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Litchmore-Smith v. Medina

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART G

FLORENCE F. LITCHMORE-SMITH

Petitioner-Landlord,

vs.

KEYSHLA MEDINA, JUSTIN MUNOZ

Respondent-Tenant.

JOHN DOE

Respondents-Undertenants.

Address: 127 Montrose Avenue, Apt. 3R
Brooklyn, NY 11206

L&T Index No. 50337-21/KI

DECISION/ORDER

Hon. Kimberley Slade
Judge, Housing Court

Recitation, as required by CPLR 2219(a), of the papers considered in the review of Petitioner’s motion to restore the instant proceeding to the court’s calendar and Respondent’s Motion to Dismiss.

Papers	Numbered
Order to Show Cause to Restore to the Calendar.....	1
Notice of Motion.....	2
Petitioner Responding to Respondent Notice of Motion.....	3
Court file contained on NYSCEF.....	

This summary holdover proceeding was commenced around November 2021 seeking possession of the subject unregulated premises at 127 Montrose Avenue, Apt. 3R, Brooklyn NY 11206. Respondents were served with a 90 Day Notice that terminated their tenancy on October 30, 2021. On the 15th of November, both named respondents filed a hardship declaration with the Court. Consequently, pursuant to CEEPFA, the new laws enacted due to the pandemic, the case was placed on an administrative calendar. Shortly after that, respondent Medina informed the Court that she had filed an ERAP application pending on or around December 1, 2021. ERAP is the program that provides arrears to tenants impacted financially by the pandemic. This

proceeding was stayed subject to the hardship declaration and would have continued to be stayed based upon the ERAP application. Petitioner, appearing *pro se*, filed an Order to Show Cause (OSC) demanding that the case be put back on the calendar despite the pending ERAP application. In her papers, Petitioner states she will not accept ERAP monies and just wants possession. The OSC was signed to provide her with a date to be heard and the case heard on December 9, 2021. Respondent Medina appeared through her counsel.


Petitioner's motion to restore challenges the ERAP stay despite conceding that she commenced a nonpayment case, referencing it in this holdover petition (Nonpayment under index number LT 50023-21/KI). The nonpayment proceeding was commenced by notice of petition and petition sometime in February 2021 but was stayed due to the filing of ERAP. Upon review of the Court's internal system and case summary, the Court was notified of respondent Medina's ERAP application in September 2021. Petitioner attempted to restore the nonpayment case to the calendar but was denied. Thereafter, two months later, petitioner formally commenced the instant holdover.

The Court notes that respondent has not submitted formal opposition to the motion to restore in this case and instead filed a motion to dismiss on several grounds. Respondent argues this case should be dismissed pursuant to CPLR 3211(a)(1) because documentary evidence shows respondent Medina had a pending ERAP application at the time petitioner started this proceeding. In support of this contention, respondent cites Section 8 of Chapter 56 of the Laws of 2021, as amended by Chapter 417 of the Laws of 2021. The relevant part of the section states that absent an exception such as for nuisance, "eviction proceedings for a holdover or expired lease, or non-payment of rent or utilities that would be eligible for coverage under this program *shall not* (emphasis added) be commenced against a household who has applied for this program unless or until a determination of ineligibility is made." *2021 N.Y. Laws 417, Part A.*

The Court believes the record is clear. Documentary evidence shows that petitioner was not only made aware of a pending ERAP application in the nonpayment case but was already subject to a stay because of it. Petitioner cannot start a new case at an attempt to “forum shop” seeking a Judge to vacate her stay when one was already imposed in a prior proceeding. Additionally, the ERAP statute clearly prohibits a landlord from commencing a summary proceeding against a household who has applied for the program. This is evinced by the legislature’s use of the words “shall not.” This holdover proceeding should not have been started. Petitioner may move to challenge the stay in the nonpayment proceeding which is likely the more appropriate setting since it involves unpaid rent that may fall under the ERAP application. Additionally, although the ERAP statute appears to require a determination within six months following outreach to landlords, the ERAP application in this matter is pending since July and appears undecided. Thus, it appears that any relief available ought to be requested in the nonpayment proceeding as this holdover was precluded by the ERAP law as discussed above.

Based on the foregoing, the Court denies petitioner’s motion to restore and vacate the ERAP stay. Respondent’s motion to dismiss pursuant to CPLR 3211(a)(1) because this case was commenced while an ERAP application was pending, is granted. As such, the Court need not reach a decision on the other grounds stated in respondent’s motion to dismiss. This case is dismissed without prejudice to petitioner’s right to challenge the ERAP stay in the nonpayment proceeding, and without prejudice to petitioner recommencing this holdover after a determination of eligibility on the ERAP application is made. This constitutes the Decision/Order of the court.

Date: February 23, 2022
Brooklyn, New York


Kimberley Slade
Housing Court
Hon. Kimberley Slade, JHC