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2022-07-14

Hall v. McKenzie

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Civil Court of the City of New York

County of Kings Part 1

Index Number 304867/21
Motion Cal. # _____ Motion Seq. # _____

DECISION/ORDER

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion:

NYSCEF docs. 19-37
Papers Numbered

- Notice of Motion and Affidavits Annexed.....
- Order to Show Cause and Affidavits Annexed.....
- Answering Affidavits.....
- Replying Affidavits.....
- Exhibits.....
- Other.....

Hazel Hall aka Hazel
Sertima-Hall
Claimant(s)/Plaintiff(s)/Petitioner(s)
against
Yonnette McKenzie
Defendant(s)/Respondent(s)

Upon the foregoing cited papers, the Decision/Order on this Motion to And respondent is not entitled to an ERAP stay is as follows:

This holdover proceeding was commenced in June 2021 after service of a 90 day termination notice. By notice of motion dated November 12, 2021, petitioner moved for an Inquest date, final judgment of possession, a warrant and a plenary judgment for \$9,000.00. On February 17, 2022 the court received respondent's ERAP application information and the case was put on the ERAP administrative calendar and stayed.

Petitioner now moves to vacate the ERAP stay arguing that the lease has been terminated, ^{that} petitioner does not wish to accept ERAP funds, that the stay is an exercise in futility and prejudicial to petitioner. Petitioner continues stating petitioner wants the subject apartment for her own

Date _____ Judge, Civil Court 1

Civil Court of the City of New York
County of Kings
Part T

Index Number 304867/21
Motion Cal. # _____ Motion Seq. # _____

DECISION/ORDER

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Replying Affidavits.....	_____
Exhibits	_____
Other.....	_____

Hazel Hall AKA Hazel
Sertima - Hall
Claimant(s)/Plaintiff(s)/Petitioner(s)
against
Yonnette McKenzie
Defendant(s)/Respondent(s)

Upon the foregoing cited papers, the Decision/Order on this Motion to _____ is as follows:

use and that the premises cannot be used as an apartment since the unit is in a one family house. Petitioner citing states that respondent is not a tenant or occupant and does not have a lease making respondent ineligible to benefit from the "stay of proceedings" contained in Section 8 of the ERAP. ^{statute} Lastly petitioner states that the ERAP stay violates petitioner's Due Process rights. In opposition, ^{is attorney} respondent ^{respondent} states that ~~she~~ has been a tenant at the premises for twenty-four years and that the ERAP statute does not provide a means to vacate a stay except for the "nuisance exception." Respondent's attorney states that respondent was terminated pursuant to a ninety-day notice and the petition sought a judgment

*U.S. Bank Tr., N.A. v. Alston, 2022 NYSlipOp0922051

Date Judge, Civil Court

Civil Court of the City of New York
County of King's
Part 1

Index Number 304867/21
Motion Cal. # _____ Motion Seq. # _____

Hazel Hall AKA Hazel
Sertima - Hall
Claimant(s)/Plaintiff(s)/Petitioner(s)
against
Yonnette McKenzie
Defendant(s)/Respondent(s)

DECISION/ORDER

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion:

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Exhibits	_____
Other.....	_____

Upon the foregoing cited papers, the Decision/Order on this Motion to _____

is as follows:

for rental arrears and use and occupancy. Respondent's attorney argues that petitioner's constitutional challenge to ERAP must be denied because petitioner did not notify the New York Attorney General's office

Except for an allegation of Nuisance/Intentional damage the ERAP statute provides that a summary proceeding is automatically stayed upon an application for benefits pending an eligibility determination by Office of Temporary and Disability Assistance (OTDA). L. 2021, C. 56, Part BB, Subpart A, § 8, as amended by L. 2021, C. 417, Part A, § 4.

