

Cronson v BLDG Mgt. Co., Inc.
2018 NY Slip Op 30238(U)
February 8, 2018
Supreme Court, New York County
Docket Number: 153566/2017
Judge: Robert D. Kalish
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: Hon. _____ Robert D. KALISH
Justice

PART 29

CHRISTOPHER CRONSON and PAUL CRONSON,

INDEX NO. 153566/2017

Plaintiffs,

MOTION DATE 11/28/17

- v -

MOTION SEQ. NO. 001

**BLDG MANAGEMENT CO., INC.; and
IG SECOND GENERATION PARTNERS, L.P,**

Defendants.

The following papers, numbered 11-49, were read on this motion for summary judgment.

**Notice of Motion – Affirmation in Support – Affs in Support – Exhibits A-V –
Memorandum of Law in Support – RJJ** | **Nos. 11-39**

Affirmation in Opposition – Aff in Opposition – Exhibits 1-2 | **Nos. 40-44**

Reply Affirmation – Affs in Further Support – Exhibits A-B | **Nos. 45-49**

Motion by Plaintiffs Christopher Cronson and Paul Cronson pursuant to CPLR 3212 for summary judgment is denied.

In this action, Plaintiffs seek, among other things, a judgment declaring that Christopher Cronson is a rent-stabilized tenant of a certain apartment. On the instant motion, Plaintiffs fail to show prima facie that Christopher Cronson is the successor tenant of Paul Cronson at the apartment. While the Court does find as a matter of law that Paul Cronson permanently vacated the apartment as described more fully below, the Court cannot on the instant motion find as a matter of law that Christopher Cronson resided at the apartment continuously for the two prior years as required by law.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

BACKGROUND

Plaintiffs allege in their verified complaint¹, e-filed April 18, 2017, that they have resided at 111 East 80th Street Apartment 5A, New York, New York 10075 (the “Subject Apartment”). (LoGuidice affirmation, exhibit A [Complaint].) The Complaint alleges that Paul Cronson is Christopher Cronson’s father, that he formerly resided in the Subject Apartment, and that he currently resides at 50 East 77th Street, New York, New York 10075. The Complaint further alleges that defendant BLDG Management Co., Inc. (“BLDG”) is the management company for the building which houses the Subject Apartment while IG Second Generation Partners, L.P. (“IG” and, collectively with BLDG, “Defendants”) is the fee owner. The Complaint further alleges that the Subject Apartment is one of approximately ten units in the building regulated under the Rent Stabilization Law (“RSL”).

Plaintiffs state three causes of action in the Complaint: for a declaratory judgment; for a mandatory injunction; and for legal fees. The Complaint alleges that Paul Cronson resided in the Subject Apartment as his primary residence until October 1, 2015. The Complaint further alleges that Christopher Cronson has resided in the Subject Apartment as his primary residence for his entire life. The Complaint further alleges that Plaintiffs notified Defendants that Christopher Cronson would be remaining in possession of the Subject Apartment after Paul Cronson had vacated it.

The Complaint alleges that the most recent effective lease renewal for the Subject Apartment had an expiration date of May 31, 2017, and that Defendants had not provided Christopher Cronson with a renewal lease. The Complaint further alleges that Defendants did provide Plaintiffs with a renewal lease in February 2017 in Paul Cronson’s name and that Christopher Cronson signed and remitted it to Defendants. The Complaint further alleges that Defendants refused to countersign the renewal lease and stated in a letter dated April 3, 2017, that “[Plaintiff’s counsel’s] purported attempt at succession rights for [Christopher Cronson] is denied.” (Complaint ¶ 30.)

Plaintiffs’ complaint seeks a judgment declaring that Cristopher Cronson is a rent-stabilized tenant, a mandatory injunction requiring that Defendants comply with the RSL and the Rent Stabilization Code (“RSC”), and legal fees pursuant to Real Property Law § 234 as the prevailing parties.

¹ As sworn to by Paul Cronson on April 17, 2017.

Defendants, in their amended verified answer², dated May 10, 2017, assert two affirmative defenses: that the Subject Apartment is not the primary residence of “Plaintiff” and that Christopher Cronson is not permitted to succeed because he did not continuously reside with Paul Cronson for two years prior to Paul Cronson’s departure from the Subject Apartment. (LoGuidice affirmation, exhibit B [Amended Answer], ¶¶ 5–6.) Defendants then counterclaim for a judgment declaring that Christopher Cronson is not entitled to succession rights and that Paul Cronson “has no rights whatsoever according to the verified answer.” (Amended Answer ¶ 7.) Plaintiffs denied the allegations of the counterclaim in a verified reply dated June 13, 2017.

