

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

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**OREGON REALTY COMPANY**

**Index No. 84143/15**

**Petitioner**

**DECISION/ORDER**

**-against-**

**Hon. Jose Rodriguez  
Judge, Housing Part**

**JANE RINCON**

**Respondent**

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Recitation, as required by CPLR 2219(a), of the papers considered in the review of this Motion to retore to possession.

Papers	Numbered
Order to Show Cause and Affidavits Annexed	1
Affirmation in Opposition	2

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

Petitioner commenced this summary t proceeding in January 2016 seeking a judgment against respondent for nonpayment of rent involving premises located at 97-25 64<sup>th</sup> Avenue, Apartment 5B, Rego Park, N.Y. The petition and predicate allege that respondent failed to pay rent for the months of October through December 2015 in the amount of \$2,284.72. A rent demand notice was served on December 16, 2015 and the petition and Notice of Petition were served on January 5, 2016. Respondent failed to answer and on February 24, 2016 a judgment of possession was entered against respondent on default. A warrant of eviction issued on February 25, 2016. On March 9, 2016 respondent was evicted and the apartment was rented to a third party by petitioner. Respondent thereafter filed the instant Order to Show Cause seeking restoration to possession. . A hearing was held on March 14, 2016.

In the instant case, respondent acknowledges receipt of the rent demand and Petitioner and Notice of Petition but failed to file an answer. She further acknowledges that there have been previous nonpayment proceeding against her and she has filed and maintained Housing Preservation (HP) proceedings against petitioner. She had appeared in those proceedings and is familiar with the court procedures for filing answers and obtaining Orders to Show. She testified that she withheld her rent due to conditions in her apartment and she failed to answer the petition in part because she was caring for her mother in Long Island who had shoulder surgery. On cross examination respondent testified that an HP proceeding was settled by stipulation in November 2015 and she never sought to restore the proceeding to the court's calendar due to petitioner's alleged failure to complete repairs. However, although respondent alleges that she was unable to appear in Housing Court to file an answer, she acknowledges that on January 28, 2016 she appeared at the New York State Department of Housing and Community Renewal (DHCR) and filed a complaint against petitioner seeking a rent reduction. Respondent further testified that her monthly rent is \$929.84 and that \$215.00 is paid the Department of Social Services on her behalf. She alleges that her third party payee, her mother, gave her the balance each month but respondent failed to pay petitioner.

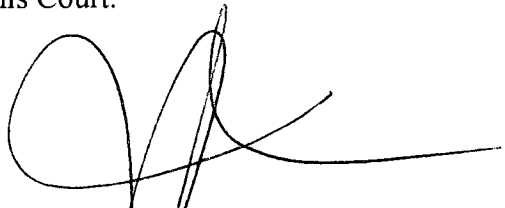
Courts generally favor dispositions made on the merits rather than on a default of a party. *Goldstein Affiliates, Inc. v. Len Ari Knitting Corp.*, 75 A.D.2d 551, 427 N.Y.S.2d 233 (1<sup>st</sup> Dept., 1980). However, the issuance of the warrant of eviction terminates the landlord tenant relationship. To vacate a default judgment the defaulting party must set forth a prima facie showing of a reasonable excuse for the default *and* underlying meritorious defense. See, *New York City Housing Authority v. Torres*, 61 A.D.2d 681, 403 N.Y.S.2d 527 (1<sup>st</sup> Dept., 1978); *Tai Sang Kwong v. Budge Wood Laundry Service, Inc.*, 97 A.D.2d 691, 468 N.Y.S.2d 110 (1<sup>st</sup> Dept., 1983). Where the

defaulting party fails to provide an excusable default and meritorious defense the motion seeking to vacate the default judgment should be denied. See, Metropolitan Ins. and Annuity Co. v. Eromosele, 10 Misc.3d 141(A), 814 N.Y.S.2d 891 (App. Term 1<sup>st</sup> Dept., 2006); 348 West 115<sup>th</sup> LLC v. Robinson, 2003 WL 1701517 (.App.Term, 1<sup>st</sup> Dept. 2003).

The court concludes that respondent failed to establish an excusable default and meritorious defense that would justify restoration to possession. Having denied the relief sought the court makes no determinations regarding balancing the equities between respondent and the new occupants.

The foregoing constitutes the decision and order of this Court.

Date: Queens, New York  
March 14, 2016



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Hon. Jose Rodriguez  
Judge, Housing Part