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2022-05-18

### 185-225 PARKHILL, LLC v. Badillo

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#### Recommended Citation

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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF RICHMOND: HOUSING PART Y

-----X  
185-225 PARKHILL, LLC,

Petitioner(s)-Landlord(s), L&T Index No. 300452-21  
Motion Seq. No. 1

-against-

DECISION/ORDER

SUNIA BADILLO,

Respondent(s)-Tenant(s),

-----X  
Hon. ELEANORA OFSHTEIN  
Judge, Housing Court

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Recitation, as required by CPLR 2219(a), of the papers considered in the review of the motion,  
NYSCEF documents: Respondent’s motion: #9-13; Opposition: #14-17; Reply: #18  
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Upon the foregoing cited papers, the decision and order on this unopposed motion is as follows:

Petitioner commenced this summary nonpayment proceeding against Respondent alleging outstanding arrears in specified monthly amounts from October 2019 through May 2021, for a total of \$1339.00. The premises, located at 185 Parkhill Avenue, Apartment 5Y, in Staten Island, New York 10304, is subject to HUD Section 8 regulations and the petition specified Respondents share of the monthly rent. Respondent filed a *pro se* answer and now, through counsel, seeks to dismiss the within proceeding claiming that the petition has been satisfied pursuant to RPAPL §731(4). Respondent argues that between the date of the petition (May 2021) and the date of this motion (February 2022), Respondent has satisfied the petition. A review of Petitioner’s rent ledger indicates twelve payments made after May 2021 (through January 2022), for a total paid of \$2223.00.

In her affidavit, Petitioner’s agent argues that additional rent arrears have come due since the petition was filed, in May 2021, for a total of \$1817.00, but the Court notes that the petition has never been amended and that no cross-motion has been filed seeking to amend the petition. Petitioner concedes that payments were made in the amount \$2223.00 but despite having failed to amend the petition, or to show that payments made were earmarked by Respondent to be applied only to ongoing rent, Petitioner states that she applied the payments to current rents first, and then applied any excess amounts to the arrears.

Respondent opposes Petitioner's bookkeeping methods, arguing that no stipulations or agreements have been signed in this case which would allow for payments to be applied to the current rent first, and no hearings or trials have been held pursuant to the intent of RPAPL §731(4). Respondent claims that in the absence of any such hearing, payments should have been applied to the amounts due to satisfy the petition.

RPAPL §731(4) provides that "[i]n an action premised on a tenant defaulting in the payment of rent, payment to the landlord of the full amount of rent due, when such payment is made at any time prior to the *hearing on the petition*, shall be accepted by the landlord and renders moot the grounds on which the special proceeding was commenced." [Emphasis added.] The "Housing Stability and Tenant Protection Act of 2019", adds this new subdivision to render moot a commenced nonpayment proceeding upon payment of the rent due prior to the hearing of the petition.

To date, there has been no hearing or determination based upon the petition, and no motion to amend the petition to include ongoing rent/arrears. There is also no dispute that Respondent has made payments totaling \$2223.00 towards the petition. Therefore, the petition is deemed satisfied, and the case is dismissed without prejudice to any additional amounts currently due. This constitutes the decision and order of the court.

Dated: Richmond, New York  
May 18, 2022

*Eleanora Ofshtein, JHC*  
HON. ELEANORA OFSHTEIN  
JHC



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Respondent's attorney: Legal Aid Society, by D. Resuta, Esq.: [dresuta@legal-aid.org](mailto:dresuta@legal-aid.org)