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### 1588-1600 AMS LLC v. Gil

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[\*1]

<b>1588-1600 AMS LLC v Gil</b>
2022 NY Slip Op 22080
Decided on March 22, 2022
Appellate Term, First Department
Published by <u>New York State Law Reporting Bureau</u> pursuant to Judiciary Law § 431.
This opinion is uncorrected and subject to revision before publication in the printed Miscellaneous Reports.

Decided on March 22, 2022

SUPREME COURT, APPELLATE TERM, FIRST DEPARTMENT

PRESENT: Edmead, P.J., Brigantti, Hagler, JJ.

570103/21

**1588-1600 AMS LLC, Petitioner-Landlord-Respondent,**

**against**

**Louis Gil a/k/a Luis Gil, Respondent-Appellant, "John Doe" and "Jane Doe," Respondents.**

Respondent appeals from an order of the Civil Court of the City of New York, New York County (Clifton A. Nembhard, J.), entered on or about April 28, 2020, which granted landlord's motion to strike his answer and for a final judgment in a holdover summary proceeding.

Per Curiam.

Order (Clifton A. Nembhard, J.), entered on or about April 28, 2020, reversed, without costs, motion denied, answer reinstated, and the matter remanded to Civil Court for further proceedings.

We exercise our discretion to excuse the failure of respondent, the senior citizen son of the deceased rent controlled tenant, to make a timely court-ordered payment of \$6,932.50. The amount due represented some two years of accrued use and occupancy which the Court directed to be paid within 11 days (former RPAPL 745[2][c]). Although respondent was

unable to obtain government assistance within the 11-day period mandated by the court, he proffered the full lump sum due, through counsel, shortly thereafter. In light of petitioner-landlord's more than two year delay in moving for RPAPL 745 relief, the large sum required to be paid, respondent's successful efforts to obtain public assistance funding, as well as his potentially meritorious succession claim, we conclude that he should be afforded a further opportunity to pay the sum due (*see Silverman v D'Arco*, 149 AD3d 527 [2017]; *see generally Matter of Strata Realty Corp. v Pena*, 166 AD3d 401 [2018]; *2246 Holding Corp. v Nolasco*, 52 AD3d 377 [2008]), and remand accordingly.

While the amendment to RPAPL 745 in the Housing Stability and Tenant Protection Act of 2019 (L 2019, ch 36, § 1, Part M) does not apply to this proceeding commenced in 2017 (L 2019, ch 36, § 1, Part M, § 29), we note that the legislature has since recognized a need for [\*2]flexibility in dealing with rent deposits. The amended statute among other things, permits the court to consider the equities of the case, directs deposit into court of use and occupancy accruing only after the court's order (RPAPL 745[2][a]), eliminates the penalty of striking claims and defenses (RPAPL 745 [2][f]), and permits the court to extend the time for deposit for good cause shown (RPAPL 745[2][d][ii]).

All concur.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Clerk of the Court

Decision Date: March 22, 2022

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