



**Decision/Order**

400 E58 Owner LLC  
Petitioner(s)

**Present:** Frances A. Ortiz  
Judge

-against-

Samuel Herrnson; Robin Cohen Herrnson; Ally Chase Herrnson;  
"John" "Doe"; "Jane" "Doe"  
Respondent(s)

Recitation, as required by CPLR 2219(A), of the papers considered in the review of this Motion for:  
**Renew**

PAPERS	NUMBERED
Notice of Motion and Affidavits Annexed	_____1_____
Order to Show Cause and Affidavits Annexed	_____
Answering Affidavits	_____2_____
Replying Affidavits	_____3_____
Exhibits	_____
Stipulations	_____
Other _____	_____
_____	_____

Upon the foregoing cited papers, the Decision/Order in this Motion is as follows:

Respondent moves pursuant to *CPLR 2221 (e)* for leave to renew this court’s decision and order dated June 13, 2019.

Under *CPLR 2221(e)*, a motion to renew shall be based on new facts not offered in the prior motion or a demonstration that there has been a change in the law that would change the prior determination. *CPLR 2221 (e)*.

This Court has read the instant motion, re-read the prior motions and the June 13, 2019 decision. After such review and oral argument, this Court concludes that respondent’s “new facts” and change in law (Housing Stability and Tenant Protection Act of 2019) do not warrant granting of the motion for renewal. *CPLR 2221(e)*.

Respondent argues that there are new facts and arguments not offered in the previous motion. According to respondent, he has new “proof” that Exhibit L to motion in chief - the envelope addressed to John Overend at the subject premises with a certified mail sticker post marked July 24, 2001 was never sent and is a fraud. *Exhibit B* to the motion to renew is an uncertified copy of a letter written to him from the United States Postal Service (“USPS”) dated July 12, 2019. The letter is signed by Anthony Prisco (Manager of Consumer Relations) and states that the tracking data for that certified mailing dated July 24, 2001 yielded no results nor could the tracking number be validated based on the archive data. Accordingly, respondent concludes that RSC § 2522.3 timeliness’ is not triggered because he can establish based on that letter that John Overend (the first tenant) never received notice of deregulation and right to file a FMRA with DHCR asserting that the rent exceeds the fair market rent. This letter presents inadmissible evidence as it is uncertified. Even assuming, this court found the USPS letter admissible, it would not be a basis for renewal for the reasons discussed below.

Here, respondent argues that based on the newly enacted Housing Stability and Tenant Protection Act of 2019, this court can consider rent overcharge claims beyond the old law rule of a 4 year statute of limitations and can now consider rent histories up to six years. Although this is accurate, respondent fails to acknowledge that this court in granting petitioner’s motion to dismiss and summary judgment on the “affirmative defenses on rent overcharge” applied *RSC §2521.1* which has not been amended in the Housing Stability and Tenant Protection Act of 2019. Furthermore, 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.

Therefore, respondent can not raise the defense according to *RSC §2521.1*, since units no longer subject to Rent Control which become vacate will have an initial legal regulated rent agreed to by the owner and the first tenant and reserved in a lease or provided for in a rental agreement subject to the provisions of this Code, and subject to a tenant's right to a FMRA to adjust such rent. Under *RSC § 2522.3*, the time within which such tenant may file a fair market rent appeal is limited. The first tenant has ninety (90) days after such notice was mailed to him/her by the owner via certified mail to file a FMRA with DHCR asserting that the rent exceeds the fair market rent. However, no fair market rent appeal may be filed after four years from the date the housing accommodation was no longer subject to the City Rent Law. Therefore, respondent's motion to renew based on Housing Stability and Tenant Protection Act of 2019 is denied, since *RSC § 2522.3 was not amended by Housing Stability and Tenant Protection Act of 2019* and it has been more than four years from the July 2001 deregulation and time to challenge for a FMRA>

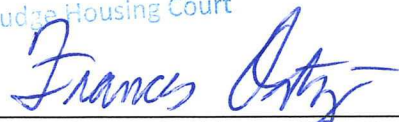
ORDERED respondent's motion to renew is denied.

ORDERED the matter remains on the calendar for August 14, 2019 at 2:15 p.m. for trial or settlement.

This is the decision and order of this court. Copies are being hand delivered to the parties in open court.

Date: 8/7/19

Frances Ortiz  
Judge Housing Court



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Judge, Civil/Housing Court  
Frances Ortiz