Plaintiffs now move the Court for an order granting summary judgment pursuant to CPLR 3212, awarding Plaintiffs the relief sought in the Complaint and striking and dismissing the defenses raised in the Amended Answer and/or dismissing Defendants’ counterclaim. Plaintiffs argue in the papers in support of their motion that, in sum and substance, Christopher Cronson has resided at the Subject Apartment his entire life and that the Subject Apartment is his permanent residence. Plaintiffs further argue that Paul Cronson vacated the Subject Apartment on October 1, 2015, and that Christopher Cronson resided continuously at the Subject Apartment for the prior two years as required for succession purposes per the RSL.

In support of their arguments on the motion, Plaintiffs have submitted certain documentary evidence to the Court, as follows.

Exhibit D is a copy of Christopher Cronson’s Certificate of Birth Registration. The birth certificate indicates that Christopher Cronson was born on October 20, 1993, and that Paul Cronson is his father. The mailing address of the original birth certificate was that of the Subject Apartment.

Exhibit E is an Answer to Petition and Notice to Tenant to Provide Information for Verification of Household Income sent on April 27, 2016, from the Division of Housing and Community Renewal (“DHCR”) to Paul Cronson³ at the Subject Apartment, regarding IG’s Petition by Owner for High Income Rent

² Plaintiffs have annexed Defendants’ amended verified answer, dated May 10, 2017, to the instant motion. The Court notes that Defendants e-filed a second amended verified answer on June 1, 2017 (NYSCEF Doc. No. 8), which Plaintiffs rejected as impermissible pursuant to CPLR 3025 in a June 6, 2017 letter (NYSCEF Doc. No. 9).

³ The letter has “Paul Cronson” typed as the addressee. Someone has by handwritten marks crossed out the name “Paul” and written in “Christopher” on the Court’s copy of the document.

Deregulation.⁴ A vacancy date for Paul Cronson of October 1, 2015, is filled out by hand on the form. In addition, Christopher Cronson's "status" is listed as "a", indicating that he either "occup[ies] the [Subject Apartment] as [his] primary residence" or has "sublet [it] to another person." As such, the form indicates that Christopher Cronson is the only tenant who has not vacated the Subject Apartment.

Exhibits F–L are allegedly letters between Plaintiffs and Defendants (and their counsel) regarding issues of succession, residency, and control of the Subject Apartment. On May 26, 2015, Christopher Cronson sent a letter (LoGuidice affirmation, exhibit F) to BLDG. The letter stated that Christopher Cronson intended to succeed to the tenancy of the Subject Apartment, that his parents would be vacating the apartment that summer, and that future bills and renewal leases should be addressed to him. The letter further stated that Christopher Cronson had resided in the Subject Apartment since birth, was a New York City resident filing tax returns in New York, and was currently attending the California Institute of the Arts ("Cal Arts") as a full-time student. The letter further stated that his attendance at Cal Arts may not be considered an interruption of his residency.

On September 14, 2016, counsel for Defendants sent a letter (LoGuidice affirmation, exhibit G) to Paul Cronson. The letter stated that Defendants were aware that he removed himself from the Subject Apartment and no longer resided there. The letter further stated that Christopher Cronson "actually resides in Los Angeles, California, where he attends school and teaches in some capacity." (LoGuidice affirmation, Exhibit G, at 1.) The letter further stated that Paul Cronson was about to place non-tenant Alex Turchlean in the building and that such occupancy would be improper. The letter further stated that it would serve to confirm that Paul Cronson was in control of the Subject Apartment, in violation of his lease agreement, and that he had until September 30, 2016, to remove Mr. Turchlean from the Subject Apartment or "[Defendants] shall take the appropriate action." (*Id.* at 2.)

Within the next month or so, Paul Cronson sent a letter⁵ (LoGuidice affirmation, exhibit H) back to Defendants' counsel asserting that the facts of the September 14, 2016 letter were "incorrect on their face" and asserting the following facts: (1) that Paul Cronson did not place his son's friend in the Subject Apartment; (2) that Christopher Cronson was currently in the Subject Apartment

⁴ Exhibit U is a DHCR letter denying the petition based upon the tenant's annual income being under \$200,000.