Here at the outset the petition, dated June 7, 2021, seeks a judgment for rent in arrears against

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Date Judge, Civil Court

_____	_____	_____	_____	_____	_____	_____	_____
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Civil Court of the City of New York
 County of Kings
 Part 1

Index Number 304867/21
 Motion Cal. # _____ Motion Seq. # _____

DECISION/ORDER

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion:

Hazel Hall AKA Hazel
Sertima-Hall
 Claimant(s)/Plaintiff(s)/Petitioner(s)
 against
Yonnette McKenzie
 Defendant(s)/Respondent(s)

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	_____
Order to Show Cause and Affidavits Annexed....	_____
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Replying Affidavits.....	_____
Exhibits	_____
Other.....	_____

Upon the foregoing cited papers, the Decision/Order on this Motion to _____

is as follows:

respondent tenant for \$6,600.00; fair value of use and occupancy; interest from August 1, 2020 " in its prayer for relief and states that respondent is "tenant of the premises," entered into possession under rental agreement." Additionally, the motion seeking an Inquest and judgment of possession specifically asks for a plenary judgment for \$9,600.00. In petitioner's affidavit in support of the ^{with this} motion petitioner states, "Respondent has not paid any rent since July of 2020 and now owes \$9,600.00."

Petitioner continued to ask for rent use + occupancy re-affirming that ^{rent} use + occupancy was being sought and very much part of the resolution of this holdover proceeding. Only recently, in this motion, has petitioner

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Date _____ Judge, Civil Court _____

Civil Court of the City of New York
County of Kings
Part 1

Index Number 304867/21
Motion Cal. # _____ Motion Seq. # _____

DECISION/ORDER

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion:

Hazel Hall ALKA Hazel Sertima - Hall
Claimant(s)/Plaintiff(s)/Petitioner(s)
against
Yonnette McKenzie
Defendant(s)/Respondent(s)

Papers	Numbered
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Order to Show Cause and Affidavits Annexed.....	_____
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Other.....	_____

Upon the foregoing cited papers, the Decision/Order on this Motion to _____

is as follows:

indicated that she does not wish to accept money from ERAP, and that she wants possession for herself.

Petitioner states that respondent is neither a tenant nor an occupant. Section 8 of the ERAP statute states that a proceeding shall be stayed pending determination of eligibility if a "household" applies for the program funds to pay for all or part of the arrears claimed by petitioner. Section 5(2)(a)(i) of the ERAP statute states a "household" is eligible for the program if it is a tenant or occupant obligated to pay rent in their primary residence in the state of New York. Furthermore, Section 2(a) of the ERAP statute defines "rent" the same as RPAPL § 702

Date _____ Judge, Civil Court 5

Civil Court of the City of New York
 County of Kings
 Part 1

Index Number 304867/21
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DECISION/ORDER

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Replying Affidavits.....	_____
Exhibits	_____
Other.....	_____

Hazel Hall AKA Hazel Serina Hall
 Claimant(s)/Plaintiff(s)/Petitioner(s)
 against
Yannelle McKenzie
 Defendant(s)/Respondent(s)

Upon the foregoing cited papers, the Decision/Order on this Motion to _____

is as follows:

which defines it, in pertinent part, as: "the monthly or weekly amount charged in consideration for the use and occupancy of a dwelling pursuant to a written or oral rental agreement." Finally, Section 210) of the ERAP statute defines "rental arrears" as unpaid rent accruing on or after March 13, 2020. ^{Last 4,} The fact that petitioner does not want to participate in the program is not fatal to an ERAP stay. See La Porte v Garcia, 75 Misc3d 557, 2022 NY Slip Op 22126 [Civ Ct., Bronx County 2022].

In view of petitioner's numerous requests for rent/upto throughout this case and based upon the foregoing and specific facts of this case respondent is entitled to a stay

Date _____ Judge, Civil Court 6

Civil Court of the City of New York

County of Kings
Part T

Index Number 304867/21
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DECISION/ORDER

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Replying Affidavits.....	_____
Exhibits	_____
Other.....	_____

Hazel Hall ALKIA Hazel
Serdima - Hull
Claimant(s)/Plaintiff(s)/Petitioner(s)
against
Yonette McKenzie
Defendant(s)/Respondent(s)

Upon the foregoing cited papers, the Decision/Order on this Motion to _____


is as follows:

of this proceeding pending O.T.D.A.'s determination of her ERAP application. Accordingly, petitioner's motion to vacate the ERAP stay is denied.

This is the decision/order of the Court.

The Court will mail a copy of this decision/order to respondents and upload it to NYSCEF.

July 14, 2022
Date


Judge, Civil Court

Hon. Elizabeth Donoghue
Judge, Housing Court