

<b>165 E. 35th St. LLC v Gross</b>
2026 NY Slip Op 30441(U)
February 2, 2026
Civil Court of the City of New York, New York County
Docket Number: Index No. L&T 300464/22
Judge: Clinton J. Guthrie
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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK: HOUSING PART D

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165 EAST 35<sup>TH</sup> STREET LLC,

Petitioner,

Index No. L&T 300464/22

-against-

**DECISION/ORDER**

SARA GROSS a/k/a SARA R. GROSS, JOHN DOE,  
JANE DOE,

Respondents.

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Present:

Hon. CLINTON J. GUTHRIE  
Judge, Housing Court

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of petitioner’s motion to restore and for a money judgment (seq. 6) and respondent’s cross-motion to deny petitioner’s motion and for a modification of the order directing payment of use and occupancy pendente lite (seq. 8):

<b>Papers</b>	<b>Numbered</b>
Notice of Motion & All Documents Annexed.....	<u>1 (NYSCEF #68-75)</u>
Notice of Cross-Motion & All Documents Annexed.....	<u>2 (NYSCEF #84-91)</u>
Reply Affirmation & Exhibit Annexed.....	<u>3 (NYSCEF #92-93)</u>

Upon the foregoing cited papers, the decision and order on petitioner’s motion and respondent’s cross-motion, consolidated for determination herein, is as follows.

PROCEDURAL HISTORY

This summary holdover proceeding was filed in January 2022. Counsel appeared for respondent Sara R. Gross (“respondent”) in February 2022. By Decision/Order dated December 27, 2023, Judge Joan Rubel granted petitioner’s motion for pendente lite use and occupancy. In a stipulation dated February 6, 2024, a stay related to the Emergency Rental Assistance Program (ERAP) was vacated, respondent’s answer and counterclaims were deemed accepted, and use

and occupancy payments previously ordered were directed to be paid directly to petitioner.

By stipulation dated September 12, 2024, the proceeding was discontinued against Leon Feingold. Thereafter, on July 14, 2025, Judge Rubel issued Decision/Order denying respondent’s motions to dismiss and to reargue the prior order granting use and occupancy, and granted petitioner’s cross-motion for discovery. Prior to the issuance of Judge Rubel’s July 14, 2025 Decision/Order, petitioner moved to restore this proceeding and for a money judgment for outstanding use and occupancy. Respondent opposed the motion and cross-moved for a modification of the use and occupancy order. After briefing on both motions, this court heard argument on October 3, 2025.

DISCUSSION

I. Motion to Restore and for a Money Judgment

The court notes at the outset that Judge Rubel’s July 14, 2025 Decision/Order restored the case for a discovery compliance conference. Thus, the court grants the request to restore the proceeding as academic. As for petitioner’s request for a money judgment for unpaid use and occupancy, the amended, post-HSTPA (Housing Stability and Tenant Protection Act) version of RPAPL § 745 removed most of the former penalties, including the striking of claims and defenses, for failure to pay use and occupancy (*see 1599-1600 AMS LLC v Gil*, 75 Misc 3d 1, 3 [App Term, 1st Dept 2022]). In its current form, the sole penalty included in the statute is “an immediate trial of the issues to be raised in the respondent’s answer” (RPAPL § 745(2)(d)(i)). Petitioner argues that a money judgment should be issued to avoid an inequitable result (i.e. by reaping the benefit of occupancy without payment). Respondent opposes petitioner’s motion for a money judgment in all respects.

Upon due consideration, the court denies petitioner’s request for a money judgment. The

court is guided by the fact that the legislature amended a version of RPAPL § 745 that specifically allowed for the entry of a judgment upon nonpayment of a court-ordered deposit of use and occupancy (*see* former RPAPL § 745(2)(c)(i)) and replaced it with a version that omitted the remedy of a judgment and left the sole penalty as an immediate trial (*see Riley v County of Broome*, 95 NY2d 455, 463 [2000] [“[T]he words of the statute are the best evidence of the Legislature’s intent.”]; *Ben Ami v Ronen*, 79 Misc 3d 14, 17 [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2023]). The court notes that petitioner reserves its right to seek a judgment for any unpaid use and occupancy at trial (*see Tzifil Realty Corp. v Mazrekaj*, 78 Misc 3d 128[A], 2023 NY Slip Op 50278[U], \*3 [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2023] [citing RPAPL § 747(4)]). Petitioner also retains the right to request an “immediate trial” as defined in RPAPL § 745 should respondent be in default in payment of court-ordered use and occupancy at the time that the case is transferred to Part X.

## II. Cross-Motion to Modify the Use and Occupancy Order

Respondent argues that the use and occupancy order should be modified to reflect her income as a recipient of emergency cash assistance, citing RPAPL § 745(2)(c)(i). The cross-motion is supported by a New York City Department of Social Services (DSS) printout listing cash assistance benefits from October 2024 through October 2025. Petitioner opposes the cross-motion, primarily arguing that it was not brought as a proper motion to reargue and/or renew pursuant to CPLR § 2221.

The court observes that Judge Rubel’s December 27, 2023 Decision/Order directing the payment of use and occupancy did not include the specific amount to be paid. Thus, the court does not find that respondent was constrained to seek the relief that it now seeks by filing a CPLR § 2221 motion. The Appellate Term, First Department, in *Gil*, noted that the legislature’s

amendment of RPAPL § 745 reflected a “need for flexibility in dealing with rent deposits.” (*Gil*, 75 Misc 3d at 3). Upon respondent’s clear showing that she is a recipient of public assistance benefits, the court grants the cross-motion to the extent that as of October 2025, when the cross-motion was first noticed to be heard, respondent’s use and occupancy obligation shall be thirty (30) percent of her monthly public assistance cash benefit (*see* RPAPL § 745(2)(c)(i)) until such time as respondent no longer receives such benefits. The documented monthly benefit was \$183.00 per month (\$91.50 semimonthly); thus 30% is \$54.90 per month as of October 2025. If respondent’s monthly benefit increases or decreases, respondent’s attorney shall promptly notify petitioner’s attorney. The court declines to modify the use and occupancy obligation retroactive to respondent’s motion, as petitioner lacked notice to challenge the request (*see Banks v Stanford*, 159 AD3d 134, 146 [2d Dept 2018] [“A court is generally limited to noticed issues that are the subject of a motion before it.”]).

This proceeding will be restored to the Part D calendar for discovery status and all purposes on February 26, 2026 at 9:30 AM.

This Decision/Order will be filed to NYSCEF.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated: New York, New York  
February 2, 2026



HON. CLINTON J. GUTHRIE  
J.H.C.

APPROVED  
CGUTHRIE, 2/2/2026, 4:19:05 PM

CHECK ONE:

MOTION SEQ. #: 6

MOTION SEQ. #: 8

CHECK IF APPROPRIATE:

NOTES

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	STAY CASE
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE
NOTES							