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2022-08-12

Aung v. Cabral

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS: HOUSING PART B

MAR MAR AUNG

Petitioner-Landlord

-against-

WALKIRSI PENA CABRAL

25-38 98th Street

East Elmhurst, New York 11369

Respondent-Tenant

“JOHN DOE” and “JANE DOE”

Respondents-Undertenants

L&T Index # 308270/21

DECISION/ORDER

Hon. Clifton A. Nembhard

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of petitioner’s order to show cause.

Papers

Numbered

Notice of Motion and Affidavits Annexed	
Order to Show Cause and Affidavits Annexed	1
Answering Affidavits	
Replying Affidavits	
Exhibits	
Other	

Upon the foregoing cited papers, the order to show cause is as follows:

Background

Petitioner commenced this month-to-month holdover proceeding to recover possession of 25-38 98th Street, East Elmhurst. The petition alleges that respondent entered into possession pursuant to a written lease agreement made as of December 19, 2019. Prior to commencement petitioner served as 90 Day Notice terminating respondent’s tenancy effective October 31, 2021. Respondent filed a Hardship Declaration which stayed the proceeding through January 15, 2022. On or about March 2022 respondent filed an Emergency Rent Assistance Program (“ERAP”) application effectively staying the case until a determination is made on her application. Petitioner now moves to lift the ERAP stay on the ground that it is inapplicable to this proceeding.

Discussion

The gravamen of petitioner's argument is that only tenants who are parties to a current rental agreement and those who occupy with their permission are protected by the ERAP statute. Since respondent does not fall within either category, it would be unreasonable and unjust to permit the stay to continue. In support of this position, petitioner notes the RPL § 235-f defines a tenant as a person occupying or entitled to occupy a residential rental premises as either a party to the lease or rental agreement or as a statutory tenant and an occupant as a person, other than the tenant or tenant's immediate family, who occupies with the consent of the tenant. Petitioner contends that because respondent's lease expired and because it informed her of its intention not to renew the lease, respondent is not occupying the premises as a party to a lease within the meaning of the statute. She is also not a statutory tenant nor a person occupying the with the consent of the tenant and therefore she is not eligible for ERAP.

The Court finds petitioner's argument unpersuasive. Section 8 of Subpart A of Part CC of chapter 56 of the Laws of 2021 states:

Except as provided in section nine-a of this act, eviction proceedings for a holdover or expired lease, or non-payment of rent or utilities that would be eligible for coverage under this program shall not be commenced against a household who has applied for this program or any local program administering federal emergency rental assistance program funds unless or until a determination of ineligibility is made. Except as provided in section nine-a of this act, in any pending eviction proceeding, whether filed prior to, on, or after the effective date of this act, against a household who has applied or subsequently applies for benefits under this program or any local program administering federal emergency rental assistance program funds to cover all or part of the arrears claims be the petitioner, all proceedings shall be stayed pending a determination of eligibility.

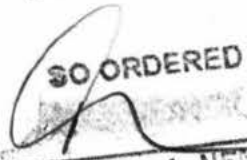
The plain language of the statute provides that all holdover proceedings are subject to an automatic stay pending a determination of the applicant's eligibility. *Sea Park E. L.P. v. Foster*, 74 Misc3d 213 [Civ Ct NY 2021]. Moreover, respondent, as stated in the petition, is occupying the premises as a month-to-month tenant. The fact petitioner chose to terminate her tenancy does not change the nature of respondent's occupancy. Unlike a licensee or squatter who have no obligation to pay rent, if respondent's ERAP application is approved and petitioner accepts the funds, the landlord-tenant-relationship between the parties would be reinstated. *Compare, Active v. Gregory*, 74 Misc3d 1213 (A) [Civ Ct Kings 2022]. This outcome, it appears to the Court, was the intent of the Legislature when it included stays of holdover proceedings in the statute. To interpret the ERAP law as petitioner suggests would render the expired lease language in the statute superfluous. A more plausible interpretation is that the Legislature intended for the stay to apply for individuals, such as respondent, who remained in possession after their lease expired. Accordingly, the situation here is of the type specifically contemplated by the statute.

Conclusion

Based on the foregoing the order to show cause is denied. The case shall remain on the Administrative Calendar pending a final determination of respondent's ERAP application.

This constitutes the decision and order of the Court.

Date: August 12, 2022
Queens, New York

SO ORDERED

HON. CLIFTON A. NEMBHARD

Hon. Clifton A. Nembhard, JHC