⁵ The letter is undated but appears to have been sent in response to the September 14, 2016 letter and appears to have been followed up on by Plaintiffs' counsel by a letter dated October 12, 2016.

with his friend and had no intention of asking him to leave; (3) that Paul Cronson gave his son's friend's name to the doorman at his son's request as a courtesy; and (4) that Paul Cronson is not "exercising control" over the Subject Apartment. (LoGuidice affirmation, exhibit H, at 1.) The letter then stated that Defendants could contact Christopher Cronson directly regarding additional issues relating to the apartment and provided Defendants with a Los Angeles address for him.

On October 12, 2016, counsel for Plaintiffs sent a letter (LoGuidice affirmation, exhibit I) to counsel for Defendants notifying Defendants of their representation of Plaintiffs and addressing the September 14, 2016 letter. On March 27, 2017, counsel for Plaintiffs sent another letter (LoGuidice affirmation, exhibit J) to counsel for Defendants stating that counsel had never responded to the October 12, 2016 letter. The letter further stated that Defendants were sending renewal leases to Paul Cronson despite knowing that he no longer lived in the Subject Apartment. The letter enclosed two executed renewal leases signed by Christopher Cronson and requested the return of one fully countersigned copy.

On April 3, 2017, counsel for Defendants sent a letter (LoGuidice affirmation, exhibit K) to counsel for Plaintiffs rejecting the renewal lease as executed by Christopher Cronson. On May 16, 2017, BLDG sent Paul Cronson a "Final Notice" letter indicating that Paul Cronson's lease had expired, directing Paul Cronson to notify BLDG of any intention to vacate or remain as a tenant, and advising that he had been "placed on a hold-over legal status for non-renewal." (LoGuidice affirmation, exhibit L, at 1.)

Exhibit M contains form 1098-T tuition statements from Cal Arts for Christopher Cronson for the 2015 and 2016 tax years. The Subject Apartment is listed as Christopher Cronson's address on both forms. On the 2015 form, the "[a]mounts billed for qualified tuition and related expenses" are \$43,986.00. The amount "includes amounts for an academic period beginning January–March 2016." A box is also checked indicating that Christopher Cronson was "at least half-time student." On the 2016 form, the "[a]mounts billed for qualified tuition and related expenses" are \$22,823.00. The amount "includes amounts for an academic period beginning January–March 2017." A box is also checked indicating that Christopher Cronson was "at least half-time student."

Exhibit N is a license and registration. The license is a New York State driver license issued to Christopher Cronson on April 13, 2016, and which lists the Subject Apartment as his address. The registration lists the owner's name as

“Cronson, C, C” and the owner’s address as that of the Subject Apartment and was issued on February 18, 2015.

Exhibit O contains various statements from medical providers and a copy of Christopher Cronson’s health insurance card. The statements are regarding treatment received by Christopher Cronson and are dated May 9, 2012, January 24, 2013, March 25, 2013, and August 25, 2015.

The May 9, 2012 statement is from NYU Child Study Center located at 577 First Avenue, New York, New York 10016 and lists both Paul Cronson and Christopher Cronson’s address as that of the Subject Apartment.

The January 24, 2013 statement relates to treatment at New York Presbyterian, Weill Cornell and lists Christopher Cronson’s address as that of the Subject Apartment.

The March 25, 2013 statement relates to treatment by a “John Wells.” No address is indicated for this provider. The statement lists Christopher Cronson’s address as that of the Subject Apartment.

The August 25, 2015 statement is for lab work done by Sunrise Medical Laboratories located in Hicksville, New York. The requesting physician is listed as Dr. Adam Rosenbluth. In an affidavit, Christopher Cronson states that Dr. Rosenbluth is his primary care physician and is located at 912 Fifth Avenue, New York, New York 10021. The statement also lists Christopher Cronson’s address as that of the Subject Apartment.

There is also a letter in Exhibit O dated September 16, 2014, which indicates that Christopher Cronson had insurance coverage on an Oxford Health Plans family plan from January 1, 2011, to August 31, 2014, when his coverage ended.

Exhibit P contains letters dated March 9, 2014, June 1, 2014, and November 3, 2015, addressed to Christopher Cronson c/o Paul Cronson at the Subject Apartment. Exhibit P also contains a copy of Christopher Cronson’s Met Museum membership card. The card indicates that Christopher Cronson has been a member since March 1989 and that his membership will expire on April 30, 2017.

