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Gregory v. Pacheco

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

..... X
Evelyn Gregory,

Petitioner,

INDEX NO.: L&T 300492-22

-against-

DECISION/ORDER

Alexandria Sanchez Pacheco
301 Grove Street
Ground Floor
Brooklyn, NY 11207

Respondent.

..... X

HON. HANNAH COHEN

Recitation, as required by CPLR 2219(a), of the papers considered in the review of Respondent motion to dismiss, and or a stay and to amend the answer and discovery and petitioner’s cross motion and in opposition seeking use and occupancy

<u>Papers</u>	<u>Numbered</u>
Motion	1
Opposition/Cross Motion	2
Opposition, Reply	3,4

Upon the foregoing cited papers, the Decision and Order on these motions is as follows:

Petitioners commenced this holdover proceeding to regain possession of the premises in 2022 alleging a termination of a month to month tenancy. The premises is located in a two family home. It is undisputed that respondent was approved for ERAP payments and petitioner accepted said payments in January 2022. Respondent now moves to dismiss the proceedings as

petitioner accepted ERAP funds or seeks a stay of this holdover proceeding for 12 months from acceptance of ERAP funds. Respondent also seeks to submit the amended answer and seek discovery upon petitioner's oral statements in court that she wishes to occupy the premises for her daughter. Petitioner opposes and seeks use and occupancy.

Per the terms of the COVID-19 ERAP of 2021 [L.2021, N.Y. Ch. 56], acceptance of payment of rent of rental arrears from ERAP constitutes an agreement by the recipient landlord or property owner "not to evict for reason of expired lease or holdover tenancy on behalf of whom rental assistance is received for 12 months after the first rental assistance payment is received...". However the statute provides an exception if the dwelling unit is located in a building that contains four or fewer units, pursuant to section 9 subpart A of part BB of chapter 56 of laws of 2021, in that section (iv) provides that a landlord or property owner who accepts ERAP payment for rent arrears "may decline to extend the lease or tenancy, if the landlord intends to immediately occupy the unit for the landlord's personal use as a primary residence or the use of his or her family and may decline to extend the lease or tenancy if the landlord intends to immediately occupy the unit for the landlord's personal use as a primary residence or the use of an immediate family member as a primary residence" and (v) notifies the tenants of the protections established under this subdivision. Here, petitioner wishes to reclaim a unit in a two family home for the use of her daughter. As such, respondents motion to dismiss or stay the proceedings is denied. Respondent's motion to amend the answer is granted as pleadings are freely amendable absent prejudice or surprise (CPLR 3025(b)).

When constructing a statute, the court must conclude that the legislature deliberately placed wording to serve its intended purpose (See Rodriguez v Perales, 86 NY2d 361 [1955]; Bitzarkis v Evans, 2021 NY Slip Op 21280 [Civil Ct Kings Co November 2021]). Like wise the absence of additional words must be seen as intentional and meaningful, as the failure of the

legislature to include a term in a statute is a significant indication that its exclusion was intended (See People v Finnegan, 85 NY3d 53 [1995]; Pajak v Pajak, 56 NY2d 394 [1982] (failure of legislature to include a term in a statute is significant indication that its exclusion was intended.” The court must conclude that had the legislature required petitioner to present proof of its intent to utilize the premises for his or her own use as a primary residence or that of his or her family’s, the legislature would have done so. As the legislature did not enact into the statute a requirements for proof by the petitioner or proof of how notice is to be given regarding their rights under this statute, respondents motion for discovery is denied. As respondent has demonstrated HPD violations and warranty of habitability issues, and or issues regarding the legal use of the premises, petitioner’s motion for use and occupancy is denied without prejudice to renew at trial.

The case is restored back to te courts calendar on August 3, 2022 at 2:30 pm, part H, rm 507.

This constitutes the decision and order of this Court.

Dated: July 19, 2022

Brooklyn, New York



Hon, Hannah Cohen, J.H.C.

**HANNAH COHEN
JUDGE, HOUSING COURT**