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DIEGO BEEKMAN MUTUAL HOUSING ASSOCIATION HOUSING DEVELOPMENT FUND CORP. v. MELENDEZ JR.

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

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

L&T Index No. 009967/20

Petitioner,

-against-

DECISION/ORDER

MIKEY MELENDEZ JR.,
WILLIAM DIAZ,

Respondents.

-----X
Present: Hon. OMER SHAHID
Judge, Housing Court

Recitation, as required by C.P.L.R. § 2219(a), of the papers considered in the review of Respondent’s Order to Show Cause to Dismiss (Motion #3 on N.Y.S.C.E.F.):

Papers	Numbered
Respondent’s Order to Show Cause (Motion #3 on N.Y.S.C.E.F.).....	<u>1</u>
Affirmation in Opposition (Entry 37 on N.Y.S.C.E.F.).....	<u>2</u>
Affirmation in Reply (Entry 38 on N.Y.S.C.E.F.)...	<u>3</u>

In this nuisance holdover proceeding, Petitioner obtained a final judgment of possession against Respondents after inquest on August 24, 2021. On September 29, 2022, the court, by decision, denied Respondent Mikey Melendez’s cross-motion to vacate the default judgment and permitted Petitioner to execute upon the warrant of eviction.

Respondent Mikey Melendez moves to dismiss the proceeding with prejudice on the ground that Petitioner accepted funds paid pursuant to Respondent’s E.R.A.P. application on October 26, 2022. If the court does not dismiss the matter, Respondent seeks to set the matter down for a hearing on whether Respondent is committing ongoing nuisance conduct. In the alternative, Respondent seeks a stay in the execution of the warrant to allow Respondent an opportunity to vacate. Petitioner opposes the motion.

The E.R.A.P. statute provides that “[a]cceptance of payment for rent or rental arrears from this program or any local program administering federal emergency rental assistance program funds shall constitute agreement by the recipient landlord or property owner...not to evict for reason of expired lease or holdover tenancy any household on behalf of whom rental assistance is received for 12 months after the first rental assistance payment is received, unless

the dwelling unit that is the subject of the lease or rental agreement is located in a building that contains 4 or fewer units, in which case the landlord may decline to extend the lease or tenancy if the landlord intends to immediately occupy the unit for the landlord's personal use as a primary residence or the use of an immediate family member as a primary residence." L. 2021, Ch. 56, Part BB, Subpart A, § 9(2)(d)(iv) as amended by L. 2021, Ch. 417, Part A, § 5.

However, this provision of the law does not apply "if a tenant intentionally causes significant damage to the property or is persistently and unreasonably engaging in behavior that substantially infringes on the use and enjoyment of other tenants or occupants or causes a substantial safety hazard to others." L. 2021, Ch. 56, Part BB, Subpart A, § 9-A as amended by L. 2021, Ch. 417, Part A, § 6. The statute further provides that if a landlord has accepted E.R.A.P. funds after the court awards a judgment against a tenant based upon nuisance conduct, then the court shall hold a hearing to determine whether the tenant is persistently engaging in unreasonable conduct. See L. 2021, Ch. 56, Part BB, Subpart A, § 9-A(3) as amended by L. 2021, Ch. 417, Part A, § 6. If the landlord fails to establish at the hearing that the tenant has engaged in such conduct, then the matter shall be dismissed with prejudice. See L. 2021, Ch. 56, Part BB, Subpart A, § 9-A(5)(ii) as amended by L. 2021, Ch. 417, Part A, § 6.

Hence, based upon the plain reading of the statute, dismissal is not warranted at this juncture. There is no dispute that Petitioner has accepted E.R.A.P funds after Petitioner was awarded a final judgment of possession at inquest based upon Respondents' nuisance activity. The statute instead provides that the court shall conduct a hearing if Petitioner has accepted an E.R.A.P. payment after it has been awarded a final judgment of possession based upon nuisance activity. Based upon the circumstances of this proceeding, dismissal shall only take place if Petitioner fails to establish that Respondent is persistently engaging in unreasonable conduct.

Similarly, Petitioner's argument that a hearing (i.e., the August 24, 2021 inquest) already took place is without merit. The statute provides that the court must conduct an additional hearing to determine if Respondent is engaging in persistent nuisance conduct after Petitioner has accepted E.R.A.P. funds. Here, the inquest took place before the acceptance of the funds. Petitioner's acceptance of the E.R.A.P. funds after it obtained a final judgment of possession based upon nuisance activity, regardless at trial or at inquest, triggers an additional hearing for the court to determine whether such activity persists. If Petitioner fails to establish the existence of such conduct, then it has vitiated its right to enforce the judgment and warrant issued at inquest.

Based upon the foregoing, Respondent's Order to Show Cause is granted to the extent that the matter is hereby restored to the calendar for a hearing to allow the court to determine whether Respondent is persistently engaging in unreasonable conduct. If Petitioner establishes at hearing that Respondent has engaged in such conduct, it shall be permitted to execute upon the warrant of eviction forthwith. However, if Petitioner fails to establish such, then the proceeding shall be dismissed with prejudice. The hearing shall take place in-person in Part G (Room 560) on August 8, 2023 at 2:30 P.M.

This constitutes the decision and order of the court.

Dated: July 17, 2023
Bronx, N.Y.



Omer Shahid, J.H.C.