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550 Equities v. Washington

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**CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART R**

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550 EQUITIES,

Index No. L&T 053916

DECISION/ORDER

**Petitioner-
Landlord,**

-against-

**JOHN B WASHINGTON,
HOWARD L. WASHINGTON
MAHOGANIE WASHINGTON,
JANIA WASHINGTON
“JOHN DOE” and “JANE DOE”**

**Respondents-
Tenants.**

-----x
HON. ANNE KATZ:

Procedural History

This was a summary holdover proceeding where petitioner sought possession of 550 West 158th Street, Apartment 3A, New York, New York 10032 (“premises”). The premises are subject to the Rent Stabilization Code, as amended. Petitioner alleged that the tenant of record no longer resided at the premises and commenced this proceeding by Notice of Petition and Petition. Respondent, John Washington (“respondent”), interposed an Answer which alleged he was entitled to succeed to the rent stabilized tenancy rights of his mother, the tenant of record.

A trial was conducted by the Court and after trial, this Court issued a Decision and Order dated August 16, 2018 which held that respondent failed to prove he resided with his mother for the requisite period of time, prior to her permanent vacatur and denied him tenancy rights to the premises. Petitioner was awarded a final judgment of possession, with issuance of the warrant of eviction forthwith and execution stayed for three months for respondent to voluntarily vacate. Respondent appealed this Court’s decision and, on April 9, 2020, the Supreme Court, Appellate Term, First Department affirmed this Court’s decision.

Prior to the decision of the Supreme Court, Appellate Term, First Department, Governor Cuomo declared a state of emergency in New York due to the onset of the Covid-19 pandemic. In order to protect the health and welfare of tenants in New York City who faced eviction during the pandemic, Chief Administrative Judge Lawrence Marks issued Administrative Order (“AO”) 68/20 which suspended eviction proceedings. On August 12, 2020, AO 160/20 was issued which permitted eviction proceedings to resume but set forth the procedures in DRP 213. Pursuant to DRP 213,

petitioner was required to seek leave of court, by motion, and on notice to respondent to enforce a warrant of eviction issued prior to March 17, 2020.

On November 25, 2020, petitioner brought a DRP 213 motion to execute on the warrant of eviction which motion is still pending. Then on December 28, 2020 the Covid-19 Emergency Eviction and Foreclosure Prevention Act (“EEFPA”) was enacted which again halted evictions for individuals who suffered from financial hardships due to the Covid-19 pandemic. On March 3, 2021, Respondent filed a Hardship Declaration with this Court based upon the financial hardship he experienced due to Covid-19. Subsequently, on April 16, 2021, New York enacted the Covid-19 Emergency Rental Assistance Program (“ERAP”). Under the terms of ERAP, any person who applies for the benefits of ERAP is entitled to a stay of Housing Court proceeding until a final determination of eligibility is made on their application. *ERAP §8 L.2021, Ch. 56 Part BB, Subpart A.*

Respondent has filed an ERAP application, application #BA55E, which application is still pending. Although counsel for petitioner alleged, in court, that petitioner was not looking for money, in order to respondent to apply for ERAP money, the petitioner cooperated with respondent and completed the requested information on the ERAP application so that the respondent could apply for funds.

Law Applied to the Facts of the Proceeding

Respondent argues that this proceeding is stayed due to respondent’s pending ERAP application. Petitioner argues that the proceeding is not stayed as any stay only applies to nonpayment proceedings and not to holdover proceedings, as in the case at bar.

Under the terms of the ERAP provisions, as stated above, when a tenant applies for ERAP, the proceeding must be stayed pending a determination on the application. *See L. 2021, Ch. 56, Part BB, Subpart A, §8.* The language contained in the statute is clear that “any pending ERAP application stays a proceeding until an eligibility determination is made. *See Park E. L.P. v. Foster, 2021 NY Slip Op 21347 (Civ. Ct. NY 2021).* Nowhere in the statute is a distinction made between a nonpayment proceeding and a holdover proceeding for the purposes of an ERAP stay. In fact, this Court has repeatedly upheld that an ERAP stay applies in holdover proceedings and even against non-tenants. *20 W. 55th St., LLC v. Mackler, 2021 NY Slip Op 32901 (U), L&T Index Number 300325/21.* The only exception made to an ERAP stay is for those cases based upon allegations of nuisance. *Gibbons Realty Corp. v. Latney, L&T Index Number 52132/20 (Civ. Ct NY).*

Accordingly, as respondent’s ERAP application is currently pending, caselaw dictates that the stay remain in effect and petitioner’s motion to restore the proceeding to the calendar for a new final judgment and warrant of eviction is denied at this time. The proceeding will be placed on the ERAP administrative calendar pending a determination of the application.

This constitutes the Decision and Order of this Court.

Dated: New York, New York
June 30, 2020



Hon. Anne Katz