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2020-11-13

### Tremont Echo HDFC v. Cedeno

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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF BRONX: HOUSING PART L

TREMONT ECHO HDFC,

Petitioners,

Index No. 3725/2017

- against -

SALVADOR CEDENO, LUIS PEREZ

**DECISION & ORDER**

Respondents,

PREMISES: 1921 Morris Avenue, Apt. #1  
Bronx, NY 10453

-----X  
Present: Hon. David J. Bryan  
Judge, Housing Court

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of this motion.  
-----X

**Papers**

Notice of Motion, Affirmation, Affidavit, Exhibits 1  
Affirmation in Opposition, Affidavit, Memorandum of Law, Exhibits 2

-----X  
Petitioners are represented by: Novick, Edelstein, Pomerantz, P.C.

Respondent is represented by: Mobilization for Justice

-----X

Upon the foregoing cited papers, the Decision and Order on this Motion are as follows:

Petitioner moves for permission to execute on the warrant of eviction in accordance with the relevant executive and administrative Orders relevant to the COVID-19 pandemic. Respondent opposes petitioner’s motion in all respects. For the reasons stated herein, the motion is DENIED.

This summary proceeding is a licensee holdover alleging that Salvador Cedeno and Luis Perez, were occupying the premises after the death of the tenant of record, Aida Cedeno. The case was ultimately settled by a two-attorney stipulation of settlement dated February 7, 2018. The stipulation provided petitioner would receive a final judgment of possession *only*, and in consideration of respondent paying \$19,265.64 plus current rent for March 2018 to petitioner, a rent stabilized lease would be offered on the agreed upon terms outlined in the stipulation. Respondents were to pay \$19,265.64 plus March 2018 rent by March 21, 2018, and the warrant of eviction was stayed to March 24, 2018 to allow for this payment. The stipulation also made certain provisions as to the legal rent to be charged and increases that would be instituted along with the new lease.

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF BRONX: HOUSING PART L

On July 16, 2018 the Hon. Krzysztof Lach issued an Order deciding the respondent's Order to Show Cause seeking more time to work with HRA to comply with the payment obligation of the original stipulation. The Order noted that the parties agreed that \$22,012.92 was due and owing through July 31, 2018. The Order also provided that the warrant of eviction would be stayed through July 30, 2018 for payment of \$22,012.92. The Order held that if respondent met the payment obligation then the judgment and warrant would be vacated. If not, then the warrant of eviction could execute, and the respondent could be evicted.

During oral argument on the instant motion the parties agree that the Department of Social Services timely tendered \$21,977.94. The parties do not dispute that this payment was \$34.98 less than the amount that the Court ordered to be paid by July 30, 2018.

Exhibit F of the respondent's opposition indicates that on July 26, 2018 petitioner received payment of \$21,977.94 and that negotiations were underway for the proper form of the lease. Exhibit G indicates that on September 7, 2018 adjustments needed to be made in the proffered lease in regard to the rent amount. On December 24, 2018 there were other issues as to the rent amount and term of the lease that were being resolved. This motion followed on August 25, 2020.

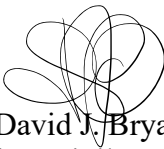
The Court notes that in this case the only judgment that was entered against the respondent was a judgment of possession. A money judgment was never entered here. Furthermore, as respondent is not a current tenant and without a lease agreement creating a privity of contract between the respondent and petitioner for the payment of current rent, this Court declines to hold the respondent responsible for monies that have accrued outside of the agreed upon stipulation of settlement dated February 7, 2018 and subsequent Decision & Order issued July 16, 2018. The Court notes that there was no agreement between the parties or issued by the Court for the respondent to pay ongoing use & occupancy here.

Therefore, the Court stays execution of the warrant of eviction through January 15, 2021 for payment of \$34.98. Upon full and timely payment of \$34.98 the judgment and warrant shall be vacated, and the Court directs petitioner to deliver a rent stabilized lease in respondents' names in accordance with the terms of the stipulation of settlement dated February 7, 2018. The Decision and Order of the Hon. Krzysztof Lach merely extended the time for respondent to comply with payment, a condition necessary for the delivery of the promised lease and remained silent as to any other terms of the original stipulation. This Court holds that the terms and conditions of the original stipulation remain in full force and effect, with the exception of the payment. As stated above, the warrant of eviction shall be stayed through January 15, 2021 for payment of \$34.98.

The Court also notes that the petitioner waited over two years to seek execution of the warrant of eviction in this case after the Decision & Order of July 16, 2018 was issued.

This is the decision of the Court and copies will be e-mailed to the attorneys for the parties.

Date: November 13, 2020

  
David J. Bryan,  
Housing Judge, Civil Court