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Williams v. Collado

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

-----X
ALTHEA WILLIAMS

Index No.: 50134/2022

Petitioner,

-against-

Motion Seq. 3

OSC Seg. 2

KELLY COLLADO

DECISION/ORDER

Respondent.
-----X

Present:

Hon. ELIZABETH DONOGHUE
Judge, Housing Court

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of petitioner’s order to show cause to vacate the ERAP stay, and respondent’s cross motion for dismissal pursuant to CPLR 3211(a)(1) or leave to interpose an answer:

PAPERS	NUMBERED
Order to Show Cause & Affidavits Annexed.....	<u>1- 2</u>
Notice of Cross-Motion & Affidavits Annexed	<u>3 - 5</u>
Answering Affidavits	<u>7</u>
Replying Affidavits.....	<u>8</u>
Exhibits	<u>6</u>
Memorandum of law.....	<u> </u>

Upon the foregoing cited papers, the Decision/Order on petitioner’s motion to vacate the ERAP stay and respondent’s cross-motion for dismissal/ leave to interpose an answer:

Petitioner, pro-se, commenced the within holdover proceeding on February 24, 2022. The case was first calendared in the Intake Part on March 22, 2022. On March 22, 2022 petitioner filed an order to show cause, sequence 1, for a final judgment and warrant that was returnable in Part T on March 30, 2022. On March 30 the court was given information about respondent’s ERAP application, and petitioner’s order to show cause, and the case were stayed. That same day, March 30, 2022 petitioner filed another order to show cause, sequence 2, seeking to vacate the ERAP stay. In her affidavit in support of the order to show cause petitioner states that the tenant is a nuisance and that she does not need the back payments and that she does not want the ERAP money. Petitioner’s order to

show cause, sequence 2, was returnable on April 7, 2022 and then adjourned to April 28, 2022 and then to May 3, 2022.

On May 3, 2022 respondent cross-moved to dismiss the case. Respondent argues that the case should be dismissed pursuant to CPLR 3211(a)(1) because respondent had a pending ERAP application at the time petitioner commenced the within proceeding in direct contravention of the ERAP statute. Respondent states that petitioner failed to submit an affidavit alleging nuisance behavior with the petition to invoke the statutory exception of nuisance. Petitioner opposes the cross-motion saying that she resides in the subject premises on the same floor as respondent, that she is subject to a lot of "unpleasantness", and that it is not safe in her home because of the company respondent keeps. Petitioner states that the ERAP was filed in February 202[1], and that the respondent did not comply with the documents that were asked of her until the 90 Day Notice in September 202[1].

Section 8 of the Covid -19 Emergency Rental Assistance Program Part BB, Subpart A of chapter 56 of the Laws of 2021, as modified by L.2021, c.417 states that a holdover based on an expired lease, "shall not be commenced" when the household has a pending ERAP application. Respondent attaches, as Exhibit A to the motion, a copy of respondent's ERAP application status, from the Office of Temporary and Disability Assistance which shows September 22, 2021 as respondent's ERAP application date. The within holdover was commenced on February 24, 2022.

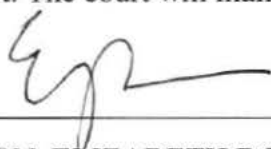
While petitioner is alleging respondent is engaging in nuisance behavior in support of her order to show cause to vacate the ERAP stay, an exception that allows a landlord to commence a holdover against a household who has applied for ERAP, or seek an eviction within twelve months of receiving ERAP payments, Section 6 Subpart A of Part BB of Chapter 56 of the laws of 2021, Section 9-a, requires a landlord to file, "a new petition with such allegations and comply with all notice and service requirements under Article 7 of the Real Property Law." In this case, petitioner did not allege nuisance behavior in the petition.

Accordingly, petitioner's order to show cause is denied and respondent's cross motion for dismissal is granted, the petition is dismissed.

This is the Decision/Order of the court. The court will mail a copy of this Order to the respondents, and upload to NYSCEF.

Dated: Brooklyn, New York

June 2, 2022



HON. ELIZABETH DONOGHUE, J.H.C