Exhibit Q encloses a copy of Christopher Cronson’s deposit transaction history relating to transactions from April 8, 2016 to December 14, 2016. A

monthly preauthorized withdrawal in the amount of \$2679.17 is visible, as is a \$3000.00 deposit dated June 7, 2016. Another deposit transaction history report displays transactions from January 10, 2017 to May 8, 2017 and shows similar preauthorized withdrawals. Exhibit Q also encloses copies of three checks from Christopher Cronson to BLDG in amounts corresponding to the preauthorized withdrawals listed in the transaction history reports. Other financial statements are attached from dates in 2011–2017 that list Christopher Cronson’s address as being that of the Subject Apartment.

Exhibit R is Christopher Cronson’s state and federal tax returns from 2013 and 2014. Both the 2013 and 2014 tax returns state that Christopher Cronson lived in New York City for 12 months. (LoGuidice affirmation, exhibit R, at 3, 9.) His address is listed as that of the Subject Apartment.

Exhibit S is the 2013, 2014, and 2015 tax returns of Paul Cronson and his wife, Caroline Cronson. The 2013 and 2014 tax returns list their address as that of the Subject Apartment. The 2015 tax return lists their address as the East 77th Street address (the deed for which is provided as Exhibit T). All three tax returns name Christopher Cronson as their dependent and state that he lived with them.

Christopher Cronson has submitted an affidavit in support of his motion. Christopher Cronson states in his affidavit, dated June 1, 2017, that the Subject Apartment has been his sole and primary residence since he was born. Christopher Cronson further states that his parents, Paul and Caroline Cronson, moved into the Subject Apartment in 1989 and lived there continuously as their sole and primary residence until October 2015. Christopher Cronson further states that he remained in the Subject Apartment and continues to live there as the sole tenant. Christopher Cronson further states that the utility bills for the Subject Apartment are in Paul Cronson’s name and that Paul and Caroline Cronson take care of the utility bills while Christopher Cronson is at school. (Aff of Christopher Cronson ¶ 24.)

Christopher Cronson further states in his affidavit that he is currently a student at Cal Arts in Valencia, California. Christopher Cronson further states that he “was admitted as a full time [sic] student there in September 2014.” (*Id.* ¶ 13.) Christopher Cronson further states that he lived in campus housing during his first academic year and has lived off-campus in a rental apartment beginning in the 2015 academic year. (*Id.* ¶¶ 15–16.)

Paul Cronson also submits an affidavit, dated June 14, 2017, in which he adopts and incorporates all the statements in Christopher Cronson's affidavit. Paul Cronson further states that he notified Defendants of his move from the Subject Apartment. Paul Cronson further states that Christopher Cronson "has been a full time [sic] student [at Cal Arts] since 2014." (Aff of Paul Cronson ¶ 17.) Paul Cronson further states that Christopher Cronson lives in the Subject Apartment while on break from school.

Defendants argue in their opposition papers that "the sole questions before this Court are whether there are questions of fact as to whether the plaintiff, Christopher Cronson, resided with his parents at the subject apartment for a 2[-]year period prior to their 'vacating' the subject apartment or whether discovery may produce evidence not presently available to defendants that might defeat this motion and this succession rights claim." (Affirmation of Wolf ¶ 3.)

Defendants further argue that Paul Cronson still pays the utility bills which remain in his name. (*Id.* ¶ 5.) Defendants further argue that "even if the Plaintiff, Christopher Cronson, paid the rent, *inasmuch as he is a full time [sic] student*, his father, Paul Cronson, is funding his account. *Since he is a full time [sic] student*, there appears to be a \$3000 a month deposit into this account which appears to be from his father." (*Id.* ¶ 6 [emphases added].) Defendants argue, in sum and substance, that Paul Cronson is the tenant of record at the Subject Apartment, maintains dominion and control over it, and never permanently vacated it.

Defendants argue that Christopher Cronson cannot establish his succession rights claim or that he resided in the Subject Apartment for two years prior to Paul Cronson's permanently vacating. (*Id.* ¶ 8.) Defendants note, among other things, that Christopher Cronson did not explain the difference in amounts billed between the 2015 and 2016 1098-Ts. (*Id.* ¶ 9[d].) Defendants state that they "need to know whether [Cal Arts] has a policy of discounting tuition to residents of California as well as the documentation supplied in connection with [Christopher Cronson's] enrollment." (*Id.* ¶ 12[a].)

Defendants ask that this Court search the record and grant them summary judgment. In the alternative, Defendants ask that they be given the opportunity for discovery, including depositions of Plaintiffs and possibly non-parties.

