

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK: HOUSING PART C

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LONDON TERRACE ASSOCIATES,

Petitioner,

Index No. 70210/2014

- against -

**DECISION/ORDER**

MATHEA C. RUBIN, ELLIOT MILLET, OLIVIA MILLET,

Respondents.

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Present: Hon. Jack Stoller  
Judge, Housing Court

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

<u>Papers</u>	<u>Numbered</u>
Order To Show Cause and Supplemental Affirmation and Affidavits Annexed....	1, 2, 3, 4
Affidavit in Opposition	5

Upon the foregoing cited papers, the Decision and Order on this Motion are as follows:

London Terrace Associates, the petitioner in this proceeding (“Petitioner”), commenced this holdover proceeding against Mathea C. Rubin, a respondent in this proceeding (“Respondent”), Elliot Millet, a co-respondent in this proceeding (“Respondent’s son”), and Olivia Millet, another co-Respondent in this proceeding (“Respondent’s daughter”), seeking possession of 465 West 23<sup>rd</sup> Street, Apt. 18D, New York, New York (“the subject premises”) on the ground that Respondent is a rent-stabilized tenant of the subject premises, that Respondent has failed to maintain the subject premises as her primary residence, and that the occupancy of Respondent’s son and Respondent’s daughter of the subject premises is derivative of Respondent. Respondent interposed a defense that she is entitled succeed to the tenancy of a prior tenant of the subject premises. During the pendency of discovery proceedings, Respondent

defaulted on a stipulation to pay use and occupancy and the Court struck her answer and Petitioner obtained a final judgment. Respondent now moves for relief from that order pursuant to RPAPL §749(3) and CPLR §5015.

The stipulation, dated October 7, 2015 (“the Stipulation”), provided that Respondent owed arrears in use and occupancy, obligated Respondent to pay the arrears on or before October 23, 2015, and that Respondent’s answer would be deemed stricken on default. There is no dispute that Respondent did not pay the arrears. Petitioner moved for relief, and by an order dated May 11, 2016, the Court granted Petitioner’s motion to strike Respondent’s answer and award Petitioner summary judgment against Respondent. Respondent, who had been unrepresented up to that point, subsequently retained counsel and moved to vacate the Stipulation and to reargue the Court’s decision. The Court denied both motions.

Respondent has since obtained the arrears, both what she had to pay according to the Stipulation and use and occupancy that accrued since the Stipulation, which is in Respondent’s counsel’s escrow account. In support of her motion for relief pursuant to RPAPL §749(3) and/or CPLR §5015, Respondent avers that she has lived in the subject premises for forty-nine years, that she had trouble paying use and occupancy and the arrears because she did not earn enough income, that she sought help from the Human Resources Administration (“HRA”) to the extent of making fifteen appointments with HRA to effectuate payment of use and occupancy, that she sought help from constituent services staff at a local elected official’s office six times, and that she now has a job that enables her to pay use and occupancy. Although HRA denied her application, despite the assistance from the elected official’s office, Respondent avers that she

obtained the funds from a lifelong friend.

Petitioner argues that relieving Respondent from the consequences of default on the Stipulation would amount to an impermissible alteration of the Stipulation.

There are circumstances according to which a default on a stipulation cannot be cured as such. However, there is a well-developed body of authority, starting with RPAPL §749(3), that confers upon the Court the discretion to relieve an occupant from an eviction upon payment of arrears even when the eviction or threat of an eviction resulted from an occupant's default in payment according to a stipulation. Harvey 1390 LLC v. Bodenheim, 96 A.D.3d 664 (1<sup>st</sup> Dept. 2012). Courts consider applications for either stays of eviction or for opportunities to pay all rent arrears and remain in an apartment on a case-by-case basis, applying a number of factors to make such a determination.

