

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FIRST DEPARTMENT

Choi v. Linc LIC L.L.C.

Choi, 2026 NY Slip Op 02919 (Supreme Court of the State of New York Appellate Division First Department 2026) · No. Index No. 154436/24; Appeal No. 6602; Case No. 2025-05055 · Decided May 12, 2026

SUMMARY

The Appellate Division, First Department held that rent concessions granted after the enactment of the Housing Stability and Tenant Protection Act of 2019 functioned as a preferential rent and that the landlord failed to calculate rent increases lawfully. The court also held that the lease provision permitting the landlord to charge attorneys' fees without a court order was unconscionable and that the tenant was entitled to treble damages for willful rent overcharges. The order was modified to grant the tenant summary judgment on liability and remanded for further proceedings concerning damages.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Scarpulla, J.P.; Mendez, J.; Shulman, J.; Rodriguez, J.; Hagler, J.
JURISDICTION	New York Supreme Court, Appellate Division, First Department
DECIDED	May 12, 2026
DOCKET	Index No. 154436/24; Appeal No. 6602; Case No. 2025-05055
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from an order of Supreme Court, New York County, denying the defendant-landlord's motion and plaintiff-tenant's cross-motion for summary judgment.
STANDARD OF REVIEW	De novo review of the legal issues presented on the parties' motions for summary judgment.
PRECEDENTIAL VALUE	Published New York Appellate Division decision; uncorrected and subject to revision before publication in the Official Reports.
PARTIES	Linc LIC L.L.C. v. Hyunseoung Choi

TOPICS

- landlord tenant
- real estate
- damages
- summary judgment
- appellate procedure

PRACTICE AREAS

landlord-tenant law

real estate law

contract law

appellate litigation

QUESTIONS PRESENTED

1. Whether the rent concessions functioned as a preferential rent requiring the tenant's rent increases to be calculated from the rent actually charged and paid.
2. Whether the tenant was entitled to summary judgment on liability for rent overcharges and related declaratory and injunctive relief.
3. Whether the lease provision allowing the landlord to assess attorneys' fees without a court order was unconscionable and unenforceable.
4. Whether the landlord overcame the statutory presumption that the rent overcharges were willful, thereby avoiding treble damages.

HOLDINGS

1. The concessions functioned as a preferential rent because the amount charged and paid by the tenant was less than the legal regulated rent; consequently, rent increases had to be calculated from the rent actually charged and paid before renewal, as adjusted by lawful increases.
2. The tenant was entitled to summary judgment as to liability on the second and third claims for rent overcharges and related declaratory and injunctive relief.
3. The lease provision allowing the landlord to assess attorneys' fees against the tenant without a court order was unconscionable and unenforceable.
4. Treble damages were warranted because the landlord did not overcome the presumption of willfulness by a preponderance of the evidence.

KEY QUOTATIONS

*"We read the parties' rent abatement agreement "in the light of the circumstances existing at its making" (["*1])*

*"The landlord did not meet its burden of overcoming the presumption of willfulness by a preponderance of the evidence; therefore, an assessment of treble damages is warranted" (["*2])*

FACTUAL BACKGROUND

The landlord granted the tenant rent concessions under a residential lease and marketed the apartment by advertising the net effective rent after applying those concessions. The rent-abatement agreement characterized six months of concessions as based on adverse conditions, identified as COVID-19, although DHCR guidance limited such concessions to three months. The landlord also charged the tenant attorneys' fees without a court order under a lease provision permitting fees based on the landlord's subjective determination of default, and refunded some fees after the action began.

PROCEDURAL HISTORY

Supreme Court denied both the landlord's motion and the tenant's cross-motion for summary judgment. The Appellate Division modified the order to grant the tenant's cross-motion as to liability and remanded for further proceedings on damages, while affirming otherwise.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The motion court must conduct further proceedings consistent with the decision to determine damages, including treble damages on the rent overcharges and attorneys' fees charged without a court order.

CASES CITED

- *Viohl v. Chelsea W26 LLC*, 241 AD3d 1187, 1189 (1st Dept 2025)
- *Matter of Century Operating Corp. v. Popolizio*, 60 NY2d 483, 488 (1983)
- *Matter of Parsons Manor LLC*, DHCR Adm Rev Dckt No. GS110023RO (June 28, 2019)
- *Matter of Kasowitz, Benson, Torres & Friedman, LLP v. JPMorgan Chase Bank, N.A.*, 237 AD3d 499, 499 (1st Dept 2025), lv denied 44 NY3d 908 (2025)
- *Matter of Bandil Farms Inc. v. New York State Div. of Hous. & Community Renewal*, 190 AD3d 403, 405 (1st Dept 2021)

OPINION

Choi v. Linc LIC L.L.C. 2026 NY Slip Op 02919

PER CURIAM.

Choi v Linc LIC L.L.C. - 2026 NY Slip Op 02919 skip to main content It appears you are using Adblock. Please disable Adblock to best experience our website. Law Reporting Bureau Thomas J.K. Smith, State Reporter Court Decisions Resources About Home All Court Decisions Decisions Choi v Linc LIC L.L.C. 2026 NY Slip Op 02919 May 12, 2026 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This decision is uncorrected and subject to revision before publication in the Official Reports. Hyunseoung Choi, Respondent-Appellant, v Linc LIC L.L.C., Appellant-Respondent. Decided and Entered: May 12, 2026 Index No. 154436/24|Appeal No. 6602|Case No. 2025-05055| Before: Scarpulla, J.P., Mendez, Shulman, Rodriguez, Hagler, JJ. Belkin Burden Goldman, LLP, New York (Jeffrey L. Goldman of counsel), for appellant-respondent. Hyunseoung Choi, respondent-appellant, pro se. [*1] Order, Supreme Court, New York County (Nicholas W. Moyne, J.), entered August 5, 2025, which denied defendant-landlord's motion and plaintiff-tenant's cross-motion for summary judgment, unanimously modified, on the law, to grant tenant's cross-motion as to liability and to remand for further proceedings on damages consistent with this decision, and otherwise affirmed, without costs. The rent concessions granted by landlord did not conform to

