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### 22 Hawthorne St. LLC v. Lendor

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**22 Hawthorne St. LLC v Lendor**

2022 NY Slip Op 34536(U)

September 6, 2022

Civil Court of the City of New York, Kings County

Docket Number: Index No. 308930/21

Judge: Michael L. Weisberg

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

-----X

22 HAWTHORNE STREET LLC,

Index No. 308930/21

Petitioner,

DECISION/ORDER

-against-

Mot. seq. no. 2 & 3

DEXTER LENDOR, ET AL.,

Respondents.

-----X

WEISBERG, J.:

The following e-filed documents, listed by NYSCEF document numbers 13-14; 17-18 (motion nos. 2 & 3), were read on these motions to vacate the ERAP stay.

Of the various grounds upon which a summary eviction proceeding may be maintained, the three most common are nonpayment of rent by a tenant (RPAPL 711[2]); holding over by the tenant after the expiration of their term (RPAPL 711[1]); and the various grounds “where no landlord-tenant relationship exists” (RPAPL 713). Colloquially, cases commenced pursuant to RPAPL 711(2) are known as “nonpayment proceedings,” while all other cases are known as “holdover proceedings.” In fact, however, “summary eviction proceedings to evict squatters or licensees are technically neither [read as “not”] holdover proceedings...” (Andrew Scherer, Residential Landlord-Tenant Law in New York § 8:1 [2021-2022 ed]). In the case of a licensee, a squatter, or a superintendent, there is no “term” of tenancy beyond which someone in possession can “hold over.”

Where a household member has applied for ERAP, the ERAP statute prohibits commencement or continuation of an “eviction proceeding[] for holdover or expired lease, or nonpayment of rent...” (L 2021, ch 56, part BB, subpart A, § 8). This proceeding, premised as it is on the allegations that Respondent was in possession of the subject premises as an incident to his employment and his employment has been terminated, is not a “holdover proceeding,” and thus the ERAP application effectuates no stay.

Accordingly, it is ORDERED that the motion is granted as set forth below; and it is further

ORDERED that any stay previously effectuated as the result of an ERAP application is vacated; and it is further

ORDERED that the parties shall appear on September 23, 2022 at 9:30 AM in Part S/Room 602 for an in-person settlement conference, whereupon the proceeding shall be transferred to the trial expediter if no settlement is reached.

This is the court's decision and order.

Dated: September 6, 2022

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Michael L. Weisberg, JHC