain about the term of that lease. The motion to dismiss is denied.\*

Petitioner cross moves the Court for discovery. The underlying proceeding is one based upon allegations that respondent does not utilize his apartment as his primary residence. It has been held that discovery is appropriate in primary residence holdovers. The standard by which a Court determines the need for discovery was established in the seminal case of *NYU v. Farkas*, 468 NYS2d 808 where the Hon. David Saxe established a six prong test that has been effectively applied ever since. Application of the facts as set out in the predicate Notice allege that

---

\* The procedural challenges to the tenant’s motion are not addressed as not being meritorious.

respondent owns property at 22 West 123<sup>rd</sup> Street New York, New York; that respondent is the co- mortgagor of the property at 22 West 123<sup>rd</sup> Street New York, New York; respondent posts advertisements to let the apartment; respondent is rarely seen at the premises; and either of the two alternative addresses are within walking distance to respondent's place of employment. The information relative to the facts underlying this proceeding are solely within the knowledge and control of the respondent. While respondent does submit a document entitled, " Respondent's affidavit in Reply to petitioner's opposition to respondent's motion to dismiss and petitioner's cross motion for discovery" he fails to address the merits of petitioner's request for discovery. Accordingly, the coss motion is granted without opposition. Petitioner further requests use and occupancy. Respondent also fails to address this request. Accordingly, the respondent is directed to pay the outstanding use and occupancy at the rate in the last expired lease within twenty days of this decision and order. Should respondent fail to do so, petitioner may seek further relief consistent with this order. The matter is restored to the calendar in part F Room 830 on June 5, 2015 for a date and time to be established for the deposition of the respondent.

Dated: New York, New York  
May 13, 2015

  
\_\_\_\_\_  
Anne Katz, J.H.C.