Defendants provide an affidavit from Sara Getlin, an agent for BLDG. Ms. Getlin attaches as exhibits to her affidavit the last renewal lease executed by Paul

Cronson dated February 18, 2015, and the renewal lease executed by Christopher Cronson dated February 27, 2017. Ms. Getlin stated that it appears that the February 27, 2017 renewal lease was also executed by Paul Cronson and that this demonstrates and illustrates Paul Cronson's continued dominion and control over the Subject Apartment. (Aff of Getlin ¶¶ 4–5.) The remainder of the affidavit realleges statements from Wolf's affirmation.

Plaintiffs argue in reply that insofar as Defendants sought certain additional discovery enumerated in their affirmation in opposition, Plaintiffs have either addressed or provided it in reply. Plaintiffs attached Christopher Cronson's voter registration information which indicates he is registered to vote in New York. Plaintiffs also attached vehicle insurance premium notices dated December 22, 2014, December 22, 2015, and December 22, 2016, all of which list the address of the Subject Apartment as Christopher Cronson's address.

Plaintiffs argue that the legal issue for this case is “whether or not Christopher Cronson's school attendance constitutes a lack of primary residence that would bar succession rights.” (Reply affirmation of LoGuidice ¶ 15.) Plaintiffs argue on this point that the RSC “provides that absence for scholastic purposes as a full-time student does not defeat primary residence.” (*Id.* ¶ 16.) Plaintiffs further argue that it is uncontroverted that Paul Cronson moved out of the Subject Apartment in late 2015 and that “[a]ny documents thereafter are irrelevant, including *any 2015 tax returns which could not be filed until 2016 at the earliest.*” (*Id.* ¶ 23 [emphasis added].)

Both Christopher Cronson and Paul Cronson have submitted reply affidavits in further support of their motion for summary judgment. Christopher Cronson in his affidavit stated that he has not had a paying job in 2013–2015 and has been “a student.” (Reply aff of Christopher Cronson ¶ 4.) Christopher Cronson further stated that “[his] tuition depends on what classes [he] take[s], as well as periodic adjustments in [Cal Arts'] charges.” (*Id.* ¶ 7.) Christopher Cronson then stated that “[Defendants] can independently verify the difference in the charges [on the 1098-T forms] on the [Cal Arts] web page, which has an app to compute costs[.]” (*Id.* ¶ 8.) Christopher Cronson further stated that Cal Arts is a private university which charges the same amount for in-state tuition as out-of-state tuition. (*Id.* ¶ 13.) Christopher Cronson further stated that Paul Cronson did not sign the February 2017 lease renewal.

Paul Cronson, in his reply affidavit, stated that “Ms. Getlin speculates that there are two signatures on [the February 2017] lease, one of which is [his]. That is untrue [sic] and the falsity of that claim is apparent from the documents. The [February 2017] lease renewal, which the landlord never signed, is signed by my son, with his name printed below his signature.” (Reply aff of Paul Cronson ¶¶ 6–8.)

At oral argument, the parties’ counsel reiterated the points raised in their papers. Counsel for Plaintiffs stated that “this is a very narrow series of issues at this point. The parties have narrowed down the issue of succession.” (Tr, at 2, lines 25–26; at 3, line 2.) Counsel for Plaintiffs further stated that “the only issue” was whether “if a person was attending school and temporarily relocates as part of an enrollment as a full-time student, that would break the two-year period of time [under the RSC].” (Tr, at 4, lines 4–12.) Counsel for Plaintiffs stated that the proof submitted to the Court regarding whether Christopher Cronson was a full-time student during this period was “the affidavits, and there is also a website that gives the requirements for full-time and what the tuition is.” (Tr, at 7, lines 14–21.)

Counsel for Plaintiffs was asked “[s]o what do we have for the year 2014 to 2015? What is in the papers that says that Christopher is a full-time student at that school? What exhibit?” Counsel for Plaintiffs replied, “[e]xhibit M is the tuition statements for 2015 and 2016.” (Tr, at 8, lines 12–16.) Counsel for Plaintiffs further stated that the “\$22,823” from the 2016 1098-T was for “an entire year . . . based on the credits . . . [Christopher Cronson has] taken” and that “he took less [sic] credits in 2016—I’m sorry—in 2015.” (Tr, at 8, lines 17–26; at 9, lines 2–7.) Counsel for Plaintiffs argued that “[f]ull-time student is defined as someone who goes to school and lives at school the academic year, which is September through December and then January through May.” (Tr, at 12, line 26; at 13, lines 2–3.)

