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WILLOUGHBY COURT APARTMENTS LP v. LEWIS

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

WILLOUGHBY COURT APARTMENTS LP,

Petitioner

Index No. LT 53227/20KI

- against -

DECISION/ORDER

ALMA LEWIS
300 VERNON AVENUE, APT. 6H
Brooklyn, New York 11206

Respondent.

-----X

HON. HANNAH COHEN:

Recitation, as required by CPLR §2219(a), of the papers considered in review of Petitioner’s motion to restore this proceeding to the court’s calendar, scheduling a settlement conference, or upon failure to appear by respondent, permitting petitioner to execute on the warrant of eviction; and respondent’s cross-motion to dismiss this proceeding pursuant to C.P.L.R. § 3212;

<u>Papers</u>	<u>Numbered</u>
Motion	1
Opposition/Cross-motion	2/3

Upon the foregoing cited papers, the Decision and Order on this motion is as follows:

Petitioner commenced this non-payment proceeding seeking rental arrears from Alma Lewis for the premises located at 300 VERNON AVENUE, APT. 6H Brooklyn, New York 11206, by service of Petition and Notice of Petition non-payment in January 2020. The Petition sought rent arrears in the sum of \$1,514.00 due through January 31, 2020. Respondent while unrepresented filed an answer on February 2020, and the case was calendared on March 2, 2020. On March 2, 2020, Alma Lewis

appeared *pro se*, and consented to a stipulation of settlement. Ms. Lewis consented to the amending the petition to date through March 2020 and consented to an entry of a final judgment in the sum of \$1,892.00 with the issuance of the warrant forthwith but the execution of the warrant is stayed through April 15, 2020, for payment of the judgment amount and April's 2020 rent. Five days after the stipulation was entered, on March 7, 2022, Governor Cuomo issued Executive Order 202 declaring a state of emergency due to Covid-19 pandemic. On March 15, 2020, Hon. Lawrence Marks, Chief Administrative Law Judge, suspended all eviction proceedings and pending eviction orders statewide. On June 30, 2020, Tenant Safe Harbor Act ("TSHA") was enacted that permitted the landlords to file eviction proceedings but did not permit the courts to issue a possessory judgment and warrant of eviction to issue based on rent owed between March 7, 2020 through January 15, 2022, for tenants who suffered a financial hardship due to COVID-19; owners may only seek a money judgment. On March 11, 2022, Marshal McCoy requested for a warrant; it was reviewed and rejected on July 29, 2020. On March 16, 2020, Marshal Charles Marchisoto requested for a default judgment and warrant; it was reviewed and rejected on July 29, 2020. To date the warrant of eviction has not been issued in this proceeding.

On October 19, 2020, Petitioner filed a motion pursuant to DRP-213 seeking to execute on the warrant of eviction that was calendared for November 17, 2022, in the Housing Motion Part ("HMP"). In HMP, the Legal Aid Society ("LAS") appeared pursuant to a judicial referral, and the motion was adjourned to December 16, 2020. After the December 16, 2020, appearance by the parties, the opposing counsels communicated back and forth regarding Ms. Lewis' recertification of her income. Thereafter, Petitioner's motion was adjourned several times. On July 13, 2021, Respondent filed a COVID-19 Hardship Declaration, staying the proceeding. On September 16, 2021, Respondent filed for an Emergency Rental Assistance Program ("ERAP") with the New York State Office of Temporary and Disability Assistance ("OTDA"); this proceeding was administratively stayed. When Respondent's ERAP was provisionally approved, proceeding was calendared, and Respondent by her

counsel filed opposition papers to Petitioner's motion and filed a Cross-motion to dismiss this proceeding. Petitioner has not submitted opposition papers to Respondent's Cross-motion.

Pursuant to DRP-213, Petitioner moved to seek to execute on the warrant of eviction.

Respondent opposed and cross-moved pursuant to CPLR § 3212 to dismiss this proceeding based upon:

(1) Petitioner's motion should be denied as the judgment has been satisfied; (2) if the judgment is not vacated, then the current provision is unenforceable pursuant to the TSHA and limit any possessory judgment to arrears accrued outside of the covered period; (3) the current rent provision in a stipulation of settlement is void against public policy as it contravenes the TSHA; and (4) proceeding should be stayed until such time as OTDA issues a final determination to Respondent's ERAP application.

Summary judgement "shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing a judgment in favor of any party." CPLR § 3212(b). When a moving party makes a *prima facie* showing of entitlement to judgment as a matter of law giving sufficient evidence to eliminate any material issue of fact, summary judgment should be granted. *Weingrad v New York University Medical Center*, 64 N.Y. 2d 851, 853 (1985). "Failure to make such a showing requires a denial of the motion, regardless of the motion papers." *Id* at 853.

Respondent's share of her rent was \$189.00 through 8/2020. Based upon Petitioner's rent history the balance due through 8/2020 was \$2,837.00. Human Resources Administration of the City of New York ("HRA") on or about December 3, 2020, mailed 5 checks to Petitioner in the sum of \$3,593.00. Although only two of the checks in the sum of \$1,132.00 was cashed on February 10, 2021, and the other three checks were reissued to Petitioner in the sum of \$2,461.00 on April 2021. See, Exhibit F of Respondents opposition and cross-motion; NYSCEF #20 shows payments from HRA:

SP44277411; \$480.00; 2/1/2020-3/31/2020

SP44277412; \$990.50; 4/1/2020-5/31/2020

SP44277413; \$990.50; 6/1/2020-7/31/2020

SP44031153; \$990.50; 8/1/2020-10/31/2020; 8/2020's portion is \$330.16

Therefore, when applying \$2,791.16 HRA payments to be credited for the months of February 2020 through August 2020, that leaves a balance of \$45.84 due through 8/2020. Although based upon the March 2, 2020 stipulation, the warrant of eviction was to issue forthwith but due to the unforeseeable event of the global COVID-19 pandemic, the tenancy was not terminated by the issuance of a warrant. Both requests for issuance of warrant were rejected by the warrant clerk. Based upon the HRA payment earmarked for the specific months from February 2020 to August 2020, the judgment sum of \$1,892.00 has been satisfied. *L & T E. 22 Realty Co. v. Earle*, 192 Misc. 2d 75, [AT 2nd 2002]. Petitioner may seek a money for \$45.84 remaining balance due through August 2020.

Based upon the foregoing, Petitioner's motion to execute on the warrant is denied; Respondent's cross-motion is granted, judgment has been satisfied, and this proceeding is dismissed through July 2020.

This constitutes the decision and order of this court.

Dated: August 15, 2022
Brooklyn, New York



Hannah Cohen, J.H.C.