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DIEGO BEEKMAN MUTUAL HOUSING ASSOCIATION HOUSING DEVELOPMENT FUND CORP. v. LARKINS

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX: HOUSING PART E

-----X
DIEGO BEEKMAN MUTUAL HOUSING
ASSOCIATION HOUSING DEVELOPMENT FUND CORP.,

Index No. L&T 1450-20

Petitioner,

MOTION SEQ. 01

-against-

DECISION/ORDER

JOSHUA LARKINS,
NYCHA,
LISA LARKINS,

Respondents.

-----X
BERNADETTE G. BLACK, Judge:

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of Petitioner’s motion to vacate the Emergency Rental Assistance Program (“ERAP”) stay, and to restore the proceeding to the court’s calendar:

NYSCEF Documents 4, 8-15.

Petitioner commenced this nonpayment proceeding on or about January 20, 2020, seeking \$3446.96 in rent arrears for the months September and October 2019 from Respondent, rent-stabilized tenant of record Joshua Larkins. Respondent is a Section 8 voucher recipient. Petitioner attached proof that New York City Housing Authority (“NYCHA”) accepted the landlord’s certification of the nonpayment eviction petition. Respondent’s mother Lisa Larkins filed an answer asserting a general denial and that there was a discrepancy with Respondent’s Section 8 case. The parties, by counsel, have stipulated to amend the pleading to add Lisa Larkins as a Respondent-Undertenant. Although the proceeding was initially calendared in February 2020, shortly thereafter, due to the COVID-19 health emergency, the matter was stayed. In July 2021, Ms. Larkins filed an Emergency Rental Assistance Program (“ERAP”) application, which stayed the proceeding pursuant to the ERAP law. L 2021, ch 56, § 1, part BB, subpart A, § 8, as amended by L 2021, ch 417, § 2, Part A, § 4. Respondents’ ERAP application remains pending to date.

The proceeding comes before the court on Petitioner's motion, which seeks to vacate the stay imposed by the pending ERAP application. By the filing date of the motion Petitioner's records indicated that Respondent owed \$47,387.36 in rent arrears. Petitioner argues that Section 8 tenants to have low priority status in the ERAP application pool due to the state law that requires priority to be given to applicants who do not receive rental subsidies. Petitioner urges the court to exercise its discretion to vacate the stay, citing to the length of time that Respondent's application as been under review and the prejudice to the landlord, as Respondents' rental arrears continue to increase.

The ERAP statute in relevant part here provides: "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." L 2021, ch 56, § 1, part BB, subpart A, § 8, as amended by L 2021, ch 417, § 2, Part A, § 4.

"It is a fundamental principle of statutory interpretation that a court should attempt to effectuate the intent of the Legislature." 2023 N.Y. Slip Op. 23075, --- N.Y.S.3d --- (App. Term, 1st Dept. 2023) (citations omitted). In general, courts have relied on the plain language of the statute which states, among other criteria, that in order to be eligible for ERAP relief, an applicant must be a tenant or occupant obligated to pay rent at their primary residence in the state of New York. (L 2021, c 56, part BB, subpart A, § 5 [1] [a] [i]). See *West 49th Street, LLC v. O'Neil*, 76 Misc. 3d 459 (Civ. Ct., New York County 2022); *5th and 106th St. Assoc. LP v. Hunt*, 76 Misc. 3d 338, 341 (Civ. Ct., New York County 2022); *Laporte v. Garcia*, 75 Misc. 3d 557 (Civ. Ct., Bronx

County 2022); *Briggs v. Evans*, 74 Misc. 3d 1224(A) (Civ. Ct., Bronx County 2022); *Actie v. Gregory*, 74 Misc. 3d 1213(A) (Civ Ct. Kings County 2022); *Abuelafiya v. Orena*, 73 Misc. 3d 576 (Dist. Ct., 3rd Dist. Suffolk County, 2021). In *Bank of New York Trust Company, N.A. as Trustee... v. Courtney*, *supra*, the Appellate Term recently stated: “The legislature’s intention, as reflected in the language of the statute at issue here, is clear and inescapable. The filing of an ERAP application stays an eviction proceeding only against a ‘household,’ a term limited to a ‘tenant’ or an individual occupying the premises with the consent of tenant and obligated to pay rent.” Respondent Joshua Larkins is the rent-stabilized tenant of the subject premises, and the landlord seeks rent arrears due pursuant to the parties’ lease. Based upon the plain language of the statute, Respondents’ household certainly meets the eligibility threshold to be considered for ERAP benefits.

The Office of Temporary and Disability Assistance (“OTDA”) administers the ERAP applications, and continues to provide the following advisory statement on its website:

“IMPORTANT NOTE: 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.** Residents of public housing are urged to contact their public housing authority to determine if their rent can be adjusted retroactively based on a previous change in circumstances, including a reduction in income.” (Emphasis added.)

Based upon OTDA’s notice, Respondents’ application will be among the last to be considered, but at some point, the application will be processed and determined. The most recent OTDA update notice indicates that the ERAP application portal closed on January 20, 2023, and that New York State is no longer accepting ERAP applications. The notice provides that

applications by households with income over 80 percent of the area median income, and households that have already received 12 months of ERAP rental assistance, will be denied. While the notice offers no indication of when subsidized tenants' ERAP applications will begin to be addressed or paid, OTDA does not indicate that subsidized tenants are precluded from consideration. *See, e.g., Elliot Place Properties v. Jaquez*, 77 Misc. 3d 1230(A) (Civ Ct, Bronx County 2023); *Robo LLC v. Matos*, 75 Misc. 3d 1211(A) (Civ Ct, Bronx County 2022). Although Petitioner is undisputedly prejudiced by the stay occasioned by continued pendency of Respondent's ERAP application, the law is clear that the stay must remain in place until Respondent's application is fully determined. Accordingly, the motion is denied.

This constitutes the decision and order of the court.

Dated: Bronx, New York
April 13, 2023



Bernadette G. Black, J.H.C.