Counsel for Defendants argued, in sum and substance, that Defendants were entitled to an examination of Plaintiffs and to discovery to establish “whether or not [Christopher Cronson] resided in the [Subject Apartment] from October [] [20]13 through October [20]15 when [Paul Cronson] left.” (Tr, at 16, lines 19–21.) Counsel for Defendants further argued that although Paul Cronson physically vacated the Subject Apartment in October 2015—a point they “don’t dispute”—he continued to pay the utility bills and was effectively paying the rent by depositing the rent funds into Christopher Cronson’s account. (Tr, at 18, lines 9–13; at 21, lines 16–17.) Counsel for Defendants further argued that the 1098-Ts do not specify the time periods to which they relate and the amounts are uneven, and that

such times indicating Christopher Cronson was not a full-time student “would not be counted toward residing in the apartment for the requisite time period.” (Tr, at 22, lines 8–14.) Counsel for Defendants then argued that he is “entitled to a deposition to determine when [Christopher Cronson] left, when he came back, and where he was” and does not have to “accept his conclusory statements.” (Tr, at 22, lines 15–20.)

Counsel for Plaintiffs argued in reply that case law cited by counsel for Defendants (discussed more fully below) “doesn’t say anything about those of us who help our children who are starting out in life by helping with pay[ing] their rent. That is not exerting control over a rent[-]stabilized apartment.” (Tr, at 25, lines 16–19.)

DISCUSSION

“To obtain summary judgment it is necessary that the movant establish his cause of action or defense sufficiently to warrant the court as a matter of law in directing judgment in his favor, and he must do so by tender of evidentiary proof in admissible form.” (*Zuckerman v City of New York*, 49 N.Y.2d 557, 562 [1980] [internal quotation marks and citation omitted].) “Once this showing has been made, the burden shifts to the nonmoving party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial for resolution.” (*Giuffrida v Citibank Corp.*, 100 N.Y.2d 72, 81 [2003].) “On a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party.” (*Vega v Restani Constr. Corp.*, 18 N.Y.3d 499, 503 [2012] [internal quotation marks and citation omitted].) In the presence of a genuine issue of material fact, a motion for summary judgment must be denied. (*See Rotuba Extruders v Ceppos*, 46 N.Y.2d 223, 231 [1978]; *Grossman v Amalgamated Hous. Corp.*, 298 A.D.2d 224, 226 [1st Dept 2002].)

The RSC provides that a member of a tenant’s family may succeed a tenant if the tenant has permanently vacated subject housing and if the family member resided with the tenant in the subject housing as the family member’s primary residence for a period of no less than two years immediately prior to the date the tenant permanently vacated. (*See* 9 NYCRR 2523.5 [b] [1].) A son of a tenant qualifies as a family member under the RSC. (*See* 9 NYCRR 2520.6 [o] [1].) The required residency period is not interrupted by the family member’s temporary relocation because he or she is “enrolled as a full-time student.” (9 NYCRR 2523.5 [b] [2] [ii].) Further, “[t]he burden of presenting legally sufficient proof to establish

primary residency rests with the party claiming succession rights. Primary residence is judicially construed as an ongoing, substantial, physical nexus with the premises for actual living purposes.” (68-74 *Thompson Realty, LLC v McNally*, 71 AD3d 411, 412 [1st Dept 2010].)

The Court finds that Plaintiffs have shown prima facie for the purposes of the instant motion that Paul Cronson has permanently vacated the Subject Apartment as of October 1, 2015. Recently, the Appellate Division, Second Department held that a family member had the right to seek succession rights even where the tenant continued to pay the rent and executed a renewal lease after moving out. (See *Matter of Jourdain v New York State Div. of Hous. & Community Renewal*, —NYS3d—, 2018 WL 635858 [2d Dept 2018].) The Appellate Division, Second Department distinguished the facts in *Matter of Jourdain* from those in the Appellate Division, First Department case cited by Defendants in their papers, *Third Lenox Terrace Associates v Edwards* (91 AD3d 532 [1st Dept 2012].)

In *Third Lenox*, the tenant of record vacated the subject premises and, for seven years, without noticing her landlord, “continued to execute renewal leases for the subject premises and continued to pay the rent by money orders issued in her name during that time.” (*Id.* at 533.) As such, the court found that the tenant of record had not permanently vacated the subject premises. Similarly, in the other case cited by Defendants, *East 96th St. Co., LLC v Santos* (13 Misc3d 133[A] [App Term, 1st Dept 2006]), a tenant was found not to have permanently vacated where “renewal leases . . . which listed [the tenant] . . . were either personally executed by the [tenant] or bore his forged signature” for nine years following the time when he was alleged to have permanently vacated. Further, in *Santos* there was “no showing that respondent resided with the tenant in the subject apartment during the two-year period immediately preceding the tenant’s death.”

