

Fordham Law School

## FLASH: The Fordham Law Archive of Scholarship and History

---

[All Decisions](#)

[Housing Court Decisions Project](#)

---

2023-04-25

### St. Johns I Associates, LP v. Antoine

Follow this and additional works at: [https://ir.lawnet.fordham.edu/housing\\_court\\_all](https://ir.lawnet.fordham.edu/housing_court_all)

---

#### Recommended Citation

"St. Johns I Associates, LP v. Antoine" (2023). *All Decisions*. 851.  
[https://ir.lawnet.fordham.edu/housing\\_court\\_all/851](https://ir.lawnet.fordham.edu/housing_court_all/851)

This Housing Court Decision is brought to you for free and open access by the Housing Court Decisions Project at FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in All Decisions by an authorized administrator of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact [tmelnick@law.fordham.edu](mailto:tmelnick@law.fordham.edu).

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

-----x  
St. Johns I Associates, LP

Index No. LT-304697-22

Petitioner-Landlord

DECISION/ORDER

-against-

Motion Seq #3

Gregory Antoine,

Respondent-Tenant(s)  
-----x

Present: Hon. Tashanna B. Golden

Recitation as required by CPLR 2219(a), of the papers considered in the review of the  
Petitioner's Order to Show Cause:

<b>Papers:</b>	<b>Numbers</b>
Petitioner's Order to Show Cause, Affirmation and Affidavit in Support.....	12-14
Petitioner's exhibits in support of the OSC.....	15-16
Respondent's Affirmation in Opposition .....	19
Petitioner's Reply.....	20
Court File.....	Passim

---

Petitioner filed this instant non-payment proceeding on or about March 14, 2022, seeking a final money judgment in the amount of \$5,220.00 and a judgment of possession of the premises located at 1539 Sterling Place, Brooklyn, New York 11213, from respondent, Gregory Antoine. Petitioner predicated its non-payment proceeding upon service of a 14-day rent demand. On August 22, 2022, the parties entered into a stipulation of settlement whereby Respondent acknowledged owing \$4,123.00 in arrears through August 2023, and agreed to pay the same, plus September's rent by September 15, 2023. On or about December 16, 2022 the court was notified that an ERAP application was filed, and therefore the matter was placed on a mandatory administrative stay. On or about February 10, 2023, Petitioner filed the instant Order to Show Cause seeking to vacate the ERAP stay on the basis that the Respondent's tenancy is subject to

Section 8 and therefore "will not be assessed for eligibility until all other applications have been considered."<sup>1</sup>

ERAP under Part BB, Subpart A, §8 of Chapter 56 of the Laws of 2020, as modified by L. 2021, c. 417, remain fully effect ("the act" or "ERAP statute").<sup>2</sup> Pertinent parts of the act states:

"Restrictions on eviction. 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 claimed by the petitioner, all proceedings shall be stayed pending a determination of eligibility. Evidence of a payment received pursuant to this act or a local program administering federal emergency rental assistance program funds may be presented in such proceeding and create a presumption that the tenant's or occupant's rent or utility obligation for the time period covered by the payment has been fully satisfied."

There is no dispute that Respondent has a pending ERAP application, or that the application is pending determination. Specifically, there has NOT been a denial or a provisional approval, thus no determination has been made. Since approximately June 2022, the agency that processes ERAP applications and issues ERAP eligibility decisions, the Office of Temporary and Disability Assistance ("OTDA"), ERAP homepage states: "Applications from subsidized housing tenants whose rent is limited to a certain percentage of income (including public housing, section 8 and FHEPS) are not currently able to be paid. State law requires that these applications be paid after all other eligible applicants have been reviewed and paid. Therefore, at this time, none of the subsidized housing applications can be paid regardless of the date their application was submitted."<sup>3</sup>

<sup>1</sup> See NYSCEF Document # 12 at ¶16.

<sup>2</sup> See Administrative Order ("AO") 34/22 dated January 16, 2022.

<sup>3</sup> See OTDA website

In nonpayment proceedings against Section 8 tenants, some courts have declined to vacate the ERAP stay, see e.g. *Robo LLC v. Matos*, 75 Misc3d 1211[A], 168 NYS3d 676 [Civ Ct Bx Co 2022]; *14 N Highstreet, LLC v. Clowney*, 76 Misc3d 768, 172 NYS3d 824 (City Ct Mt Vernon, Aug 23, 2022); and others have granted motions to vacate see e.g. *EG Mt Vernon Pre Lp v. Duncan* (2023 NY Slip Op 50044 [U], City Ct Mt Vernon, Jan 17, 2023); *Leschinsky v. Lutula* (2022 NY Slip Op 51156[U], 77 Misc3d 1206[A] Civ Kings Co., Nov 21, 2022). The primary purpose of the ERAP statute is to prevent evictions by paying a landlord rental arrears owed by an eligible tenant. Eligibility is determined solely by OTDA.<sup>4</sup> Here, the Petitioner has brought a non-payment matter, and alleged \$5,220.00 in arrears in its Petition. In the instant Order to Show Cause, the Petitioner alleges that \$5,826.00 is owed through January 2023. An ERAP payment could potentially make the Petitioner whole and satisfy this non-payment matter, which would result in ERAP working as designed. Though the website states that “**at this time** none of the subsidized housing applications can be paid,” (emphasis added), there is a possibility that additional funding may be provided, and subsidized housing applications will be processed, if not prioritized. Though Section 8 tenants may be low priority, low priority does not mean that a denial will be issued.

Petitioner essentially asks this court to find that any pending ERAP stay where a tenant receives Section 8 benefits should be vacated, even where, as here, it's a non-payment and the amount in question is relatively low. This court finds it inappropriate to vacate the ERAP stay as a matter of course simply because the Respondent is a Section 8 tenant, and specifically here, where there is a pending ERAP application in non-payment matter as the Petitioner may in fact be made whole upon an approval, since the Respondent is “eligible” under the ERAP statute . See *1661 Topping Realty LLC v. Luwana Goodwin*, LT-309194-20, (Civ Ct. Bx. Mar. 18, 2022)

---


<sup>4</sup> See ERAP, L 2021, ch 56, Part BB, Subpart A, Section 1(3)

(declining to vacate an ERAP stay where tenant was a section 8 tenant and finding that OTDA's continued inclusion of subsidized tenants as "eligible" candidates supported the continued stay).

For the reasons stated supra, Petitioner's order to show cause to vacate the stay triggered upon respondent, Gregory Antoine filing an ERAP application is denied. Therefore, this matter remains on the ERAP calendar until there is a determination.

The foregoing is the Decision/Order of this court.

Dated: Brooklyn, New York  
April 25, 2023

  
**Hon. Tashanna B. Golden**  
**Judge, Housing Court**

---

SO ORDERED  
HON. TASHANNA B. GOLDEN  
JUDGE, HOUSING COURT