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1614 Midwood Holdings LLC v Tiliaeva
2023 NY Slip Op 23249
Decided on August 14, 2023
Civil Court Of The City Of New York, Kings County
Golden, J.
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
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Decided on August 14, 2023

Civil Court of the City of New York, Kings County

1614 Midwood Holdings LLC, Petitioner-Landlord,

against

Malika Tiliaeva, Respondent-Tenant.

Index No. LT-328061-22

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Recitation as required by CPLR 2219(a), of the papers considered in the review of the

Respondent's Motion to Amend and for Summary Judgment:

Papers:/NYSCEF Numbers

Respondent's Motion, Affidavit and Affirmation in Support, and Exhibits 5-16

Petitioner's Affirmation in Opposition and Exhibits 18-23

Court File Passim

Petitioner filed this instant nonpayment proceeding on or about November 29, 2022, [*2] seeking a money judgment in the amount of \$40,265.28 and a final judgment of possession of the premises located at 1614 East 12th Street, Brooklyn, New York 11229, from Respondent-tenant, Malika Tiliaeva. Petitioner predicated its nonpayment proceeding upon service of a 14-day notice.

Respondent has lived in the subject premises for over 13 years and states that her last renewal lease began on November 1, 2019 and ended on November 1, 2020. [FN1] Ms. Tiliaeva states she has not made direct payments to the Petitioner/landlord since March 2020, with the exception of a court ordered use and occupancy payment on March 9, 2023. [FN2] Despite not paying directly, HRA began making payments on her behalf in June 2022, [FN3] and ERAP paid \$18,302.40 on her behalf in December 2022.

On December 28, 2022, the Respondent by Counsel, filed an answer. On April 11, 2023, the Respondent, filed the instant motion to amend their answer and for summary judgment alleging Petitioner's failure to state a cause of action in that there is no landlord-tenant relationship between the parties as required under RPAPL §711(2). On June 13, 2023, Petitioner, filed opposition to the motion.

Motion to Amend:

Respondent seeks to amend her answer. [FN4] A motion to amend a pleading should be freely given absent a showing of prejudice or surprise to the opposing party. *Zader v. Oakdale Islander Ltd Partnership*, 211 AD2d 712 (App. Div. 2d Dept 1995). This rule is equally applicable to amendments of answers to interpose defenses. *Smith v. Maya*, No. 98-770-KC, 1999 WL 1037917, at *2 (2d Dep't Jul 23, 1999). The Petitioner does not object to the proposed amendment and therefore the portion of the motion seeking to amend the answer is hereby granted. Respondent's amended answer is deemed submitted.

Motion for Summary Judgment:

Respondent seeks summary judgment pursuant to CPLR 3212(b), dismissing the

Petition with prejudice based upon Petitioner's failure to state a cause of action in that there is no landlord-tenant relationship between the parties as required under RPAPL §711(2).

RPAPL 711 outlines the grounds where landlord-tenant relationship exists. RPAPL §711(2) states in pertinent part:

The tenant has defaulted in the payment of rent, pursuant *to the agreement under which the premises are held* (emphasis added).

Respondent argues that because the last renewal lease between the parties expired prior to the commencement of the instant nonpayment proceeding, there is no agreement between the parties, and therefore the matter must be dismissed. Petitioner concedes that the last renewal lease has expired but argues that the Parties mutual participation in the ERAP program resulted in an agreement that prohibits dismissal.

It is elementary that a nonpayment proceeding must be predicted on a default in rent owed pursuant to the agreement under which the premises are held. *615 Nostrand Ave. Corp. v. [*3]Roach*, 15 Misc. 3d1, 4 (App. Term 2d & 11th Jud. Dists 2006). Recently in [Fairfield Beach 9th LLC v. Shepard-Neely, 74 Misc 3d 14](#) (App Term 2d Dept, 2d,11th & 13th Jud. Dists 2021) the Appellate Term 2nd Department dismissed a nonpayment as improper where the nonpayment sought arrears for a time period where no lease was in effect, despite the tenant making payments post termination of the lease. The Appellate Term reiterated that "there must be *a rental agreement* in effect at the time the proceeding is commenced pursuant to which rent is due and owing." *Id.* (internal citations omitted), (emphasis added).

Here, there is no dispute that the written lease agreement between the parties was expired when the matter was commenced. The question then becomes whether by participating in the ERAP application process did the parties enter into a new agreement.