In the instant case, Plaintiffs provided notice to Defendants regarding Paul Cronson’s planned October 1, 2015 move more than four months in advance. Further, Paul Cronson has executed no renewal leases, and Christopher Cronson has sought to become the tenant of record and has executed a renewal lease in 2017. Further, Christopher Cronson has paid the rent on the Subject Apartment since Paul Cronson physically vacated the apartment in October 2015. The Court is not concerned as to the source of the funds Christopher Cronson uses to pay rent, only that the rent payments are made in his name as obligor to Defendants. As such, the Court finds that Plaintiffs have shown prima facie that Paul Cronson

permanently vacated the Subject Apartment on October 1, 2015, for the purposes of the instant motion and 9 NYCRR 2523.5 (b) (1).

To the extent the parties were in dispute regarding whether Christopher Cronson is Paul Cronson's son, the Court further finds that Christopher Cronson is Paul Cronson's son based upon, among other things, the birth certificate and tax returns included in the instant motion.

The Court further finds that Plaintiffs have shown prima facie for the purposes of the instant motion that the Subject Apartment has been Christopher Cronson's primary residence at all times when Christopher Cronson has not been at Cal Arts. Plaintiffs have submitted "traditional indicia" of primary residency, including federal and state tax returns, a driver license and registration, and a voter registration, as well as myriad other documents. (*See O'Quinn v New York City Dept. of Hous. Preserv. & Dev.*, 284 AD2d 211, 211 [1st Dept 2001].)

As to the aforesaid issues, Defendants fail to raise a genuine issue of material fact, and CPLR 3212 (f) is inapplicable because it does not appear to the Court "from affidavits submitted in opposition to the motion that facts essential to justify opposition may exist but cannot [] be stated." (CPLR 3212 [f].)

As the Court has found for the purposes of the instant motion that Paul Cronson permanently vacated the Subject Apartment on October 1, 2015, that Christopher Cronson is Paul Cronson's family member for RSC succession purposes, and that the Subject Apartment was Christopher Cronson's primary residence at all times when he was not in school at Cal Arts, Plaintiffs are entitled to the relief they have sought in the instant motion, provided they can show prima facie that, to the extent Christopher Cronson was not living in the Subject Apartment, this was a valid temporary relocation under 9 NYCRR 2523.5 (b) (2). Plaintiffs have argued that Christopher Cronson temporarily relocated, and that his residency should be deemed uninterrupted, pursuant to 9 NYCRR 2523.5 (b) (2) (ii) in that, when Christopher Cronson was not physically living in the Subject Apartment, this was because he was "enrolled as a full-time student."

The RSC does not define "full-time student." The Court therefore looks to other sections of the New York Codes, Rules and Regulations as to how the legislature has defined this term. Chapter 8 defines a full-time student or full-time course of study as where a student enrolls for at least 12 semester hours or the equivalent. (8 NYCRR §§ 145-2.1, 145-7.2.) Chapter 8 also defines a full-time

student as a student who enrolls for credits, hours, or courses equal to at least 75% of the normal full-time load for students prescribed by the institution. (8 NYCRR 150.3.) Chapter 10 defines a full-time student as a student enrolled for 12 or more semester hours, or the equivalent, per semester. (10 NYCRR 66-2.1.) Chapter 20 defines a full-time student as an individual who is carrying a minimum courseload in such program of 12 credit hours per semester for at least two semesters, or the equivalent, during the individual's taxable year. (20 NYCRR 105.20.) Chapter 20 also defines a full-time student as one who meets the requirements of subsection (b) of section 1.151-3 of the Federal income tax regulations. (20 NYCRR 171.8.) That section states that a full-time student is one who is enrolled for some part of five calendar months for the number of hours which is considered to be full-time attendance by a given educational institution. (26 CFR 1.151-3.)

The courts have not broadened the definition of "full-time student" well beyond the definitions present in the above-cited code provisions. In *Klein v Empire Blue Cross and Blue Shield* (173 AD2d 1006, 1011 [3d Dept 1991]), the court declined to "define precisely the meaning of full-time student," where "[i]t suffice[d] to hold that, as a matter of law, registration for one course is insufficient to satisfy [an insurance] policy requirement [relating to dependent coverage]." In *Turner v New York City Dept. of Hous. Preserv. & Dev.* (149 AD3d 547, 548–49 [1st Dept 2017]), the Appellate Division, First Department stated that "[p]etitioner [had] failed to submit any documents to establish proof . . . that he was a full-time student at Morehouse College during the [two-year succession period under the RSC]. Petitioner did not submit his transcript until after the hearing officer issued her August 11, 2014 decision; however, even considering the transcript, discrepancies such as the absence of classes for the spring 2012 semester" led the court to affirm that petitioner was not entitled to succession rights.

