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DIEGO BEEKMAN MUTUAL HOUSING ASSOCIATION, HDFC v. LEE

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

X

DIEGO BEEKMAN MUTUAL HOUSING
ASSOCIATION, HDFC,

Petitioner,

L&T Index No. 302262/2021

-against-

Present: Hon. Shorab Ibrahim

DESIREE LEE,

Mot. Seq. 1

Respondent-Tenant.

DECISION/ORDER

X

RECITATION, AS REQUIRED BY CPLR 2219(A), OF THE PAPERS CONSIDERED IN
THE REVIEW OF THIS MOTION BY THE PETITIONER TO VACATE THE ERAP STAY:
NYSCEF Documents 9 Through 18).

UPON THE FOREGOING CITED PAPERS, THE DECISION/ORDER IN THIS MOTION IS
AS FOLLOWS:

This non-payment proceeding has been stayed due to an Emergency Rental Assistance Program (ERAP) application filed on September 10, 2021. (*see* Application Status webpage printout at NYSCEF Doc. 19). Petitioner now moves to vacate the stay. Respondent opposes the motion arguing, essentially, that the plain language of the ERAP statute requires the stay remain until OTDA makes a determination. (*see* Affirmation in Opposition at NYSCEF Doc. 12, par. 26).

The gravamen of petitioner's argument is that the application has been pending since June 2021, (*see* ERAP Status at NYSCEF Doc. 10, p. 16), and there is no indication that it will be approved any time soon. Petitioner relies on two recent cases where the court vacated the stay when the applicant was a rent-subsidy beneficiary, and the application has been long-pending. (*see* Affirmation in Support at NYSCEF Doc. 9, par. 11, citing *Bay Park Two-LLC v Pearson*, 77 Misc. 3d 534 [Civ Ct, Kings County 2022] and Reply Affirmation at NYSCEF Doc. 20, par. 18, citing *Leschinsky v Lutula*, 77 Misc. 3d 1206(A) [Civ Ct, Kings County 2022]).

In *Clinton Arms Assoc. v De Gonzalez* this court specifically declined to follow the cases cited by petitioner, holding that the plain language of the ERAP statute requires that the stay remain until a determination is made by OTDA. (*see* 2023 NY Slip Op 23079 at *4 [Civ Ct, Bronx County 2023], citing *Elliot Place Properties v Jaquez*, 77 Misc. 3d 1230(A), *3 [Civ Ct, Bronx County 2023] (Here, the unambiguous language of the statute, which provides protection to a Section 8 tenant who has applied for the program, shall be given its plain meaning and this court may not resort to statutory construction beyond the words of the statute)).

For the reasons stated in *Clinton Arms Assoc. v De Gonzalez*, petitioner's motion is denied and the ERAP stay remains in effect. This constitutes the decision of the court. It will be posted on NYSCEF.

Dated: April 3, 2023
Bronx, New York

SO ORDERED,

/S/

HON. SHORAB IBRAHIM
Judge, Housing Part