The plain language of the ERAP Statute supports a reading that an agreement has been entered into upon a landlord accepting the ERAP funds. Specifically, the ERAP statute reads a landlord's acceptance of rental arrears from ERAP "shall constitute agreement by the...landlord 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." L. 2021, ch 56 § 1, part BB, subpart A, § 9 [2] [d] [iv], as amended by L. 2021, c 417, Part A, § 5. Furthermore, acceptance of ERAP funds shall "constitute [an] agreement by [a] landlord to maintain the current rental amount" for the same 12-month period. L. 2021, c. 56, Part BB subpart A, § 9 (2)(d)(iii) as amended by L.2021, c 417, Part A

§ 5.

In [*J.S.B Properties LLC v. Yershov*, 77 Misc 3d 235](#) (Civ. Ct. NY Co. 2022), a nonpayment proceeding initiated after the expiration of a lease agreement but during the 12-month period following ERAP acceptance, J. Stoller found that an occupant's ERAP application constitutes an effort to bind a landlord to treat the applicant as a tenant and the acceptance of ERAP payment resulted in an agreement to continue the landlord-tenant relationship for one year, and thus a non-pay could stand if commenced during that 12-month period. *Id.* at 242. In *100 Realty Equities LLC v. Yifei Tian*, 2023 NY Slip Op 50411 (U) (Civ. Ct. NY Co. 2023), in dismissing a holdover initiated during the 12-month period after the Landlord accepted ERAP funds, J. Stoller found that acceptance of ERAP "creates an agreement that is essentially a lease..." and therefore a no-cause holdover during the 12-month period after ERAP acceptance was improper.

Here, Respondent asserts that her last renewal lease ended on November 1, 2020 and that she has not made any payments out of pocket since March 2020 with the exception of one court ordered use and occupancy payment on March 9, 2023. However, Respondent also asserts that HRA has made payments on her behalf since June 2022, [\[FN5\]](#) that she applied for CityFHEPS, and finally that she applied for and was approved for ERAP. Unlike the tenants in *Yershov*, the Respondent actively and intentionally took steps to ensure that the landlord-tenant relationship would continue post expiration of the lease. The ERAP application was approved and paid out in December 2022, two years after the end of the last renewal lease. For an ERAP application to be approved, a tenant must apply. [\[FN6\]](#) The tenant must submit documentation including proof that [\[*4\]](#) they live in the subject premises (proof of residency and occupancy) and they must attest to the fact that arrears are outstanding for an apartment that they have an obligation to pay rent (proof of rental amount). [\[FN7\]](#) OTDA, the managing and reviewing agency, may follow up with additional questions and may require further documentation before issuing a final determination. The Respondent is not a passive party who simply gains the benefit of another party's contract. Instead, they are active participants in the process, specifically they initiate it with the hope and understanding that an approval will further extend their tenancy upon acceptance of payment by the landlord, a tenancy that is predicated on an agreement to pay rent. *Cf 417 East Realty LLC v. Rahul Kejriwal*, 2023 N Slip Op 23190 (Civ. NY. Co. 2023)

The Court cannot ignore this process, and therefore finds that the parties'—both Petitioner's and Respondent's—participation in the ERAP application showed their intention

to reinstate the landlord-tenant relationship. This Court agrees with the holdings in *Yershov* and *Tian supra* and finds that the language of the ERAP statute creates the basis for a finding that an agreement has been entered into, one that sets a definitive time frame and set rental amount. Therefore, the Court finds that where, as here, a Respondent applies for ERAP after the expiration of their lease and is awarded ERAP payments, a nonpayment may be brought pursuant to RPAPL § 711(2) during the 12-month period after ERAP acceptance. Therefore, Respondent's motion for Summary Judgment is denied.

Respondent's Motion to Amend her answer is hereby amended. The Amended answer is deemed submitted. Respondent's Motion for Summary Judgment is denied. The matter is hereby restored to the calendar to September 19, 2023 10:30 am, Part S, Rm 602 for all purposes.

The foregoing is the Decision/Order of this court.

Brooklyn, New York
August 14, 2023
SO ORDERED
HON. TASHANNA B. GOLDEN
JUDGE, HOUSING COURT

Footnotes

Footnote 1: See Malika Tiliaeva's Affidavit in Support ¶¶2 and 5.

Footnote 2: Id. at ¶10.

Footnote 3: See Id. at ¶ 11.

Footnote 4: See NYSCEF document 11 Proposed Amended Answer.

Footnote 5: Though Respondent states payments were sent to the wrong address from June 2022-December 2022, the Court notes the Respondent's intention was for payment to be issued to the Petitioner.

Footnote 6: The court notes that a landlord can apply for LRAP on its own, but the instant case is an ERAP case.

Footnote 7: See ERAP application page.

