

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF VERMONT**



---

**In re:**

**Catherine Woods,  
Debtor.**

---

**Chapter 13  
Case # 19-10159**

**ORDER**

**SUSTAINING LANDLORD’S OBJECTION, DETERMINING STAY DOES NOT APPLY,  
AND DIRECTING CLERK TO REFUND DEBTOR’S RENT DEPOSIT**

The Debtor filed the instant chapter 13 bankruptcy case on April 18, 2019. She included with her petition a Form 101A certifying that her landlord, Otter Creek Apartments, LLC (the “Landlord”) had obtained a judgment for possession of her leased residential premises prior to the filing of the bankruptcy petition. Pursuant to the applicable provision of the Bankruptcy Code, under these circumstances, the landlord is stayed from enforcing that judgment for 30 days, if the Debtor paid into the Court the sum due for 30 days of rent, to cover the rent due for the 30 days following the filing of the petition:

- (1) Except as otherwise provided in this subsection, subsection (b)(22) shall apply on the date that is 30 days after the date on which the bankruptcy petition is filed, if the debtor files with the petition and serves upon the lessor a certification under penalty of perjury that—
  - (A) under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment for possession was entered; and
  - (B) the debtor (or an adult dependent of the debtor) has deposited with the clerk of the court, any rent that would become due during the 30-day period after the filing of the bankruptcy petition.
- (2) If, within the 30-day period after the filing of the bankruptcy petition, the debtor (or an adult dependent of the debtor) complies with paragraph (1) and files with the court and serves upon the lessor a further certification under penalty of perjury that the debtor (or an adult dependent of the debtor) has cured, under nonbankruptcy law applicable in the jurisdiction, the entire monetary default that gave rise to the judgment under which possession is sought by the lessor, subsection (b)(22) shall not apply, unless ordered to apply by the court under paragraph (3).

11 U.S.C. § 362(l)(1)-(2) (emphasis added).

The Landlord timely filed an objection to the Form 101A (doc. # 12, the “Objection), asserting

the Debtor had failed to meet the statutory requirements by failing to deposit the full amount due for 30 days rental with the petition, or even within the 3 business day time frame set by this Court's Local Rules. See Vt. LBR 4001-2.

At the hearing held on May 9, 2019, the Debtor's attorney acknowledged the Debtor did not deliver to the Clerk of Court the full amount of rent due until April 26, 2019. The Court does not have discretion to grant the Debtor additional time to deliver the full amount due for 30 days. See In re Soto, 500 B.R. 679, 683 (Bankr. S.D.N.Y. 2013); In re Harris, 424 B.R. 44, at 52–53 (Bankr. E.D.N.Y.).

Based on this record, THE COURT FINDS the Landlord has set forth sufficient cause to sustain its Objection. The controlling statute is clear as to the result of that determination:

(3) (A) If the lessor files an objection to any certification filed by the debtor under paragraph (1) or (2), and serves such objection upon the debtor, the court shall hold a hearing within 10 days after the filing and service of such objection to determine if the certification filed by the debtor under paragraph (1) or (2) is true.

(B) If the court upholds the objection of the lessor filed under subparagraph (A)—

- (i) subsection (b)(22) shall apply immediately and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and
- (ii) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the court's order upholding the lessor's objection.

11 U.S.C. § 362(l)(3) (emphasis added). Accordingly the Court enters this Order.

THE COURT FURTHER FINDS that under the somewhat unusual circumstances of this case, and in the interest of justice, that the Clerk of Court may refund to the Debtor's attorney the \$1,100 the Debtor has paid to the Clerk, and the Landlord shall refrain from acting on its right to evict the Debtor until tomorrow morning.

Therefore, IT IS HEREBY ORDERED that

1. the Landlord's Objection is sustained, and the Clerk shall immediately provide a copy of this Order to the Landlord;
2. the Clerk shall forthwith return to the Debtor the three checks, totaling \$1,100, payable to the Landlord, that she delivered to the Clerk; and
3. the automatic stay does not apply to the Landlord, as of 9:00 a.m. on May 10, 2019, and therefore the Landlord may proceed to enforce its judgment of possession, and right to evict, as of that time.

SO ORDERED as of 3:45 PM on May 9, 2019.



Colleen A. Brown  
United States Bankruptcy Judge