The main factor militating against granting Respondent's motion is that she breached the Stipulation. See Chelsea 19 Associates v. James, 67 A.D.3d 301 (1<sup>st</sup> Dept. 2009). However, a number of other factors presented herein militate in favor of relief for Respondent pursuant to RPAPL §749(3): the extent to which delays in obtaining payment are attributable to delays by a government agency assisting a tenant obtain rent arrears, Harvey 1390 LLC, supra, 96 A.D.3d at 665, 2246 Holding Corp. v. Nolasco, 52 A.D.3d 377 (1<sup>st</sup> Dept. 2008), a tenant's substantial payment from personal funds when HRA delayed payment, 1240 Sheva Realty Assoc., LLC v. Ramos, 51 Misc.3d 143(A) (App. Term 1<sup>st</sup> Dept. 2016), whether a tenant is a long-term tenant, Lafayette Boynton Hsg. Corp. v. Pickett, 135 A.D.3d 518, 519 (1<sup>st</sup> Dept. 2016), Harvey 1390 LLC, supra, 96 A.D.3d at 665, 6465 Realty Co. v. Tsugiyama, 47 Misc.3d 138(A) (App. Term 1<sup>st</sup>

Dept. 2015), Nagle 112, LLC, v. Miqui, 46 Misc.3d 149(A)(App. Term 1<sup>st</sup> Dept. 2015), that a tenant has paid rent arrears, Lafayette Boynton Hsg. Corp., supra, 135 A.D.3d at 519, 6465 Realty Co., supra, 47 Misc.3d at 138(A), Nagle 112, LLC, supra, 46 Misc.3d at 149(A), a tenant's resumption of employment after having been laid off, 2203 Belmont Realty Corp. v. Gant, 51 Misc.3d 140(A) (App. Term 1<sup>st</sup> Dept. 2016), and whether a tenant — particularly a long-term tenant — has a rent-regulated tenancy, Nagle 112, LLC, supra, 46 Misc.3d at 149(A).

Like the tenants this appellate authority has relieved from eviction despite breaches of stipulations, Respondent experienced delays by HRA, paid out of another source of funds after such delay, actually now has arrears to date, and now has a job. Respondent also represents that she has been occupying the subject premises for forty-nine years.

Unlike the tenants addressed in the above-mentioned appellate authority, Respondent does not have an undisputed extant tenancy at stake. She claims succession to a prior tenancy. However, the current lack of certitude as to Respondent's tenancy status and rent-regulatory status makes a compelling argument for permitting Respondent to cure her default of the Stipulation. This proceeding is not a nonpayment proceeding. It is a licensee holdover proceeding where Respondent has interposed a succession defense. Denying Respondent's current motion would determine the dispute over her status against her — not because a factfinder holds that she does not establish the criteria for succession on the merits, but because she was previously unable to pay ongoing use and occupancy. Denial of a cause of action on the merits for failure to pay use and occupancy is "drastic" relief, 49 Terrace Corp. v. Richardson, 40 Misc.3d 135(A) (App. Term 1<sup>st</sup> Dept. 2013), and contravenes a policy expressed by appellate

authority strongly preferring resolutions of cases on their actual merits. Kommeh v. City of New York, 96 A.D.3d 476 (1<sup>st</sup> Dept. 2012), Parker v. Alacantara, 79 A.D.3d 429, 430 (1<sup>st</sup> Dept. 2010), American Audio Serv. Bur. Inc. v. AT & T Corp., 33 A.D.3d 473, 476 (1<sup>st</sup> Dept. 2006), Stephenson v. Hotel Emples. & Rest. Emples. Local 100, 293 A.D.2d 324, 325 (1<sup>st</sup> Dept. 2002), Mediavilla v. Gurman, 272 A.D.2d 146, 148 (1<sup>st</sup> Dept. 2000).

Accordingly, the Court grants Respondent's motion to the extent of vacating the judgment and warrant, conditioned upon Respondent's tender of the arrears now held in Respondent's counsel's office to Petitioner on or before September 9, 2016. As the striking of Respondent's pleading short-circuited the discovery process, the Court calendars the matter for a conference on the status of discovery, to be held on October 13, 2016 at 2:15 p.m. in part C, Room 844 of the Courthouse located at 111 Centre Street, New York, New York.

This constitutes the decision and order of this Court.

Dated: New York, New York  
August 29, 2016



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HON. JACK STOLLER  
J.H.C.