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Cenat v. Ishmael

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS, HOUSING PART A

-----X
RUTH CENAT,

Petitioner-Landlord,

-against-

KYLE ISHMAEL,

Respondent(s)-Tenant(s),

and

John Doe, Jane Doe,

Respondent(s)-Undertenant(s).
-----X

Present: Hon. Tashanna B. Golden

Index No. LT-309084-21/KI

DECISION/ORDER

Tashanna B. Golden J.H.C.

Motion Seq # 3

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this petitioner's order to show cause:

| <u>Papers:</u> | <u>Numbers</u> |
|--|----------------|
| Petitioner's Order to Show Cause, Affirmation, Affidavit and Exhibits..... | 30-37 |
| Respondent's opposition Affirmation and Exhibits..... | 40-44 |
| Respondent's Affidavit in Opposition..... | 45,46 |
| Court File..... | <i>passim</i> |

This is a summary holdover proceeding filed in October 2021.¹ The first court date was November 9, 2021. The Respondent was assigned counsel on November 23, 2021. With the assistance of counsel, Respondent filed an ERAP application in January 2022 and this matter was administratively stayed pending the outcome. See Respondent's Affirmation in Opposition. Respondent then filed a second ERAP application in February 2022. *Id.* In July 2022, Petitioner filed a motion to restore as the first ERAP application was denied.² Petitioner was then notified of the second ERAP application which had a provisional approval and was subsequently denied. See Respondent's Affirmation in Opposition. As a result, the matter was restored. On October 28, 2022, Respondent filed a third ERAP application which mandated the court to put the case back on an administrative stay. Petitioner seeks to set aside the ERAP stay on the grounds that there has already been two ERAP denials, and that the Respondent does

¹ See NYSCEF document 1, 2 Petition and Notice of Petition

² See NYSCEF document 11

not live at the premises and is using it either as a storage space or renting it out to other persons unknown to her. See Petitioner's Order to Show Cause.

The ERAP statute states that where there is a pending application the matter shall be stayed until there is a final determination.³ Here, there has been not one, but two final determinations—a denial of ERAP funds. Counsel argues that the denials are a result of administrative errors on the part of OTDA, but even if that is the case, it does not change the fact that the Respondent has had the benefit of the required stay while such determination was made, not once, but twice. As a determination has been made the court is no longer required to stay the matter further, especially where, as here, there is no indication of success. The cases cited by Respondent to support an additional stay for second, or as here, third ERAP applications are distinguishable as this is not an instance where there has been an approval for less than the 12 eligible months, but again, not one but two denials. Further, Respondent's argument that the ERAP stay should remain because the Petitioner is seeking use and occupancy fails to acknowledge the extensive settlement discussions where the Petitioner offered waiver of arrears and even settlement money for the Respondent to vacate the subject premises, which were rejected. Petitioner's motion to vacate the ERAP stay is hereby granted.

The matter shall be restored to the calendar for a hearing for all purposes on December 23, 2022 9:30 am.

The foregoing is the Decision/Order of this court.

Dated: Brooklyn, New York
December 15, 2022



HON. TASHANNA B. GOLDEN
JUDGE, HOUSING COURT

³ See ERAP under Part BB, Subpart A, §8 of Chapter 56 of the Laws of 2020, as modified by L. 2021, c. 417