Based upon the foregoing, the Court finds as a matter of law that a "full-time student" for the purposes of the RSC is a student who is enrolled in twelve or more credit-hours, or their equivalent, in a fall or spring semester. "Full-time student" status is determined semester by semester. If a student in a given academic year takes sixteen credits in the fall but takes eight credits in the spring, the student was a full-time student in the fall and was not a full-time student in the spring. For other term lengths, such as quarters and summer sessions, the Court finds as a matter of law that "full-time student" for the purposes of the RSC shall mean a student who enrolls for credits, hours, or courses equal to at least 75% of the normal full-time load for students prescribed by the institution for the given term (quarter, summer session, etc.). If a student attends school in the summer where a

full course load is regarded as eight credits, then a student taking six or more credits during that summer session is a full-time student, and a student taking fewer than six credits during that summer session is not a full-time student.

In the instant case, Plaintiffs fail to show prima facie that Christopher Cronson resided with Paul Cronson in the Subject Apartment with the Subject Apartment as his primary residence from October 1, 2013 to October 1, 2015. Specifically, Plaintiffs fail to show that Christopher Cronson's minimum period of required residency was not interrupted by any period in which Christopher Cronson temporarily relocated for a valid reason as contemplated under 9 NYCRR 2523.5 (b) (2). To the extent that Plaintiffs argue that Christopher Cronson was a full-time student during the two-year period—from August/September 2014 through October 1, 2015—and temporarily relocated because of that, Plaintiffs fail to show that Christopher Cronson was enrolled in twelve or more credit-hours in any given fall or spring semester at Cal Arts or that he was enrolled for at least 75% of the normal full-time load for students prescribed by Cal Arts for any quarter term or summer session for which Christopher Cronson may have enrolled.

While Plaintiffs state in their affidavits that Christopher Cronson is and has been a full-time student at Cal Arts since starting there in 2014, Christopher Cronson's own 1098-T for the 2016 tax year indicates an amount billed that is approximately half of what was billed in 2015. Further, the amounts billed on the 1098-Ts correspond to amounts for attendance not just in the tax year, but also in the following year. Further, the 1098-Ts indicate that Christopher Cronson was at least a half-time student, but do not specify a number of credit-hours per semester or academic term.

Plaintiffs have failed to submit transcripts, registrar statements, enrollment verification or dates of attendance (e.g., from Cal Arts directly or via the National Clearinghouse), or any other documentary evidence to support their statements in their affidavits that Christopher Cronson has been a full-time student at Cal Arts since 2014. In fact, the only documentary evidence submitted in this regard, the forms 1098-T, casts doubt on the assertion that Christopher Cronson has always been a full-time student at Cal Arts since beginning in 2014 because, as counsel for Plaintiffs put it: the "\$22,823" from the 2016 1098-T was for "an entire year . . . based on the credits . . . [Christopher Cronson has] taken" and that "he took less [sic] credits in 2016 [than in 2015]." As such, Plaintiffs have failed to show prima facie that Christopher Cronson may succeed his father as the tenant of record at the Subject Apartment under the RSC, and the Court need not address CPLR 3212 (f).

CONCLUSION

Accordingly, it is

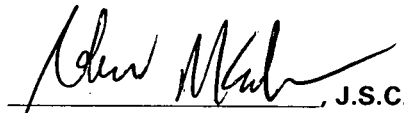
ORDERED that the motion by Plaintiffs Christopher Cronson and Paul Cronson pursuant to CPLR 3212 for summary judgment is denied; and it is further

ORDERED that counsel are directed to appear for a preliminary conference at 71 Thomas Street, Room 104, New York, New York 10013-3821

on FEBRUARY 27, 2018 AT 9:30AM.

The foregoing constitutes the decision and order of the Court.

Dated: February 8, 2018
New York, New York


J.S.C.

HON. ROBERT D. KALISH

- 1. Check one:.....
- 2. Check if appropriate:..... MOTION IS:
- 3. Check if appropriate:.....

- CASE DISPOSED NON-FINAL DISPOSITION
- GRANTED DENIED GRANTED IN PART OTHER
- SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE