

Fordham Law School

FLASH: The Fordham Law Archive of Scholarship and History

All Decisions

Housing Court Decisions Project

2023-06-23

SUTTER GARDENS ASSOCIATES v. COLON

Follow this and additional works at: https://ir.lawnet.fordham.edu/housing_court_all

Recommended Citation

"SUTTER GARDENS ASSOCIATES v. COLON" (2023). *All Decisions*. 987.
https://ir.lawnet.fordham.edu/housing_court_all/987

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.

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

-----X
SUTTER GARDENS ASSOCIATES,

Index No. LT-309135-22

Petitioner-Landlord,

DECISION/ORDER

Motion Seq #2

-against-

SANDRA I. COLON,

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 motion to vacate the ERAP stay:

Papers:	Numbers
Petitioner’s Motion, Affirmation in Support, and Exhibits.....	8
Respondent’s Affirmation in Opposition.....	9
Respondent’s Affidavit in Opposition and Exhibits.....	10-12
Court File.....	Passim

Petitioner filed this instant non-payment proceeding on or about April 14, 2022¹ seeking a final money judgment in the amount of \$3,240.00² for the premises located at 825 Blake Ave. Apt 1-D, Brooklyn, New York, 11207 from respondent, Sandra I. Colon. On June 16, 2022, Petitioner filed a motion for default judgment.³ An ERAP application was filed and therefore on or about October 26, 2022, the matter was placed on a mandatory administrative stay.⁴ On or about January 30, 2023,⁵ Petitioner filed the instant motion to vacate the ERAP stay on the basis

¹ Resp’t Affirmation in Supp. ¶ 5
² Pet’rs Affirmation in Supp. ¶ 4.
³ Resp’t Affirmation in Supp. ¶ 7.
⁴ Resp’t Affirmation in Supp. ¶ 8.
⁵ Resp’t Affirmation in Supp. ¶ 9.

that the Respondent's tenancy is subject to Section 8 and therefore are "low priority in the ERAP application pool" and alleges the application "will not be paid."⁶

ERAP under Part BB, Subpart A, §8 of Chapter 56 of the Laws of 2020, as modified by L. 2021, c. 416, remain fully effect ("the act" or "ERAP statute").⁷ 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. As of May 15, 2023, ERAP applications are no longer being accepted and applications submitted prior to the application portal's closure on January 20, 2023 "including applications from subsidized housing tenants whose rent is limited to a certain percentage of income (including public housing, section 8 and FHEPS) are being reviewed and processed in the order received."⁸ Therefore, at this time, ERAP applications submitted by Section 8 tenants prior to the application portal's closure—such as Respondent's application—can and may possibly be paid, as consistent with State law and program rules.

⁶ Resp't Affirmation in Supp. ¶ 7, 12.

⁷ See Administrative Order ("AO") 34/22 dated January 16, 2022.

⁸ See OTDA website.

Petitioner asks this court to expediate any pending ERAP stay where a tenant receives Section 8 benefits by vacating the matter, even where, as here, it is a non-payment, the amount in question is relatively low, and may be paid. In nonpayment proceedings against Section 8 tenants, some courts have declined to vacate the ERAP stay, *see e.g. Robo LLC v. Matos*, 75Misc3d 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], 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.⁹ Here, the Petitioner has brought a non-payment matter, and alleged \$3,240.00 in arrears in its Petition. An ERAP payment could potentially make the Petitioner whole and satisfy this non-payment matter, which would result in ERAP working as designed.

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) (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).

⁹ See ERAP, L 2021, ch 56, Part BB, Subpart A, Section 1(3).

For the reasons stated supra, Petitioner's motion to vacate the stay triggered upon respondent, Sandra I. Colon 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
June 23, 2023



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

Hertz, Cherson & Rosenthal, P.C.
Attorneys for Petitioner
118-35 Queens Boulevard, 9th Floor
Forest Hills, New York 11375
By: Michael Rosenthal

The Legal Aid Society
Attorneys for Respondent
394 Hendrix Street
Brooklyn, NY 11207
By: Joanna Laine