current guidance from the New York State Division of Housing and Community Renewal (DHCR), nor were they permissible under this Court's analysis of concessions offered after the enactment of the Housing Stability and Tenant Protection Act of 2019 (HSTPA) (L 2019, ch 36). We have previously determined that the pre-HSTPA version of DHCR Fact Sheet #40 is no longer relevant with respect to concessions offered after the HSTPA's enactment, as DHCR amended Fact Sheet #40 shortly thereafter to remove the discussion distinguishing between preferential rents and concessions (see *Viohl v Chelsea W26 LLC* , 241 AD3d 1187 , 1189 [1st Dept 2025]). We read the parties' rent abatement agreement "in the light of the circumstances existing at its making" (*Matter of Century Operating Corp. v Popolizio* , 60 NY2d 483, 488 [1983] [internal quotation marks omitted]). These include landlord's admission in its response to tenant's notice to admit that its marketing of the apartment advertised the net effective rent to be paid after the application of the rent concessions. Further, the landlord's form rent abatement agreement provided six months of rent concessions based on "adverse conditions" identified as "Other (specify): COVID-19." Although purportedly tied to the pandemic, the six months of concessions in one lease term exceed DHCR's limit of three months (*Matter of Parsons Manor LLC* , DHCR Adm Rev Dckt No. GS110023RO [June 28, 2019]). Rent Stabilization Code (9 NYCRR) § 2521.2 (a) defines a preferential rent as existing when "the amount of rent charged to and paid by the tenant is less than the legal regulated rent for the housing accommodation," thus, the landlord failed to rebut tenant's showing that the concessions here functioned as a preferential rent upon which his rent increases should have been calculated (see Rent Stabilization Law of 1969 (RSL) [Administrative Code of City of NY] § 26-511 [c] [14] ["upon renewal of such lease, the amount of rent for such housing accommodation that may be charged and paid shall be no more than the rent charged to and paid by the tenant prior to that renewal, as adjusted by the most recent applicable guidelines increases and any other increases authorized by law"]). Accordingly, the motion court should have granted summary judgment to tenant as to liability on his second and third claims for rent overcharges and related declaratory and injunctive relief. [*2] In residential proprietary leases, we have found unconscionable attorneys' fees provisions in which "the lease provides for attorneys' fees regardless of default or merit" (*Matter of Kasowitz, Benson, Torres & Friedman, LLP v JPMorgan Chase Bank, N.A.* , 237 AD3d 499 , 499 [1st Dept 2025], lv denied 44 NY3d 908 [2025]). The provision here is unconscionable on the same basis, as it purports to allow landlord to assess legal fees against tenant without court order based on landlord's subjective determination of "any action or inaction that would constitute a default by [tenant] under this Lease, and whether or not [landlord] brings or defends a lawsuit, arbitration, mediation or other proceeding against or by [tenant] or anyone else." Accordingly, tenant should also have been awarded summary judgment on his first claim for rent overcharge arising from landlord's charging of attorneys' fees without court order. The enactment of Real Property Law § 234-a in 2021 underscores this rationale, as it prohibits landlords, including landlord here, from "assessing a lessee any fee, surcharge or other charges for legal services in connection with the operation or rental of a residential unit unless the

owner, lessor or agent has the legal authority to do so pursuant to a court order" (Real Property Law § 234-a [a]). Rent Stabilization Law § 26-512 (g), also enacted in 2021, similarly prohibits landlords of rent stabilized apartments from assessing "any fee, surcharge or other charges for legal services in connection with the operation or rental of a residential unit unless the owner, lessor or agent has the legal authority to do so pursuant to a court order." The landlord's contention that it was permitted to assess legal fees against tenant's account absent a court order is meritless. Even before the enactment of the above statutes, "lease clauses deeming legal and late fees additional rent have been held to be unenforceable against rent stabilized tenants" (Matter of Bandil Farms Inc. v New York State Div. of Hous. and Community Renewal , 190 AD3d 403 , 405 [1st Dept 2021] [internal quotation marks omitted]). Landlord's effort to overcome the presumption of willfulness based on its refund of some of the fees after the commencement of this action fails, as Rent Stabilization Law § 26-516 (a) provides that a refund offered after the commencement of an action is not considered evidence of a lack of willfulness on a landlord's part. The landlord did not meet its burden of overcoming the presumption of willfulness by a preponderance of the evidence; therefore, an assessment of treble damages is warranted, to be calculated by the motion court in further proceedings based on this order (Rent Stabilization Law § 26-516 [a] [landlord "shall be liable to the tenant for a penalty equal to three times the amount of such overcharge" unless it "establishes by a preponderance of the evidence that the overcharge was not willful"]). [*3] We have considered the remaining contentions and find them unavailing. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: May 12, 2026 Court Decisions All Court Decisions Official Reports Service Bound Volumes Decision Search Resources RSS Feeds Style Manual Citation Tools Opinion Formatting & Privacy Guidelines Opinion Selection Criteria Legal Research Portal Site Index About About the Law Reporting Bureau About our Operations Contact Us Twitter Quick Contact Info 17 Lodge Street Albany, NY 12207 Phone: (518) 453-6900 Links to or from other sites do not signify endorsement or relationship with them.